

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

% Date of Decision : 7th April, 2010

+ **CRL.A. 271/2010**

MOHD. FARUKH Appellant
Through: Mr. Deepak Vohra with
Mr. Krishan Kumar, Advocates

versus

STATE OF NCT OF DELHI Respondent
Through: Mr. M.N. Dudeja, APP

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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

Yes

PRADEEP NANDRAJOG, J. (Oral)

1. Vide impugned judgment and order dated 12.10.2009, the learned trial Judge has convicted the appellant for the offence of having murdered his father Ali Sher.

2. The witnesses who have deposed against the appellant were his brothers Mohd. Iqbal PW-2 and Jakir PW-4 as also his brother-in-law Aas Mohammad PW-5. Besides the deposition of the said three witness, the learned trial judge has relied upon the testimony of Ct. Ramvilas PW-9 who had

apprehended the appellant soon after the crime was committed, having notice blood on the clothes of the appellant as also blood stained dagger in his hand when the appellant was fleeing from the place where the crime was committed. Corroboration has been found to the testimony of Ct.Ramvilas through the testimony of SI A.K.Singh PW-16, ASI Fazruddin PW-19 and Ct.Radhey Shyam PW-3. Though not specifically referred to by the learned trial judge, as per the report Ex.PX of the serologist, human blood of the same group as that of the deceased was detected on the clothes of the appellant which were seized on the appellant being apprehended. We note that the learned trial judge has relied upon the fact that the clothes of the appellant which were seized by the Investigation Office after the appellant was apprehended were stained with blood.

3. Mohd.Iqbal PW-2, the brother of the appellant simply deposed that on 27.10.2006 he was at his house along with Aas Mohammad and at about 2:00 PM went upstairs to change clothes for Namaj. When he was changing clothes he heard noise on the ground floor and immediately came down. He saw his father in a pool of blood inside his shop. His brother-in-law also came there and both shifted their father to Holy Family Hospital in a TSR where the doctor declared him

brought dead. He deposed that the appellant used to quarrel with the family and hence his father had got him separated. That his father had given the appellant a shop which appellant had rented out for a sum of Rs.3,000/- per month. That the appellant used to remain mentally depressed. That the appellant suspected that he would not be given his share in the family property.

4. Suffice would it be to note that PW-2 does not claim to have seen the appellant assault his father. At best, the testimony of PW-2 brings out a motive for the crime.

5. Jakir PW-4 deposed that on 27.10.2006 he was present in his house along with his brother-in-law Aas Mohammad and at around 2:00 PM his father Ali Sher was sitting inside the shop. The distance between his house and the shop was a room. He heard a noise. He came out on hearing the noise/cry of his father and saw the appellant with a dagger in his hand which was smeared in blood. He saw the appellant at a distance of about 10 feet and on seeing him the appellant fled from the spot. He saw his father in a pool of blood with a number of stab injuries. He called his brother and brother-in-law and rushed his father to the hospital. Police reached the hospital where his statement Ex.PW-4/A was recorded.

6. Suffice would it be to note that substantially the same facts have been disclosed by PW-4 in his statement Ex.PW-4/A on the basis whereof the FIR was registered.

7. Aas Mohammad PW-5, the brother-in-law of PW-2 and PW-4, whose presence at the spot has been deposed to by the said two witnesses, deposed that he was present in the house of his brother-in-law Jakir (PW-4) on 27.10.2006 at about 2:00 PM. He heard noise of crying and came outside. He saw his father-in-law Ali Sher lying in a pool of blood. He saw the accused running away from the spot having some arm. A TSR was stopped and his father-in-law was removed to Holy Family Hospital where he expired.

8. Since Aas Mohammad claimed to have become unconscious and perplexed and resiled from certain statements made by him during investigation to the investigating officer and as recorded in his statement under Section 161 Cr.P.C., he was cross-examined by the learned APP and on cross-examination admitted that when he came outside the house of his brother-in-law he saw the appellant running from the spot having blood on his clothes and a blood stained dagger in his house. He admitted that he chased the appellant who was apprehended by the police at a distance of

about 15 meters from the spot where the crime was committed.

9. The person who claimed to have apprehended the appellant is Const.Ramvilas PW-9 who deposed that on 27.10.2006 he was on picket duty at Ceiling Club Picket from 8:00 AM to 8:00 PM and that around 2:00 PM saw a person coming towards the picket with a blood stained dagger in his hand. The clothes of the person was stained with blood. He apprehended that person and brought him to the police station and disarmed him. Two persons in a TSR were taking an injured and told him that the appellant had stabbed his father. He made inquiry and the appellant told his name as Farukh. He informed the police post Jamia. SI A.K.Singh accompanied by Const.Radhey Shyam and ASI Fazruddin came to the spot and he handed over custody of the accused to them.

10. Suffice would it be to note that while deposing in Court Const.Ramvilas PW-9 has confused when he stated that he brought the accused to the police station, it appears that he intended to say that he brought the accused to the police picket, for the reason SI A.K.Singh, ASI Fazruddin and Const.Radhey Shyam claimed to have taken custody of the accused at the police picket.

11. SI A.K.Singh PW-16 deposed that on receipt of DD No.14 from police post Jamia Nagar he along with ASI Fazruddin and Const.Radhey Shyam went to Ceiling Club Picket where Const.Ramvilas produced the appellant whose clothes were stained with blood. A dagger was handed over to him. He went to Holy Family Hospital where he met Jakir whose statement Ex.PW-4/A was recorded by him. He made the endorsement Ex.PW-16/A beneath the statement and handed over the same to Const.Radhey Shyam for FIR to be registered. He further deposed that after FIR was registered Insp.Akhilesh Yadav PW-21 took over the investigation and came to the spot. Even he went to the spot. At the spot Insp.Akhilesh Yadav seized the dagger which was handed over by Const.Ramvilas and drew up the seizure memo Ex.PW-9/D and thereafter drew the sketch Ex.PW-9/C of the dagger and as recorded in the memo Ex.PW-9/E seized the clothes of the accused.

12. Insp.Akhilesh Yadav PW-21 has deposed in sync with the testimony of SI A.K.Singh PW-16 pertaining to the investigation conducted after the FIR was registered.

13. We have gone through the cross-examination of aforesaid witnesses and do not find anything worthy of being noticed which discredits the testimony of the said witnesses.

14. The only thing worthy to be noted is that as per the police officers the dagger in question was wrapped in plain white paper and thereafter cloth was used to create a pullanda. It has come on record that when the dagger was opened for the first time after it was seized and on the seal being broken and the pullanda opened, no such paper was found within which the dagger was wrapped.

15. The aforesaid blemish as to whether at all the dagger was wrapped in a white sheet of paper and if at all what happened to said white sheet, in view of the eye witness account aforenoted, renders the said controversy fairly inconsequential.

16. From the testimony of PW-4 and PW-5 it is apparent that when deceased Ali Sher was seen fatally stabbed, lying in a pool of blood, the appellant was seen nearby with blood on his clothes and a dagger in his hand. The appellant was in the process of leaving the scene of the crime.

17. The appellant is the son of the deceased and his conduct of not rendering any assistance to his father and fleeing from the scene of the crime is so strong evidence that it leaves no scope for any inference other than the inference of guilt against the appellant. The fact that the clothes of the

appellant were stained with the blood of his father and the fact that there was a dagger in the hand of the appellant further nails the guilt of the appellant.

18. We would be failing if we do not note that Dr.B.L.Chaudhary PW-12 who conducted the post-mortem on the body of the deceased and prepared the post-mortem report Ex.PW-12/A also gave the opinion Ex.PW-12/B that the dagger in question could be the possible weapon of offence.

19. As per the post-mortem report Ex.PW-12/A, 13 incised wounds were inflicted on the person of the deceased. The target was the neck. It is apparent that an attempt was made to slit the neck of the deceased. The external jugular vein was cut. Incised wound No.7 shows the situs of the injury on the chest. Entering the third right rib at cost-chondral junction the dagger pierced the right lung.

20. The sketch of the dagger Ex.PW-9/C prepared by the investigating officer shows that the total length of the dagger is 31 cms with blade length being 21 cms.

21. Thus, there is no scope for any argument that the acts of the appellant do not make out a case of murder.

22. He who inflicts 13 stab wounds on the vital part of the body of a human being using a dagger having a blade of

21 cms length would certainly be attributed with the intention to cause the death of the victim.

23. We find no merit in the appeal which is dismissed.

24. Since the appellant is in jail we direct that a copy of the present decision be sent to the Superintendent Central Jail Tihar to be made available to the appellant.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

APRIL 7, 2010
'mr/mm'