

* **HIGH COURT OF DELHI : NEW DELHI**

Judgment delivered on: 23.02.2011

+ **CRL. APPEAL NO. 982/2010**

NAWAB ALI SAIFI Appellant

Versus

THE STATE AND OTHERS Respondents

Advocates who appeared in this case :-

For the Appellant : Mr Sunil Kapoor.

For the Respondents : Ms Richa Kapoor, for R-1.
Mr Kishan Nautiyal, for R-2 to 5.

Coram:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE MANMOHAN SINGH

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

BADAR DURREZ AHMED, J. (ORAL)

1. This appeal under the proviso to Section 372 of the Code of Criminal procedure, 1973 has been filed by the father of the deceased Sahana, being aggrieved by the judgment dated 27.07.2010 passed by the learned Additional Sessions Judge, Fast Track Court, Patiala House Courts, New Delhi in Sessions Case No. 121/2009 arising out of the FIR No. 846/2007 registered at Police Station Sangam Vihar.

2. By virtue of the impugned judgment, the accused Mohd. Farid, Yamin, Smt. Vakila and Farukh were acquitted of the charges under Section 498A/304B/34 IPC.

3. The learned counsel appearing on behalf of the appellant submitted that the trial court had gone wrong in concluding that the appellants daughter Sahana had died a natural death. According to him, the death was unnatural and, therefore, the trial court went wrong in acquitting the said accused/respondent nos. 2 to 5.

4. The entire case hinges upon the question as to whether the death of Sahana was under natural circumstances or not. PW-4, Dr. Ashish Jain, who is the doctor who conducted the postmortem examination on the dead body of Sahana, stated in his examination-in-chief that the cause of death was kept pending till the result of the viscera was received from the Forensic Science Laboratory. It was pointed out by the said witness that at the time of postmortem examination, certain ante-mortem injuries were found on the dead body. They were as under:-

1. A contusion of size 2 x 1 cm is present over anterior aspect of the left thigh, 4 cm above left knee joint.
2. A contusion of size 1 x 1 cm is present over shin of tibia on the left side which is 7 cm below left knee joint.
3. A contusion of size 1 x 0.5 cm is present over shin of tibia on the right side which is 7 cm below right knee joint.

However, in the same deposition, it has been stated by the said witness that the injuries mentioned were insufficient to cause the death

independently. He, however, noted that poisoning as a cause of death could not be ruled out.

5. Ex. PW-13/A is the report of the viscera received from the Forensic Science Laboratory, Rohini, Delhi. As per the said report, Exhibit '1A' comprised of stomach and piece of small intestine with contents, kept in a sealed jar; Exhibit '1B' comprised of pieces of liver, spleen and kidney, kept in a sealed jar; Exhibit '1C' comprised of blood sample of 25 ml. approx., kept in a sealed jar and Exhibit '1D' was preservative sample of saturated solution of common salt in a sealed jar. The result of the examination given by the Forensic Science Laboratory in Exhibit PW-13/A was as under:

“On chemical, Thin Layer Chromatography & Atomic Absorption Spectroscopy examination, metallic poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates, tranquilizers and insecticides could not be detected in exhibits '1A', '1B', '1C' & '1D'.”

It is, therefore, clear that as per the FSL report Exhibit PW-13/A, no poisoning has been detected. However, PW-4 Dr. Ashish Jain had stated that poisoning, as a cause of death, could not be ruled out. It is not at all clear as to what basis if at all, this statement was made.

6. A point was raised that since Sahana's death occurred in the matrimonial house, it was for the husband and his family members to explain the circumstances of the death. In this context, the learned counsel for the respondent Nos. 2 to 5 drew our attention to the defence evidence and particularly the statement of the husband Mohd. Farid made

under Section 313 Cr.P.C. who also came in the witness box as DW-5. We have gone through his testimony and find that he has given a detailed sequence of all the events from the date of his marriage till the date of the death of his wife Sahana. The answer given by him in his statement made under Section 313 Cr.P.C. reads as under:

“Q.21 Do you want to say anything else?

A. I am innocent. I have not committed any offence. I have been falsely implicated in this case.

My marriage was solemnized with Sahana (deceased) as per Muslim rituals on 13.4.05. My family and deceased Sahana's family were known to each other. The marriage proposal was initiated by Sh Noor Mohd. Who is grandfather of deceased Sahana. Engagement ceremony was held on 11.02.04. Before marriage, on 3.12.04 I was invited by my Sadu (brother in law) to attend the birthday party of his son at his house at Kelabhata, Ghaziabad. I went there and presented some gift to the child. I also met Sahana there and thereafter I came back.

On 15.4.05 brother of Sahana named Shahid Safi came to my home and took Sahana with him as per rituals. On 24.2.05, me alongwith my younger brother and my brothers in law namely Alisher and Parvez went to Sahana's home to bring her back to my home as per rituals. In the first week of June I alongwith Sahana went to my younger sister's matrimonial home at Panchkula, Haryana. WE stayed there for one day and thereafter went to Shimla alongwith my sister and my brother in law and one friend namely Inam with his wife. I took photographs at Shimla. The photographs has already been placed on record. We stayed there fore two days and came back to Panchkula. After staying for one more day there we came back to Delhi. In the second week of July we went to Aurangabad, District Bullandshahr UP which is my ancestral village to meet my grand mother and my uncle & aunt. We stayed there for three days and thereafter

came back.

In the month of July 2005 I came to know that Sahana is in family way. Then we went to Majidia Hospital and registered for the routine check up during the tenure of pregnancy and we used to visit hospital whenever doctor asked us to come. I have complete documentary record to show that I took every care of Sahana during the pregnancy.

On 5.4.06 we were blessed with a male child and the delivery took place Jeevan Nursing Home, Jeevan Nagar, New Delhi. Sahana remained in the hospital for about a week and thereafter she was discharged.

On 14.5.06 brother, sister and some other relatives of Sahana came with some gifts for the child and after having lunch they took Sahana and the baby with them. After about two weeks I went to my inlaws house and had lunch there and then I brought Sahana and Baby back to my home.

In the month of Nov. 2006 Shahana started having problem of cough. In the beginning she used to cough in the night only. I took her for medication at Dr. Qaisar Alam's Clinic and within two days she got relief. After about 10/15 days the same problem occurred again and I took her to Dr. Qaisar Alam's Clinic but this time she got no relief. Thereafter I took her to Dr. Arif who is a homeopathic Doctor and uncle of Sahana. She was treated there for one month and she was feeling some relief and not fully. Thereafter I took her to Majidia Hospital for Unani treatment and again she got some relief but not fully. She was treated there for about three or four weeks by doctor Shakil Tamanna. In the month of August 18, 2007 in the evening Sahana was feeling breathlessness and coughing heavily. She was taken to Dr. Prem Kapoor's Clinic and after examining doctor said this is the condition of allergic bronchitis (Asthama). She was given some medicines and was called again on 22.08.07. We again went there and again he gave medicines. She was Taking medicines as was prescribed till 27.8.07 when she was being taken to Dr. Prem Kapur's Clinic by my brother and Gulfam Ahmad and suddenly she got

asthmatic attack on the way. Doctor Kapur after initially examining her advised to take her to Majidia Hospital where after admitting in emergency ward and conducting ECG etc she was declared dead by Dr. Imtiaz Ali. AS I was in my college I was called by brother and I immediately rushed to Majidia Hospital. My wife died of asthmatic attack which was a natural death.”

7. From the above, it appears that Sahana had been suffering from one ailment or the other and that she was also a patient of Asthma. It also appears that one day prior to her death on 26.08.2007, she along with her son Adnan fell down the stairs in which both, she as well as her son received injuries. Both of them were taken to the doctor and were treated by the doctor. Therefore, according to the learned counsel for the respondent Nos. 2 to 5, the ante-mortem injuries which are found on the body of Sahana are clearly explained.

8. We have gone through the impugned judgment and we find that the learned Additional Sessions Judge has examined the entire case in detail and has come to the conclusion that the death of Sahana was not an unnatural one. The only suspicion that arose was because the first doctor DW-1, Dr. Prem Kapoor, who examined her, had noticed some frothing from her mouth. Such suspicion, however, that she had been administered some toxin, has been belied by the FSL report Exhibit PW-13/A. Even PW-4, Dr. Ashish Jain has not given a definitive opinion that the cause of death was unnatural. In these doubtful circumstances, the benefit would have to go to the accused. That is exactly what the learned Additional Sessions Judge has done. Since the very first ingredient of

Section 304B IPC has not been made out, it is not necessary for us to discuss the other aspects of the case. However, we find that the trial court has examined the question of cruelty and demand for dowry and has come to a conclusion that the same are not established.

9. In these circumstances there is no merit in this appeal. The same stands dismissed.

BADAR DURREZ AHMED, J

MANMOHAN SINGH, J

FEBRUARY 23, 2011

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