

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Order : 21st July, 2009.*

+ **CRL.A. No.63/2004**

MOHD. NIZAM @ NASIM Appellant
Through: Mr. Bhupesh Narula, Advocate.

versus

THE STATE Respondent
Through: Mr. Pawan Sharma, APP.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J. (ORAL)

1. Vide impugned judgment and order dated 29.7.2003, the appellant has been convicted for the offence of having murdered Firdosh Khatoon. The date when the unfortunate girl was murdered was 01.10.2001. The stated time is around 7.15 PM. The place is the street adjacent to the slum dwelling of Firdosh i.e. Jhuggi No. 786, Rakhi Market, Inderlok where she resided with her mother. As per the impugned decision, the incident was witnessed by

Mst.Ajmeri Khatoon PW-4, the mother of the Firdosh Khatoon. Further, as the appellant was fleeing from the place and was being chased by 2/3 residents of the locality, Const. Ravinder PW-11, on beat duty in the area, got attracted by the cries 'Pakado-Pakado' and saw the appellant running and being chased by 2/3 persons. He apprehended the appellant who was having a blood stained scissor in his hand and his T-Shirt was stained with blood. Both were seized.

2. The reports of the Serologist Ex.PW-12/H, Ex.PW-12/J and Ex.PW-12/K disclose that the blood group of the deceased was 'A' and human blood of same group was detected on the T-Shirt worn by the appellant and seized immediately upon his apprehension as also on the scissors which was recovered by Const. Ravinder from the hand of the appellant when he was apprehended.

3. We need not pen a lengthy decision, for the reason, the entire investigation stands recorded, post completion, soon after the incident in the Tehrir Ex.PW-12/A. It leaves hardly any scope for doubt of there being any interpolation, manipulation or false implication by the police.

4. It stands recorded in D.D. No. 25, Ex. PW-8/A, that at 19.45 on 01.10.2001 information has been received at the Police Post, Inderlok under jurisdiction of Police Station Sarai Rohilla that a girl has been murdered in the slum at Inderlok.

5. Inspector Kulbhushan who was posted at the SHO, Police Station Sarai Rohilla learnt about the said information being recorded as SI Tej Pal Singh informed him over the telephone of the same. He reached the slum cluster at Inderlok and saw Firdosh lying face down near a gali. She was dead. She had cut marks around her neck. The appellant had been apprehended by Const. Ravinder PW-11, who was on beat duty, and was handed over to Inspector Kulbhushan. A scissors, stained with blood was handed over by Const. Ravinder to Inspector Kulbhushan which was seized by Inspector Kulbhushan as recorded in the memo Ex.PW-4/C; sketch whereof Ex.PW-4/B was drawn by Inspector Kulbhushan.

6. T-Shirt worn by the appellant was stained with blood and was seized vide memo Ex.PW-4/G.

7. Scissors and T-Shirt were sealed and seal of KBS was affixed on the two parcels.

8. Ajmeri Kharoon PW-4, mother of Firdosh was present and her statement Ex.PW-4/A was recorded by Inspector Kulbhushan in which she disclosed that she was the wife of late Zahid Hussain and was residing in Jhuggi No. 786 , Rakhi Market, Inderlok,. Delhi. She disclosed that she had two sons and a daughter. Deceased Firdosh was her daughter and was married about a year back to one Mohd. Yuti and as per custom her daughter had not been residing with her husband. The ceremony of Gauna had not been held. Accused

Mohd. Naseem, a tailor by profession, was a resident of a Jhuggi opposite hers and was having an evil eye on her daughter and desired to marry her. She and her daughter were being harassed by the accused inspite of being told that the deceased was married. Two days back, her daughter had informed her that when she went to the public toilet the accused had teased her and impressed upon her to marry him. Today i.e. on 01.10.2001 at around 7.15 PM she and her two sons were outside their Jhuggi and Firdosh had gone to the public toilet. When Firdosh returned the accused followed her. Her daughter told her that the accused had threatened her that if she did not marry he would kill her. Before she could do anything, the accused, who had a scissors with him, repeatedly stabbed her daughter in the neck as a result of which her daughter fell down. After committing the offence, the accused ran towards the railway line. She and a few residents of the slum cluster chased him. Before they could apprehend the accused a policeman coming from the opposite direction apprehended the accused.

9. Beneath the statement Ex.PW-4/A of Ajmeri Khatoon, Inspector Kulbhushan made an endorsement Ex.PW-12/A in which he has recorded as under :-

“To
The Duty Officer,
P.S. Sarai Rohilla.

This is to inform that upon receipt of information from S.I.
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Tej Pal I proceeded to the slum cluster in my official vehicle and reached Rakhi Market, Zakhira, Inderlok where S.I. Tej Pal from Police Post Inderlok alongwith his staff were found present. A girl aged around twelve years named Firdosh Khatoon daughter of late Zahid Hussein R/o Jhuggi No. 786, Rakhi Market, Zakhira, Inderlok was found dead lying face down in a Nali. On inspection it was noted that there were various stab wounds on the neck of the deceased. Const. Ravinder produced Mohd. Naseem, a tailor as also a blood stained scissors and disclosed that this was the weapon of offence. At the spot statement of Ajmeri Khatoon has been recorded. The scissors produced by Const. Ravinder has been seized. The sketch thereof has been prepared. The length of the blade of the scissors is 12 cm. and the total length is 25 cm. The blades of the scissors are of iron and the other part is of yellow metal. The scissors is stained with blood. Alphabet 'SAF' have been etched on the scissors. The scissors has been sealed in a packet and seal of 'KBS' has been embossed thereon. From the statement of Ajmeri Khatoon and from the attended circumstance case be registered under Section 302 IPC. The Tehrir is being forwarded.

Date and time of incident: 01.10.2001 at about 7.15 PM

Place of incident: In front of Jhuggi No. 786 , Rakhi Market,
Zakhira, Inderlok.

Date and time of dispatch of Tehrir: 01.10.2001 at
10.25PM."

10. The body of the deceased was sent to the Subzi Mandi

Mortuary, where Dr.Ashok Jaiswal PW-14, conducted the post
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mortem on 02.10.2001 and prepared the post mortem report Ex.PW-14/A recording therein six external injuries, all directed towards the neck of the deceased. He recorded therein that internal examination showed that the blood vessels in the neck were cut, that thyroid and trachea of the deceased had also received cuts. He opined that from the nature of the wounds it could safely be said that a scissors was a possible weapon of offence that injury no.2,3,4 and 5 were caused by scissors blades whereof were partially open. He opined that injury no. 5 was sufficient to cause death in ordinary course of nature and that death was due to hemorrhagic shock.

11. We need only to note that Ajmeri Khatoon PW-4 who deposed in Court on 02.7.2002 stated the facts disclosed and as recorded in her statement Ex.PW-4/A. She identified the scissors Ex.P-5 as the one which she saw in the hand of the appellant when he stabbed her daughter. She affirmed her statement Ex.PW-4/A recorded by the SHO and stated that the thumb impression at point mark 'A' was affixed by her. She deposed that the T-Shirt Ex.P-4 was seized in her presence and was stained with blood. She deposed that the memos pertaining to the T-Shirt and the scissors were drawn up in her presence and she had witnessed the seizure of the two articles. She deposed the past events pertaining to the accused troubling her daughter as recorded in her statement Ex.PW-4/A. Nothing of

substance has been pointed out to us with respect to the cross-examination of PW-4 to discredit her.

12. Const. Ravinder deposed as PW-11 and stated that while on patrolling duty on 01.10.2001, having reached Rakhi Market, Zakhira at around 7.20 PM he saw the appellant running from the side of jhuggis followed by a woman and 2/3 persons who were crying 'Pakado-Pakado'. He apprehended the accused. At that time, the accused had a blood stained scissors in his hands. He took possession of the scissors and handed over the scissors to the SHO and also handed over custody of the accused to the SHO.

13. Inspector Kulbhushan PW-12, deposed of having received information on 01.10.2001 that a girl had been murdered at Rakhi Market, Zakhira and on reaching there, the accused was handed over to him by Const. Ravinder who also handed over a scissors to him. He deposed that he prepared the seizure memos pertaining to the scissors and the blood stained T-Shirt of the appellant and of having prepared the site plan Ex.PW-12/B. He deposed that he recorded statement of Ajmeri Khatoon and after making the endorsement thereon, sent the same for an FIR to be registered.

14. Indeed, in the teeth of aforesaid tell-tale evidence, there is hardly any scope for any worthwhile submission being made on behalf of the appellant. We therefore do not trouble ourselves with a lengthy decision save and except to note that the eye-witness

account deposed to by Ajmeri Khatoon coupled with the testimony of Const.Ravinder are sufficient wherefrom it can safely be inferred that since the deceased was repelling the amorous advances of the appellant, seething in rage, the appellant repeatedly stabbed the deceased around the neck with scissors, resulting in her death. He did so with impunity in front of the mother of the deceased. The place of occurrence is outside the jhuggi of the deceased and who else other than the mother would be a natural witness. The circumstance of the T-shirt worn by the appellant being stained with blood of the same group as that of the deceased and the circumstance of the appellant being apprehended while fleeing and being chased by people is also incriminating evidence against the appellant.

15. The appellant has been convicted for the offence of murder. We concur with the view taken by the learned Trial Judge.

16. The appeal is dismissed.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

JULY 21, 2009
Nandan