

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

% *Judgment Reserved on : July 15, 2014*
Judgment Pronounced on : July 21, 2014

+ **CRL.A. 107/2010**

REHAN @ GANDHI Appellant
Represented by: Mr.Sidharth Agarwal with Mr.Faraz
Maqbool, Advocates.

versus

STATE Respondent
Represented by: Mr.Lovkesh Sawhney, APP

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Rehan has been convicted for having murdered Ahsan Khan. According to the evidence, the incident was witnessed by Aamna Begum (PW-1), Ahsan Khan's daughter Rehana (PW-3), Ahsan Khan's son Irfan (PW-5), Shahid (PW-2) a tea vender having a tea shop near the place of the occurrence and Akbar Ali (PW-4) a passerby who knew Rehan.

2. In the appeal, Rehan claims that Aamna Begum, Rehana, Irfan, Shahid, Akbhar Ali are not trustworthy and prays that their testimony should be discarded and he should be acquitted.

3. Process of law was set into motion when DD No.21A (Ex.PW-15/A) was recorded by the Duty Officer at Police Station Khajoori Khas at 6:57 P.M. on April 30, 2006. Information recorded was that the wireless operator at the Police Control Room has informed that Rehana had informed

over the telephone that her father had been stabbed with a knife at Gali No.27, Khajoori Khas.

4. Insp.Jitinder Kumar (PW-15) was handed over a copy of Ex.PW-15/A. Accompanied by Ct.Umesh (PW-8) he proceeded to Gali No.27, Khajoori Khas, the street disclosed in Ex.PW-15/A where the stabbing had taken place and on learning that the injured had been removed to GTB Hospital, leaving behind Ct.Umesh at the spot, he proceeded to GTB Hospital and obtained copy of Ahsan's MLC Ex.PW-9/A which records that Ahsan had been brought to the hospital in an injured condition by ambulance A-16. After giving preliminary medical aid to Ahsan Khan, Dr.Jaswant, the Junior Resident at the hospital referred him to the operation theatre and thus Insp.Jitinder Kumar could not record Ahsan's statement, but he met Aamna Begum at the hospital and recorded her statement Ex.PW1/A. Making an endorsement Ex.PW-15/C beneath the statement of Aamna he dispatched the same from the hospital at 10:15 P.M. for FIR to be registered for an offence punishable under Section 307 IPC.

5. Returning to the place of the crime, Insp.Jitinder Kumar prepared the rough site plan Ex.PW-15/D at the instance of Aamna Begum wherein he recorded site of the tea shop of Shahid; the spot where Ahsan Khan was stabbed; the spot where Aamna was sitting; and the site of the house of Ahsan Khan. He thereafter recorded the statements of Shahid, Rehana, Akbar Ali and Irfan. Since all of them name Rehan as the assailant along with his team of police officials Insp. Jitinder Kumar started searching him and apprehended him at 11.45 P.M. on the same day as recorded in the arrest memo Ex.PW-8/A. Rehan's disclosure statement Ex.PW-8/C was recorded by Insp.Jitinder Kumar. Rehan volunteered to point the place where he had hidden a knife. He led Insp. Jitinder Kumar to a dilapidated house and from underneath of stone slab recovered a knife Ex.P-1. It was

seized by Inspector Jitinder Kumar vide seizure memo Ex.PW-8/A and its sketch Ex.PW-8/D was drawn at the spot by Inspector Jitinder Kumar.

6. After a few days Ahsan Khan died due to the injuries suffered by him. Offence punishable under Section 302 IPC was added in the FIR. The body was seized and sent to the mortuary of GTB Hospital where Dr.Barkha Gupta conducted the post mortem and authored the report Ex.PW-10/A recording therein that there were three incised wounds inflicted on the body with a sharp edged cutting weapon. Injuries No.1 and 2 were opined to be sufficient in the ordinary course of nature to cause death; separately and collectively. Injury No.1 had entered the body on the right axillary region 17 cm. below right axillary fold and 18 cm. right to the mid line. Cutting the 9th rib and the diaphragm the injury ended in the posterolateral surface of right lobe of liver. The sharp edged weapon of offence had traversed 17 cm. into the cavity. The second stab wound was obliquely placed at the right iliac fossa. It was 15 cm. deep. Cutting the muscles it had injured the intestine of Ahsan Khan. The knife recovered at the instance of Rehan was sent to the doctor who conducted the post mortem. Vide report Ex.PW-10/B, Dr.Barkha Gupta opined that the injuries noted by her during post mortem of the dead body of Ahsan Khan could have been caused by the knife. The knife was sent thereafter to the Forensic Science Laboratory where as per report dated November 13, 2006 blood was detected on the knife but due to disintegration origin could not be detected.

7. We may note that Insp.Jitinder Kumar claims to have recorded Ahsan Khan's statement Ex.PW-15/E when Ahsan Khan regained consciousness on May 04, 2006. Since the learned Trial Judge has not relied upon the same in as much as various infirmities have been noted by the learned Trial Judge in paragraph 39 of the verdict of guilt, we overlook said dying declaration made by Ahsan and simply record our reason; our

concurrence with the view taken by the learned Trial Judge in paragraph 39 of the verdict of guilt.

8. In her testimony in Court, Aamna Begum, PW-1 deposed that at around 6.30 P.M. on the day of the incident she was sitting on the plank outside Shahid's shop. Ahsan was sitting on a chabutra nearby. Rehan who resided in street No.27 stabbed Ahsan with a knife in the stomach. She shouted. Rehan stabbed Ahsan repeatedly saying that since Ahsan had falsely implicated him he would not spare him. Rehan tried to run. Police reached there and apprehended Rehan. An ambulance reached. Along with some neighbours which included Shahid and the children of Ahsan she took him to the hospital where police reached and recorded her statement Ex.PW-1/A.

9. On being cross-examined she stated that Rehan was apprehended before she accompanied Ahsan Khan in the ambulance to the hospital and the knife was recovered at the spot. She admitted that she had been arrested twice and was sent to judicial custody in two different cases. She admitted that there was a criminal litigation between her and Ahsan Khan.

10. Shahid PW-2 deposed that he was selling tea from a tea shop near 20 feet road next to Gali No.27. At 6.30 P.M. on April 30, 2006 while he was preparing tea for Aamna Begum he saw Ahsan sitting on a shelf nearby. Rehan came and stabbed Ahsan who shouted and fell down. Rehan continued to stab Ahsan and ran away. Somebody informed the police. Ahsan was taken to the hospital.

11. During cross-examination he stated that Rehan was caught by the police as he was running away after stabbing Ahsan.

12. Rehana PW-3 deposed that when she was at the gate of her house her younger brother Irfan told her that Rehan was hitting their father. She and Irfan ran towards the place where Rehan was hitting her father. When

she reached she saw her father had fallen and Rehan was stabbing him in front of Shahid's tea stall. Rehan ran away. Someone made a telephone call to the Police Control Room and her father was removed to the hospital. During cross-examination she said that Rehan could not be apprehended at the spot.

13. Akbar Ali PW-4 during course of his examination-in-chief recorded on November 21, 2007 deposed that he was going to Shahid's shop to take tea at 6.30 P.M. on April 30, 2006 and saw Rehan stabbed Ahsan. He inflicted two blows. He ran towards Rehan to apprehend him. Rehan managed to escape. But, on being cross-examined after 5 months on May 08, 2008 turned turtle and claimed to have gone to Shahid's shop to take tea at around 7.30 p.m. and then saw Ahsan Khan lying on the ground.

14. Irfan PW-5 deposed that at 6.30 P.M. he was taking water at the street when a child told him that Rehan was stabbing his father. He told his sister said fact and the two reached the spot and saw Rehan stabbed their father. He tried to catch Rehan who managed to run away. His father was taken to the hospital.

15. The learned Trial Judge has believed the eye witness account narrated by the aforesaid five witnesses.

16. Learned counsel for Rehan questions the credibility of the five witnesses as also the recovery of the knife statedly at his instance which was opined to be capable of inflicting the injuries on the person of Ahsan Khan. We recapitulate the arguments advanced :

(i) DD 21-A records that Rehana had informed that her father was stabbed without giving a description of the assailant. Counsel urged that Rehana was the daughter of Ahsan Khan and had deposed as PW-3. If she had seen the incident and had seen Rehan stab her father, she would have narrated said fact. This belies her claim to be an eye witness.

(ii) Insp.Jitinder Kumar had a copy of DD 21-A and thus he knew that there was an eye witness who had rung up the number 100 i.e. the Police Control Room. There was neither a reason nor a justification for Insp.Jitinder Kumar not to have made said person the informant and register the FIR on his/her statement.

(iii) Aamna Begum PW-1 and Shahid PW-2 have stated, the former in her examination-in-chief and the latter during cross-examination that Rehan was apprehended at the spot which contradicts the deposition of PW-3 Rehana and Irfan PW-5 that the accused ran away.

(iv) In her deposition Aamna Begum deposed only of Shahid's presence and of no other eye witness.

(v) The post mortem report of the deceased shows only three incised wounds which would be inflicted in a time span of not more than five seconds. Rehana was at the gate of her house when her brother Irfan told her that their father was being stabbed. As per Irfan he was at the gali drinking water when a boy told him that his father was being assaulted. He told Rehana said fact. The two went to the tea shop of Shahid. The site plan Ex.PW-15/D shows that from the tea shop of Shahid one has to walk in the northern direction to reach the crossing and turning north on to street No.27 to reach the house of Ahsan Khan. Ex.PW-13/A, which is a site plan to scale would show that the distance to be covered is about 30 meters. Counsel urged that claim of Rehana and Irfan that they saw their father being stabbed is thus not to be believed.

(vi) No blood sample or blood stained earth was picked up from the spot.

(vii) The knife Ex.P-1 was recovered from an open space which was accessible to all.

17. DD No.21-A records the information (translated) as under:-

“Time 6.57 evening. Entry made that Wireless Operator Ct.Mohan No.3475 PCR PIS No.28941963 has informed that one Rehana from telephone No.22965498 at House No.1071, A Block Gali No.27, Khajoori Khas of her father being stabbed. He is bleeding.”

18. Entries are made by the Police Control Room in a cryptic manner because the purpose is not to record the statement of the informant. The purpose is to immediately flash information pertaining to a crime being committed at the place disclosed so that the nearest PCR van can rush to the place of the incident. If at the Police Control Room the duty officer starts questioning the informant and starts writing a lengthy complaint, it would consume at least half an hour and the very purpose of recording the information would be rendered useless. Thus nothing turns on the cryptic information recorded in DD No.21-A. Rehana was not to give graphic details of what she allegedly saw while making the call at telephone No.100.

19. It is no doubt proved that Insp.Jitinder Kumar had a copy of DD No.21-A. But that does not mean that he was bound by law to only make the informant the person who had rung up the Police Control Room. As stated by Insp.Jitinder Kumar, when he reached the hospital he found that Ahsan Khan was in the operation theatre. He met Aamna Begum who claimed to be an eye witness and he recorded her statement.

20. It may be true that Aamna Begum and Shahid have stated that Rehan was apprehended at the spot but Rehana and Irfan have stated that Rehan fled. But nothing turns thereon, and for this we also need to deal simultaneously with the fifth contention urged that Rehana and Irfan could not be eye witnesses.

21. The testimony of Irfan would evidence, a fact confirmed by Rehana, that after Irfan was told by somebody that his father was being stabbed near Shahid's tea shop, Irfan told said fact to his sister Rehana who

was outside her house and both proceeded to Shahid's tea shop. Only three injuries were inflicted on their father and it is apparent that the assailant consumed not more than three to five seconds to launch and complete the assault. The assailant had run away. We agree with the contention that it is highly improbable that the brother and sister saw their father being stabbed and their claim that they saw their father being stabbed or the assailant running away is untrue. It is apparent that the brother and the sister reached Shahid's tea shop on hearing that somebody had stabbed their father. They reached Shahid's tea shop within minutes of the incident and heard Aamna Begum and Shahid, and probably Akbar Ali name Rehan as the assailant. We are thus constrained to discard the testimony of the brother and the sister of the eye witness account.

22. Merely because the brother and the sister have not spoken the complete truth, would not mean that Aamna Begum and Shahid are not truthful witness. That Aamna Begum and Shahid deposed that Rehan was caught at the spot and the knife was recovered at the spot, a fact which is incorrect would not mean that the two have to be disbelieved. It is trite that witnesses cannot be expected to possess a photographic memory and recall details of incidents as if a video tape is being replayed. The power of observation differs from person to person. What is noted by one may not be noted by another. By and large people recall the broad contours of an event and when questioned regarding minor details thereof tend to speak by estimation. Where witnesses are from the under privileged section of the society or are illiterate, they tend to mix up facts and get confused regarding sequence of events and fill up details from imagination on the spur of the moment. The sub conscious mind, for fear of looking foolish or being disbelieved, activates on the spur of the moment, something in the mind of the witness which is then uttered by the witness.

23. Being witnesses to the incident Aamna Begum and Shahid accompanied Ahsan Khan to the hospital and came back to the spot. Shahid on account of the fact that he had his tea shop or probably for the reason Insp.Jitinder Kumar told him to return to the spot. Aamna Begum returned to the spot to assist Insp.Jitinder Kumar to prepare the site plan of the scene where the incident took place. Rehan was apprehended the same night. The knife was recovered pursuant to the disclosure statement the same night. This explains Aamna Begum and Shahid speaking a little slurred on the subject of Rehan being caught at the spot. This part of their testimony is an embellishment and not a serious contradiction so as to discredit the two witnesses.

24. It may be true that no blood sample or blood stain earth was picked up from the spot and the reason obviously is that none was seen at the scene of the crime as deposed to by SI Jatinder Swaroop PW-14 of the crime team.

25. We find no question put during cross-examination to Insp.Jitinder Kumar as to why he did not lift blood or blood stain soil from the scene of the crime. Had a question been put to him, the answer would have surfaced and the same could have guided us further.

26. The likely reason could be the large number of people moving around the place where the crime took place and thus it became impossible for the eye to detect where the blood fell. Be that it may, said fact cannot be used to nullify the percipient evidence of the occurrence through the eyes of PW-1 Aamna Begum and PW-2 Shahid.

27. Aamna Begum has admitted that there was a criminal case pending between her and the deceased Ahsan Khan and her deposing as a witness to the murder of Ahsan Khan lends credence to her testimony because she spoke in favour of a deceased enemy. That Aamna Begum had

a criminal record would not mean that she is not a worthy witness if she withstood the rigours of the cross-examination. Besides, in this case we have corroboration to her testimony through the eyes of Shahid. Her presence at the spot is corroborated by the testimony of Rehana and her brother Irfan. Even Akbar Ali, who may have later on turned turtle, corroborates her presence at the scene of the crime.

28. Rehan came armed with a butcher's knife which is evident from the sketch Ex.PW-8/D. The blade is 23.8 cm in length. At base the thickness of the knife is 5.3 cm. The handle is 10.8 cms. The knife tapers towards the tip. Rehan entered the stage with a premeditated mind. He accused Ashan Khan of falsely implicating him and said that he would not spare him. Rehan inflicted three stab blows in the abdomen of Ashan Khan, two of which proved fatal. Both were sufficient in the ordinary course of nature to cause death. The only intention which can be attributed to Rehan is of causing the death of Ashan Khan.

29. The appeal is dismissed.

30. Two copies of this decision be sent to the Superintendent, Central Jail Tihar. One for his record and the other to be supplied to Rehan who is in judicial custody.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JULY 21, 2014
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