

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

% *Judgment Reserved on: July 23, 2014*
Judgment Delivered on: July 30, 2014

+ **CRL.A. 275/2013**

MOHD. ASHIQ Appellant
Represented by: Mr.S.B.Dandapani, Advocate.

versus

STATE NCT OF DELHI Respondent
Represented by: Mr.Manoj Ohri, APP for State
with Inspector Saket Kumar,
PS Ashok Vihar.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Mohd.Ashiq, not being true to his name, has been held guilty of murdering his wife Aasmin @ Baby by manual strangulation. He has also been held guilty of the offence punishable under Section 498A IPC. For the offence of murder he has been directed to undergo imprisonment for life and pay a fine of ₹3,000/- and in default of payment of fine to undergo simple imprisonment for three months and a sentence to undergo rigorous imprisonment for two years for the offence punishable under Section 498A IPC and pay a fine of ₹1,000/- and in default to undergo further two months simple imprisonment.

2. Mohd.Ashiq assails the judgment dated June 08, 2012 on the plea that there is no material to show that he was present with Aasmin @ Baby on

that night as admittedly even as per the prosecution case Mohd.Ashiq had remarried and was living with his second wife at Nabi Karim. It is highly unnatural that a person after allegedly killing his wife would make extra judicial confession before one and all i.e. the sons, Dhabawala etc. The conduct of Mohd.Shakeel does not inspire confidence as on finding his sister dead he did not inform the police rather informed his brother-in-law living at Gurgaon who on reaching Delhi informed the police. There are contradictions in the testimony of Samida and Mohd.Shakeel in as much as Samida says that she saw Mohd.Ashiq sitting by the side of dead body of her daughter whereas Mohd.Shakeel says that he saw Mohd.Ashiq going out of the hut. Samida has not stated anything about the quarrels between Mohd.Ashiq and his wife whereas Mohd.Shakeel has stated about the same.

3. On the incriminating evidence being put to Mohd.Ashiq in his statement as per the requirement under Section 313 Cr.P.C he denied the same and pleaded false implication however, no specific plea was taken except stating that he never visited the spot of incident on August 03, 2008 or at any point of time prior thereto. However, no defence evidence has been led to prove the plea of alibi.

4. The investigating machinery was set into motion on a PCR call received at 9.15 AM vide DD No.14 at PS Ashok Vihar on August 04, 2008 that in Patharwala Bagh, JJ Colony, Wazir Pur a dead body was lying near the Masjid. SI Satya Prakash, the then Chowki In-charge Police Station Wazir Pur on receipt of DD No.14 Ex.PW-16/A along with ASI Devraj, Constable Shish Ram and Constable Ugrasen reached at Jhuggi No.17A/177, Patharwala Bagh, Near Choti Masjid. Lot of people had gathered at the spot and body of a woman was found lying on the wooden

bed in a Jhuggi with strangulation and injury marks on her neck. She was found bleeding from her mouth. There Mohd.Shakeel met the Sub-Inspector who stated that the body was of his sister Aasmin. He also got his statement recorded vide Ex.PW-9/A on the basis of which FIR was registered.

5. Mohd.Shakeel stated that he was working in Orient Craft Limited at Gurgaon as a helper and was staying in Jhuggi with his parents. On the ground floor of the Jhuggi his sister Aasmin @ Baby along with her younger son Rehmat aged 11 years was living. Aasmin was married in 1990 to Mohd.Ashiq. She had two sons Neemat aged 14 years and Rehmat aged 11 years. Around 13 years ago Mohd.Ashiq married another woman Shakeela and was thereafter living in House No.AB-430, Amarpuri, Nabi Karim, Delhi. After that there used to be quarrels between Mohd.Ashiq and Aasmin for the reason that for quite some time Mohd.Ashiq had stopped coming to his sister. His sister used to work in houses in Ashok Vihar and earn livelihood for herself and her children. After some time Mohd.Ashiq again started coming to his sister however, he used to state that his sister was characterless and used to quarrel and assault his sister. His sister had made a complaint to the police in this regard. Due to intervention of the Panchayat the matter was settled though Mohd.Ashiq continued to doubt the character of his sister and used to assault her. The elder son of his sister Neemat had gone to Mumbai and on August 03, 2008 at around 4.00 PM Rehmat had gone to Nabi Karim. At around 9.30 PM Mohd.Ashiq came to the Jhuggi of his sister and quarrelled with her. He again stated that she was unchaste and he would leave her. On this he and his mother pacified the matter and at around 10.15 PM he and his mother went to their Jhuggi to sleep. His brother-in-law and sister also slept in the Jhuggi downstairs. On August 04,

2008 at around 6.00 AM he saw Mohd.Ashiq going out of the Jhuggi of his sister to the Dhaba of Mulla. When he came down after ten minutes he saw that his sister's Jhuggi was closed from outside. He opened the bolt and went inside. He found his sister lying dead on the bed. She had injury marks on her neck. He shouted on which his parents and neighbours came. He informed his sister Parveen and brother-in-law at Gurgaon. Thereafter Parveen along with her husband Abdul Kalam came to their house and after seeing Aasmin's dead body phone call was made to the police.

6. During the course of investigation statements of PW-1 Master Rehmat, PW-2 Master Neemat, sons of Mohd.Ashiq and the deceased and PW-8 Mohd.Umar, the Dhabawala was recorded by the police. Crime scene was photographed and site plan prepared. The body of Aasmin was sent for post-mortem. As per PW-26 Dr.R.P.Singh the cause of death was opined as Asphyxia due to ante mortem strangulation (throttling). Time since death was half a day. The post-mortem was conducted at 2.30 PM and thus the death took place at around 2'o clock in the night. No cross-examination of PW-26 was done by the defence and hence his testimony has gone unchallenged. PW-26 noted the following injuries:

“External antemortem injuries:

1. *Reddish abrasion of size 6 cms x 1.5 cms was present on right side of neck, placed horizontally, in submandibular region, medial and was in midline.*
2. *Reddish abrasion of size 0.7 cm x 0.3 cm was present in right submandibular region 2.5 cms below mandible and 2.5 cms lateral to midline.*
3. *Semi-circular reddish abrasion of size 1 cm x 0.3 cm was*

present 0.5 cm above the injury no.2.

4. *Reddish abrasion of size 0.5 cm x 0.4 cm was present on left cheek, 1.5 cms below and lateral to left angle of mouth.*
5. *Reddish abrasion of size 0.5 cm x 0.2 cm was present on left side of neck, 4 cms below ear lobule.*
6. *Multiple linear reddish abrasions were present on left side of base of neck in an area of size 2.5 cms x 2 cms, 6 cms posterior to middle of left clavicle.*

Internal Examination:

Brain was oedematous and congested.

Diffused extravasation of blood was present in soft tissues of neck. Fracture of left greater cornu of hyoid bone bent medially was present.

Lungs were oedematous and congested.

Multiple petechial haemorrhages were present on ventricular surfaces of the heart.

Liver, spleen, kidneys were congested.

Stomach was full of semi-digested food (rice and bone pieces) ”

7. Mohd.Shakeel in his deposition before the Court has stood by his statement made to the police. He has also reiterated that Mohd.Ashiq sent the younger son of his sister Rehmat to Nabi Karim on that date which fact has gone unchallenged in the cross-examination. This act of Mohd.Ashiq reflects on his conduct as Rehmat used to stay with Aasmin and if he had

been there then Mohd.Ashiq would not have been able to execute the plan. The testimony of this witness is assailed on the ground that after finding his sister dead he did not inform the police but informed his sister and brother-in-law who were staying in Gurgaon and on their coming to Delhi they informed the police. Nothing unnatural can be noted in this regard. It often happens that before approaching the police people want their family members to be with them. Mohd.Shakeel in his statement has stated that he noted injuries on his brother-in-law which fact is corroborated by the body inspection memo of Mohd.Ashiq Ex.PW-25/B which shows swelling near the left eye, wound on upper and lower lips and swelling on left forearm and pain in left shoulder.

8. The version of Mohd.Shakeel is further corroborated by Samida, who also deposed on the lines of Mohd.Shakeel. Even Samida stated that on August 03, 2008 Mohd.Ashiq visited his daughter at 2.00 PM. At about 3.00 PM she went with her daughter to the market for getting the sewing machine repaired. They came back at about 4.00 PM. Her daughter was tired on that day and she slept with her husband. In the morning when she went downstairs she saw her daughter had died and Mohd.Ashiq was sitting by the side of her body. This witness has not been cross-examined. Thus the testimony of this witness has also gone unchallenged. Therefore, even the defence taken by Mohd.Ashiq of his not being present at the spot fails having not cross-examined this witness who has stated about his presence on that night and the morning with his daughter.

9. The prosecution also presses in the extra judicial confession made by the deceased to PW-1 Master Rehmat, PW-2 Master Neemat, sons of Mohd.Ashiq and the deceased and PW-6 Mohd.Abdul Kalam. Rehmat

deposed that he along with his brother and mother were residing on the ground floor of Juggi No.17A/177 Patharwala Bagh, Wazir Pur and his nana nani were living on the first floor. His father used to reside at Nabi Karim along with other mummy and used to come to their house on holidays. His father used to come at their house after consuming liquor and used to quarrel and demanded money from his mother. His father used to ask him to accompany his mother and keep a watch on her. He used to say to his mother “*tu to kissi se fasi hui hai*”. His father also used to say to his mother that she was in the company of bad people and indulging in immoral activities. On August 03, though he did not remember the year but around three-four months back on a Sunday he went to meet his father to Nabi Karim. His father told him that he was going to his mother’s residence to Patharwala Bagh. He stayed at the house of his father at Nabi Karim. On the next day his father came to Nabi Karim and told him that he had committed the murder of his mother as she was quarrelling with him. His father gave him ₹1,000/- and asked him to buy things for himself and to tell the police that his mother died of her own. He came back to his home situated at Patharwala Bagh and saw the dead body of his mother who had injuries on her neck. This witness has not been cross-examined and thus his testimony has also gone unchallenged.

10. PW-2 Master Neemat stated that he with his mother and brother was residing at J-17A/177, Patharwala Bagh, Wazir Pur and his nana nani were living on the first floor. Those days he was living at Mumbai. His father used to reside at Nabi Karim as he had married another lady namely Shakeela. His father used to visit their house after consuming liquor and used to quarrel with his mother and demanded money from her. His father

used to say to his mother that she was having love affairs with other person. He used to ask the witness to keep a check on her and to see with whom she meets and used to say that his mother was of bad character. His father used to say that his mother lives with some other man. His mother wanted him to study but his father wanted him to work somewhere and give his earning to him. His father sent him to Bombay Centre for a job of embroidery. On August 03, 2008 his father made a call to him and informed that he would kill his mother and asked him to come to Delhi. He came to Delhi and found that his mother had been killed by his father but could not see his father. Again this witness has not been cross-examined and thus his testimony has also gone unchallenged.

11. PW-8 Mohd.Umar deposed that he was running a Dhaba in his Jhuggi. On August 04, 2008 at about 6.00 PM he was working in his Dhaba when Mohd.Ashiq came and told him that he had killed his wife Aasmin by pressing her neck. He was shocked to hear the same from his mouth and could not believe him so he continued to work. Mohd.Ashiq was looking perturbed and his voice was trembling. After this Mohd.Ashiq went away from his Dhaba. After sometime, he heard the noise of Mohd.Shakeel, brother of Aasmin and cries as well. He came out and went to Jhuggi of Aasmin and found her lying dead on her bed. There was injury mark on her neck. He realised that Mohd.Ashiq was stating correctly. Mohd.Ashiq was present in the Jhuggi at that time but thereafter he fled away. In cross-examination this witness has denied the suggestion that Mohd.Ashiq was not present in the Jhuggi or near the area on that day and he clarified that initially Mohd.Ashiq was present in Jhuggi, nobody tried to apprehend him and thereafter he fled away. This witness also explains the contradiction in

the version of Mohd.Shakeel and Samida as Samida says that Mohd.Ashiq was present in the Jhuggi when she went downstairs and saw her daughter dead whereas Mohd.Shakeel stated that he saw him going out of the Jhuggi. From the evidence on record it is proved that Samida and Mohd.Shakeel had seen the deceased with Mohd.Ashiq lastly at night when they went to sleep and in the morning he left the Jhuggi after locking the same from outside wherein Aasmin was found dead by manual strangulation though he came back again and thereafter fled away.

12. From the evidence of Mohd.Shakeel and Samida, the extra judicial confessions to the two sons and to Mohd.Umar, the post-mortem report corroborating the version of the deceased and the testimony both Rehmat and Neemat going unchallenged we are of the considered opinion that the prosecution has proved its case beyond reasonable doubt against the appellant.

13. The plea of Mohd.Ashiq is that he was not present in the night with Aasmin however, this being his defence he was required to prove the plea of alibi in which he has utterly failed as neither he has led any defence evidence nor elicited in the cross-examination of the prosecution witnesses about his absence at the spot. Further it has been proved beyond reasonable doubt that on that night Mohd.Ashiq was present with Aasmin when death took place and thus how the death of his wife took place in the Jhuggi at the mid of night has to be explained by Mohd.Ashiq as the onus in this regard lay on him under Section 106 of the Evidence Act which onus he has failed to discharge.

14. Considering the material on record we find no infirmity in the impugned judgment convicting Mohd.Ashiq for offence punishable under

Sections 302/498A IPC. Consequently the appeal is dismissed. The appellant who is in custody will suffer the remaining sentence.

15. T.C.R. be returned.

16 Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 30, 2014
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