

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

% *Date of Decision : 30th April, 2010*

+ **Crl. A. No. 1026/2008**

MOHD.MEHFOOZ Appellant
Through: Mr.Bhupesh Narula, Advocate

versus

THE STATE OF DELHI Respondent
Through: Mr.M.N.Dudeja, A.P.P.

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?

PRADEEP NANDRAJOG, J.(Oral)

1. Vide impugned judgment and order dated 13.10.2008 the appellant has been convicted for having murdered his wife at around 12:00 noon on 11.6.2007 at their matrimonial house being a room on the top floor of building bearing Municipal No.WP-15 Wazirpur Village, Delhi.

2. Rakesh Jain PW-5 has deposed that he was the owner of a 3 storeyed building bearing Municipal No.WP-15, Village Wazirpur and on the top floor thereof appellant with his family was residing with the permission of his tenant Mohd.Ali as also his i.e. Rakesh Jain's permission. That he had a shop in the same building and was present in his shop when he saw

appellant leave the house with his son at around 12:00 noon and that nobody went upstairs till 2:00 PM when one Gulam informed him that the wife of the appellant is lying unconscious in the room.

3. It is apparent that the testimony of Rakesh Jain proves that the appellant along with his wife and children was residing in a room on the top floor of House No.WP-15, Village Wazirpur, Delhi and left the building at around 12:00 noon on the day his wife was found murdered in the room at around 2:00 PM.

4. Rakesh Jain has been cross-examined in a most perfunctory manner. His cross-examination reads as under:-

“I do not know the date when Gulab had come to my shop and told me that wife of accused Mehfooz was lying unconscious in the room of my tenant Mohd.Ali. I cannot say the exact time when wife of accused was taken to the hospital in the TSR. I do not know whether accused Mehfooz had gone to the house of his cousin Gulab. I do not know if the wife of the accused was suffering from TB and died because of the same. It is incorrect to suggest that I am deposing falsely.”

5. Suffice would it be to state that testimony of Rakesh Jain has not been challenged with respect to the facts deposed to by him and is directed towards proof that the deceased was suffering from tuberculosis and died due to the disease.

6. Corroboration to the testimony of Rakesh Jain is to be found through the testimony of Mohd.Ali PW-6 who has

deposed that he was a tenant under Rakesh Jain and the appellant who was his cousin started residing with him along with his wife and children about 10-11 days prior thereto with him and that when he left for work on 11.6.2007 the appellant, his wife and children were in the house. His testimony is also corroborated through the testimony of Rafat Jahan PW-4 who deposed that on 11.6.2007 she was at her house bearing No.37 Village Wazirpur when at around 12:00 noon appellant left his son with her and also handed over to her his mobile phone Ex.P-1 and a file with documents Ex.P-2 (collectively). Her husband came home at 2:00 PM. Son of the appellant was weeping. Her husband took the son of the appellant to drop him at the house of the appellant and after about an hour and a half her husband returned and told her that Kesar Jahan was lying in her room when her husband went to the house of the appellant and he removed her to the hospital where she was declared dead.

7. Even Rafat Jahan PW-4 has been cross-examined in a most perfunctory manner. Her cross-examination reads as under:-

“I cannot say as to what clothes accused was wearing at that time as I was inside the kitchen. I do not know the number of the TSR in which the wife of the accused was taken to the hospital. The wife of the accused was removed to the hospital at about 3:00 PM. It is wrong to suggest that accused did not come to my house with the child, mobile and the file. It is incorrect to suggest that I am deposing falsely. I did

not go to the house of accused when my husband had gone there with the child. It is correct that wife of accused Mehfooz was TB patient and was pregnant also and was suffering from that ailment. It is correct that wife of accused Mehfooz was under tense due to her ailment.”

8. It is apparent that the purport of cross-examining Rafat Jahan was to prove that the deceased was suffering from tuberculosis and had died due to said ailment.

9. Rafat Jahan's husband, Zafar Alam has been examined as PW-1 and he has corroborated his wife when he deposed that on returning to his house to take lunch on 11.6.2007 he saw son of the appellant with his wife who told him that the appellant had left his son as also a mobile phone and a file containing some documents with her. Since son of the appellant kept on crying he took him to the house of the appellant and was horrified to see the wife of the appellant lying in a lifeless condition. He removed her to Sunder Lal Jain Hospital in an auto where she was declared 'brought dead'.

10. Even Zafar Alam has been cross-examined in a most perfunctory manner. His testimony on afore-noted points has gone unchallenged.

11. The appellant was apprehended on 13.6.2007. It is apparent that he absconded from his house.

12. From the cross-examination of the witnesses i.e. PW-1 as also PW-4 and PW-5, it is apparent that the thrust of the cross-examination was that the deceased was a patient of

tuberculosis and hence we find the argument advanced before the learned Trial Judge that the deceased probably died on account of tuberculosis. The plea has been rightly negated by the learned Trial Judge for the simple reason, the post-mortem report Ex.PW-11/A proved at the trial by the author thereof, Dr.Kulbhushan Goel PW-11, concludes that there were nail injuries on the neck of the deceased with marks of ligature pressure on the neck. It is apparent that the deceased was strangled to death.

13. Now, the place where the deceased died was her matrimonial house. The deceased was found dead at 2:00 PM. The appellant was seen leaving the house at 12:00 noon. The testimony of the landlord who sits in a shop on the ground floor of the same building establishes that after appellant was seen leaving the building at 12:00 noon none entered the building till 2:00 in the afternoon when the deceased was found lifeless in her room. The appellant absconded and was arrested on 13.6.2007. Said facts and the conduct of the appellant are sufficient wherefrom the guilt of the appellant can be inferred.

14. We also find proof of non cordial relationship between the appellant and his wife through the testimony of Miraj PW-3, the brother of the deceased as also the testimony of Intezar Ahmed PW-2, the father of the deceased who have

proved dowry demands.

15. We concur with the reasoning of the learned Trial Judge and hence dismiss the appeal.

16. Since the appellant is in jail we direct that a copy of this decision be sent to the Superintendent, Central Jail Tihar for being supplied to the appellant.

PRADEEP NANDRAJOG, J

SURESH KAIT, J

APRIL 30, 2010
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