

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

% *Date of Decision: 10th May, 2010*

+ **CRL.APPEAL No.472/2010**

NOOR ALAM Appellant
Through: Ms.Nilofar Qureshi, Advocate

versus

STATE Respondent
Through: Mr.M.N.Dudeja, Advocate

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 the Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.(Oral)

1. After evidence was led the appellant was examined under Section 313 Cr.P.C. and to questions No.2, 8, 9, 11, 12, 13, 28 and 40 he answered; the questions and the answers are noted as under:-

“Q.2 It is further in evidence against you that you along with your father Allauddin who is PO were living at Jhuggi No.K-209, Jahangir Puri. What do you have to say?

A. It is incorrect. I was residing at Bhalsava Diary Kalender Colony, Patil Nagar, Delhi at the time of incident.

Q.8 It is further in evidence against you that Mobile phone No.9350872436 is in the name of Mukesh

Sharma H-101, Kamdenu Agro Ltd. and he had given the same to Rabina and she was using the same. What do you have to say?

A. It is correct that my mother was using this mobile phone but she handed over the same to me.

Q.9 It is further in evidence against you that on 19.03.08 Mukesh made a telephone call to Rabina @ Darshana on mobile phone No.9350872436 from the telephone of his company from No.27183897 but it was busy and also from STD Booth No.99992974 but it was disconnected and he was unable to talk to her. What do you have to say?

A. It is correct. The mobile in my possession at that time.

Q.11 It is further in evidence against you that on the night intervening 19/20.03.08 HC Kamlesh Narain was working as duty HC at BJRM Hospital in the night at about 1 AM you took Rabina to BJRM Hospital and disclosed your name as Noor Alam to him and stated yourself to be the son of Rabina. What do you have to say?

A. It is correct. I along with Mukesh took Rabina to BJRM Hospital.

Q.12 It is further in evidence against you that Rabina was examined vide MLC No.E-19781 and she was declared as brought dead and as there were injuries mark on the neck and on the nose so HC Kamlesh Narain passed this information to PS Jahangir Puri and asked duty officer ASI Dharam Pal to send the police. What do you have to say?

A. I do not remember if there were any injuries on the person of Rabina. It is correct that doctors declared her brought dead.

Q.13 It is further in evidence against you that you fled away from the hospital when Rabina was declared brought dead by the doctor. What do you have to say?

A. It is incorrect. I was present along with Mukesh in the hospital.

Q.28 It is further in evidence against you that in the personal search of you one nokia mobile phone of Rabina Ex.P-2 and Rs.59/- were recovered. What do you have to say?

A. It is correct.

Q.40 It is further in evidence against you that on 03.05.2008, ASI Poonam handed over the call details of mobile number 9350872436, which were received in the PS via E-mail. This mobile number was of the mobile, which was recovered from you, you disclosed that this mobile phone was with Rabina-deceased. What do you have to say?

A. It is incorrect. This phone was given to me by my mother Rabina 5/6 days before the incident.”

2. The appellant claimed not to be residing with his father. The appellant admitted that mobile No.9350872436 was in the name of Mukesh Sharma who had handed over the same to the mother of the appellant Mst.Rabina but claimed that his mother had handed over the mobile set to him 5/6 days prior to when she died. He admitted that on 19.3.2008 Mukesh made calls from the landline No.27183897 and from the STD Booth No.99992974 to the mobile No.9350872436. Appellant admitted having brought Rabina to BJRM Hospital at 1:00 AM in the intervening night of 19/20.3.2008 but claimed that even Mukesh was with him. Appellant admitted that his mother was declared dead but denied having fled from the hospital and claimed that he remained present in the hospital with Mukesh. The appellant admitted that the mobile phone

Ex.P-2 given by Mukesh to Rabina was recovered from him when he was arrested.

3. It may be noted at the outset that having admitted to have removed his mother to the hospital but denied residing at jhuggi No.K-209, the appellant has rendered no explanation as to wherefrom he learnt that his mother was injured in the jhuggi. It is obvious that by denying his being at jhuggi No.K-209 the appellant wants to get over his requiring it to be explained as to how his mother suffered the injuries and thus much would turn upon proof of the fact that the appellant not only resided at jhuggi No.K-209 along with his father who is a proclaimed offender but additionally was at the jhuggi on 29.3.2008.

4. Thus, we would be eschewing reference to evidence relatable to the mobile phone No.9350872436, save and except what is necessary to be noted. We would also be eschewing reference to the evidence of the appellant borrowing a rickshaw to transport his mother to the hospital, save and except as would be necessary.

5. ASI Kamlesh Narain PW-11 has deposed that at around 1:00 AM on the intervening night of 19/20.3.2008 when he was on duty at BJRM Hospital as a Head Constable a boy who disclosed his name as Noor Alam brought a lady claiming

to be his mother at the hospital and told her name as Rabina wife of Allauddin R/o Jhuggi No.209 Metro Apartment, K Block, Jahangir Puri and vide MLC No.19781 the doctor declared the lady brought dead. He passed on the information to PS Jahangir Puri and soon SI Jagbir and Const.Devender reached the hospital by which time Noor Alam fled. That Noor Alam was the accused.

6. SI Jagbir PW-12 and Const.Devender PW-14, the two police officers named by ASI Kamlesh Narain in his statement have corroborated the testimony of ASI Kamlesh Narain inasmuch as they have deposed that after DD No.4A was recorded at PS Jahangir Puri at about 1:20 AM they left for the hospital and learnt that a lady named Rabina had been brought dead by her son and she had injury marks on her neck. No eye witness could be found and hence SI Jagbir Singh prepared the rukka Ex.PW-12/A beneath DD No.4A and dispatched the same through Const.Devender for FIR to be registered. Thereafter Insp.Inderjeet Singh took over the investigation as apparently it was a case of murder.

7. SI Jagbir Singh has further deposed, as corroborated by Insp.Inderjeet Singh PW-20 that the dead body was sent to the mortuary and they returned to K Block Jahangir Puri to search for Noor Alam and that Noor Alam was arrested at

around 4:00 PM on 20.3.2008 and a mobile phone Ex.P-2 was recovered from his personal search.

8. Idrish PW-2 has deposed that at around 8:00 PM he lent his rickshaw to Noor Alam who came to him at said time and borrowed the rickshaw telling him that he had to bring vegetables. Relevant would it be to note that said testimony of Idrish has not been challenged and it has not been suggested to him that Noor Alam did not borrow the rickshaw telling him that he wanted to bring vegetables. No suggestion has been made Idrish that Noor Alam told him that he wants to take his mother to the hospital.

9. Rajesh PW-9 has deposed that Rabina @ Darshana was the wife of Allauddin and mother of Noor Alam and she had visited the jhuggi of Noor Alam and Allauddin who were present in their jhuggi in the afternoon of the day she died.

10. Mukesh Sharma PW-10 has deposed that he was working as a supervisor at Rajdhani Flour Mills, Lawrence Road and was living in a jhuggi in K Block, Jahangir Puri and developed relations with Rabina who started living with him as his wife. Noor Alam and his father Allauddin were pressurizing her to attend the marriage of her daughter. She was resisting the same and hence they shifted to jhuggis in village Bakoli. He had purchased telephone No.9350872436 but had given it

to Rabina. On 19.3.2008 Darshana left their jhuggi she told him that she would be visiting her husband Allauddin and Noor Alam and around afternoon he tried to contact Rabina from the landline No.27183897 but could not do so and hence made an attempt to contact her from STD Booth No.99992974. He could hear the voice of hello from the other side but the phone got disconnected. He went to K Block, Jahangir Puri at about 8:00 PM where he met Allauddin and Noor Alam who told him that Darshana had visited them during day time but had gone back. He returned to his jhuggi in Bakoli and found it locked and thus returned to Jahangir Puri where at about 3:00 AM he learnt that Noor Alam and Allauddin had left Darshana in the hospital.

11. In spite of being cross-examined very intensely Mukesh Sharma has stood his ground. Raj Kumar Yadav, PW-8, Assistant Nodal Officer Reliance Communication has deposed that on being required by the police to do so he e-mailed the call details Ex.PW-8/A pertaining to mobile No.9350872436 w.e.f. 15.3.2008 to 25.3.2008 and thereafter he sent the copy of the call details Ex.PW-8/B under his signatures and that as per the record of the company the mobile phone was in the name of Mukesh Kumar and as per cell ID chart of the company the tower LWDLH14-22 was

situated at Ramgarh Jahangir Puri, the tower LWDLH14-106 was situated at Saroop Nagar, the tower LWDLH14-107 was situated at Rohini Industrial Area and the tower LWDLH14-115 was situated at Jahangir Puri. Relevant would it be to note that the call details for the period 15.3.2008 to 25.3.2008 show only incoming call received at the No.9350872436 without a single outgoing call and on 19.3.2008 show incoming calls received through the four towers i.e. tower LWDLH14-22 situated at Ramgarh Jahangir Puri, the tower LWDLH14-106 situated at Saroop Nagar, the tower LWDLH14-107 situated at Rohini Industrial Area and the tower LWDLH14-115 situated at Jahangir Puri. The time of the calls ranges between 12:00 noon to around 2:00 PM.

12. The post-mortem report of the deceased Ex.PW-13/A proved through the testimony of Dr.Kulbhushan Goyal PW-13 shows that she was strangled to death. The left superior thorn of the thyroid cartilage was fractured with massive bruises and clots around. He opined that time of death was about 23 hours prior to the time when he commenced the post-mortem. It stands recorded on the post-mortem report that the post-mortem commenced at 3:15 PM on 20.3.2008 and this takes the time of death of the deceased to be somewhere around 4:00 PM on 19.3.2008.

13. Now, through the testimony of PW-9 we have the fact that Darshana had visited the jhuggi of Noor Alam and Allauddin i.e. jhuggi No.209. As per him Noor Alam and Allauddin were present in the jhuggi. Mukesh has proved that since he could not trace the deceased Darshana he went to the said jhuggi at around 8:00 PM and met Allauddin and Noor Alam who told him that Darshana had left. This is an obvious lie for the reason Darshana was lying dead inside jhuggi No.209.

14. The appellant has admitted taking his mother to the hospital. We note that the MLC Ex.PW-10/D2 of Rabina records that at 1:10 AM on 20.3.2008 i.e. the midnight of 19th and 20th March 2008 Noor Alam had brought Rabina to the hospital and disclosed the residential address as Jhuggi No.209, K Block, Metro Apartments. This proves that Rabina was removed to the hospital from the jhuggi and Noor Alam gave her address as Jhuggi No.K-209, Metro Apartments. The conduct of Noor Alam in borrowing a rickshaw at around 8:00 PM from PW-2 in which he removed his mother to the hospital on a false requirement of using the rickshaw to bring vegetables indicates the guilt.

15. But, as has been rightly held by the learned Trial Judge, what nails the guilt of the appellant is his claim that his

mother had given to him the mobile phone in question 5-6 days ago is proved false through the testimony of PW-10 and the call details Ex.PW-8/B which show only incoming calls with further claim and proof thereof that PW-10 made the calls on the said mobile number through the landline number in the factory in which he was employed as a supervisor and the number from the STD Booth.

16. Appellant absconding from the hospital stands proved through the testimony of PW-11 and PW-14 as also PW-20. The claim of the appellant that he was at the hospital with Mukesh taken by him when he was examined under Section 313 Cr.P.C. is a blatant lie for the reason when Mukesh was examined as PW-10 no such suggestions were made to Mukesh. It was never suggested to Mukesh that even he visited the hospital, much less that the appellant remained with him at the hospital. The claim of the appellant that he never resided in jhuggi No.K-209 has remained a mere claim and incidentally, though we are not using the same as incriminating evidence, there exists an application at page 441-443 of the Trial Court Record which has been moved by the appellant before the learned Trial Judge praying that Jhuggi No.K-209, Jahangir Puri be de-sealed as the wife of the

appellant is without a roof and she needs the jhuggi for her residence.

17. To summarize, we hold that the prosecution has established that Rabina, the mother of the appellant, had left her husband and was residing with Mukesh PW-10, she went to the jhuggi where appellant was residing with his father and was seen in the jhuggi in the company of the appellant and his father by PW-9 at around 1:00 PM on 19.3.2008; she died around 4:00 PM and was removed from the jhuggi to the hospital at around 1:00 AM in the intervening night of 19th and 20th March 2008 and at around 8:00 PM in the night, the appellant and his father falsely told Mukesh that the deceased had returned. After bringing his mother to the hospital, the appellant fled with the mobile phone of his mother. Thus, unless the appellant rendered a satisfactory explanation as to how his mother died, he must own up the guilt along with his father who remained a proclaimed offender. We may note that the appellant did deny living in jhuggi No.K-209, a fact which is false, but that apart, having admitted removed his mother to the hospital has not explained as to wherefrom he learnt that his mother was lying injured in said jhuggi and thus made him go to the jhuggi. The truncated denial and truncated admission as aforementioned without any explanation of

who gave him information of his mother being injured, renders both totally destructive.

18. The only submission which has been made today is that the conduct of the appellant removing his mother to the hospital shows that he had nothing to hide. The argument does appear to be attractive but ignores that many a criminal is known to have suffered the pangs of conscience and later on, after committing the crime, in repentance or otherwise, taking remedial action but by that time it is too late.

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

20. Since the appellant is still in jail we direct that a copy of this decision be sent to the Superintendent Central Jail Tihar to be supplied to the appellant.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

MAY 10, 2010
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