

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

% *Date of decision: October 14, 2014*

+ **CRL.A. 1125/2014**

MOHD VAKIL

..... Appellant

Represented by: Mr.Braham Singh and
Mr.N.S.Vidhudi, Advocates.

versus

THE STATE

..... Respondent

Represented by: Ms.Aashaa Tiwari, APP for the
State with Inspector Mahesh
Kasana, PS Sangam Vihar.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.B.No.10322/2014

Since we are hearing the arguments in the appeal and deciding the same, the present application seeking suspension of sentence is dismissed as infructuous.

CRL.A. 1125/2014

1. Mohd.Vakil challenges the judgment dated March 31, 2014 convicting him for the offence of murder of Abdul Hameed and Ameena, father-in-law and mother-in law respectively and the order on sentence dated May 16, 2014 directing him to undergo imprisonment for life and to pay a fine of ₹2 lakhs and in default of payment of fine to undergo Simple Imprisonment for two years. Out of the fine proceeds, if deposited, ₹1.50 lakhs was to be released as compensation proportionately to the children of

Abdul Hameed and Ameena.

2. Learned counsel for the appellant assails the impugned judgment on the ground that Shahista, the maker of the FIR is not a truthful witness and has deviated from the case of the prosecution. No motive has been attributed to the appellant to commit the offence. Even the other witness Gulzar, according to her own version was not present at the home when Mohd.Vakil came. Their being no eye witness the appellant has been falsely implicated. The appellant led defence evidence by examining his brother Shakil Ahmed, DW-1 who deposed that appellant had met with an accident at Andheria Mod on the said day and was admitted in Safdarjung Hospital. However, that aspect has not been considered. In his explanation under Section 313 Cr.P.C the appellant stated:

“I am innocent person and have been falsely implicated in this case. I had not visited the place of occurrence on 22.09.2009 as alleged by the witnesses. I had not committed the murder of my father in law Abdul Hamid and mother in law Ameena. I had no reason to commit their murder. My relations with cordial with them. The witnesses including my wife concocted a false story against me at the instance of some interested person. All the witnesses are false and interested and have deposed against me falsely. I had sustained injury due to accident which had occurred on 22.09.09 while I came out near my house. I had never called my brother from STD booth as on 22.09.2009 I had my mobile number so the question of giving call has not raised. I had never purchased any knife from any shop and the said witnesses had been produced by the police at the instance of the complainant side. No recovery of any kind including knife or anything else had ever effected from my possession at my instance. All the recovery have been planted upon me. I was in the Safdarjung hospital at the time of commission of the alleged crime. My mobile phone 9210338535 of TATA Service provider location will clearly

show my location that I had never visited the place of occurrence on 22.09.09. I am innocent and falsely implicated in this case.”

3. The process of law was set into motion on receipt of information from the PCR at Sangam Vihar vide DD No.22A on September 22, 2009 at 5.40 PM that a man has been stabbed with knife at K-1710, Sangam Vihar. ASI Rakesh reached the spot followed by Inspector J.D.Meena along with Constable Meendy Ram. The injured persons, who were two in number have been shifted to Trauma Centre. At the AIIMS Trauma Centre MLC of Ameena and Abdul Hameed were collected and the doctor declared both of them as “brought dead”. On returning to the spot statement of Shahista, wife of the appellant and daughter of the deceased was recorded, who stated that she was married to Mohd.Vakil Saifi on December 21, 2008. On September 21, 2009 on the festival of Eid Mohd.Vakil brought new clothes for her and asked her to wear the same. However, since it was Eid festival she asked her husband also to bring new clothes for himself but he refused, due to which she also refused to wear new clothes. On this Mohd.Vakil became angry and beat her and stated that he would kill her entire family. On receipt of the information about quarrel her father along with Ashraf, who was the middle man in the marriage and her brother Imtiyaz as well as Yasin reached the matrimonial home and tried to pacify the matter. Thereafter she wore new clothes to appease her husband. On September 22, 2009 her husband again beat her and told her that he had given divorce to her and asked her to go to the house of her father. On this information being given by Shahista her father reached the matrimonial home and took her back to House No.1710, K-19/9, Sangam Vihar. At about 5.00 PM when

she was present at the house of her father, Mohd.Vakil came on his motorcycle and immediately stabbed her father with knife. On hearing the shrieks of her father when her mother Ameena intervened Mohd.Vakil gave knife blows to Ameena as well due to which both of them expired. Mohd.Vakil ran away with the knife in his hand leaving behind his motorcycle No.DL 2SA2 1625, Hero Honda Passion Plus at the spot. On the basis of this statement of Shahista FIR No.349/2009 was registered at PS Sangam Vihar under Section 302 IPC.

4. The post-mortem of Ameena and Abdul Hameed were conducted by Dr.Arvind Kumar, PW-30. He authored the post-mortem report qua Ameena Ex.PW-30/A and opined the cause of death as Hemorrhagic shock consequent upon multiple stab injuries. According to him injury Nos.1, 2, 3, 4, 7 and 8 were individually sufficient to cause death in ordinary course of nature and all stab injuries were possible by single-sharp edged and pointed weapon. All the injuries were ante mortem injuries. He noticed the following external injuries on her body:

- “i) Stab wound 2 x 0.6 cm, 8 cm chest cavity deep through 4th intercostals space, in left axillary region, tract directed rightward forward downward, 13 cm below shoulder tip.*
- ii) Stab wound 2 x 0.7 cm, 6 cm, chest deep through 4th intercostals space in left axillary region, 17 cm below left should tip, tract directed rightward, forward and downward.*
- iii) Stab wound 2.2 x 0.8cm, 6 cm chest deep through 5th intercostals space in left axillary region, 18 cm below left shoulder tip, tract directed rightward, forward and downward.*

- iv) *Stab wound 2.4 cm x 1 cm, 9 cm chest cavity deep at left anterior axillary fold region, 19 cm below left shoulder tip, tract directed horizontally rightward.*
- v) *Stab wound 2.5 x 1 cm, 10 cm deep in left para spinal muscles (mid left lateral abdomen) 14 cm left lateral to posterior midline, tract directed downward, rightward, forward.*
- vi) *Stab wound 2.4 x 0.9 cm, 11 cm deep in left paraspinal muscles, over mid left lateral abdomen, 16 cm left lateral to posterior midline, tract directed rightward, horizontally and forward.*
- vii) *Stab wound 2 x 0.5 cm over left (mid) lateral abdomen, 32 cm below left shoulder tip in mid axillary line, 26 cm left lateral to posterior midline, chest cavity deep, tract directed rightward, upward and backward in left hypochondrium.*
- viii) *Stab wound 2.3 x 0.8 cm over left scapular region, chest cavity deep, 12 cm below left shoulder tip, 17 cm left lateral to posterior midline, froathy blood coming out, tract directed rightward, downward and forward.*
- ix) *Stab wound 2.2 x 0.6 cm over posterior aspect of left deltoid (shoulder) region, 12 cm below left shoulder tip, 7 cm deep in muscles, tract directed forward, rightward and downward.*
- x) *Incised wound 4 x 1 cm x 1 cm (muscle deep) over right (palm) over thinner eminence.*
- xi) *Linear incised wound 7 cm long over right forearm, 6 cm above wrist."*

5. Dr.Arvind Kumar also authored the post-mortem report of Abdul

Hameed Ex.PW-30/B and opined the cause of death as Hemorrhagic shock consequent upon multiple stab injuries. Injuries Nos.1, 2, 3 and 4 were individually sufficient to cause death in the ordinary course of nature. All injuries were possible by single sharp edged and pointed weapon. All injuries were ante mortem in nature. He noticed the following external injuries:

- “i) Stab wound 4 x 2 cm (shape of wound as shown in report at point X), chest cavity deep, present over left front chest, just below medial end of left clavicle, 4 cm lateral to mid line, cutting 1st and 2nd rib sternal end, medial side of upper lobe of right lung, directed rightward, downward and backward.*
- ii) Two stab wounds, one of size 1.5 x 0.5 cm and another of size 1.5 x 1 cm with abraded area 7 x 4 cm (epidermis peeled off), present over right side of upper half of sternum (chest), 4 cm below medial end of right clavicle, 2 cm right lateral to midline, both stab wounds were chest cavity deep, directed rightward, downward and backward with one angle acute.*
- iii) Stab wound 2.5 x 1 cm over right front of chest, 16 cm below medial end of right clavicle, 2 cm right lateral to midline, chest cavity deep in 5th end of intercostal space, directed rightward downward and backward, cutting middle lobe of right lung (4 cm cut)*
- iv) Stab wound 2.4 cm x 0.9 cm over left lateral abdomen, 10 cm above iliac crest, 22 cm below left axilla in anterior axillary line, 18 cm left lateral to anterior midline (diaphragm and 11th rib also found cut. Track directed rightward, upward and backward, peritoneal cavity deep (2 cm deep inferior surface of left lobe of liver) about 10 cm (total depth). Mesentery coming out through the wound.*

- v) *Stab wound 2.4 x 1 cm over left lateral abdomen, 20 cm from front midline, 5 cm above iliac crest, 26 cm below left axilla in posterior axillary line, peritoneal cavity not pierced (just touching the outer wall of peritoneum, tract directed rightward, backward and downward about 8 cm deep in para spinal muscles.*
- vi) *Stab wound 2.4 x 0.8 cm over left anterolateral abdomen, 15 cm left lateral to front midline 2 cm above left anterior iliac spine in mid axillary line (30 cm below left axilla), tract going 9 cm going in muscular plain directed rightward, downward and backward (at 11th intercostals space level)*
- vii) *Stab wound 2 x 1 cm 3.5 cm over left thigh postero lateral aspect, 23 cm above knee muscle deep, tract directed rightward, upward and backward.*
- viii) *Stab wound 2 x 1 x 3.5 cm over lower edge of left buttock, 6 cm left lateral to posterior midline, subcutaneous tissue deep.*
- ix) *Incised wound 10 x 2 x 2 cm over left posterior axillary fold tailing on lateral aspect of left axilla, subcutaneous tissue deep.*
- x) *Incised wound 1 x 0.5 x 0.5 cm over left scapular region of back, subcutaneous tissue deep.”*

6. Mohd.Vakil was arrested on September 23, 2009 at 2.00 AM and pursuant to his disclosure statement being recorded blood stained knife was recovered. The said knife was sent for subsequent opinion to Dr.Arvind Kumar who, vide his opinion Ex.PW-30/C opined that the injuries on Ameena and Abdul Hameed were possible by the said knife. The knife was

also sent for CFSL examination and was found to be containing human blood though the grouping could not be noted.

7. Shahista appeared in the witness box as PW-1 and deposed as per her previous statement on the basis of which FIR was registered except to the extent that she did not support the case of the prosecution as to the genesis of the occurrence. She stated that her husband Vakil was angry because her father could not send Eidi being poor which was not the case in the rukka. However, with regard to the quarrel on the first day, her being beaten and thereafter her father getting her to her parental home on September 22, 2009, the appellant coming to their house and stabbing both of her parents has been clearly deposed by Shahista. The version of Shahista is corroborated by Gulzar, her younger sister and other witnesses. Thus the deviation in the version of Shahista was only why the quarrel took place between her and the appellant on September 21, 2009.

8. Gulzar PW-4 deposed that on September 22, 2009 she was playing with her sister Gulsita on the street near her house. Her father Abdul Hameed had brought her sister Shahista at about 4.00-4.30 PM from her matrimonial home. At that time her mother, father, sister Shahista and her brother Imtiaz were present. Her brother Imtiaz went to buy some eatables from the market and at about 5.00 PM Vakil Ahmed came on bike to their house. He parked the motorcycle near the gate of their house. He got down from the motorcycle, took out a knife from the pocket and threw the cover of the knife there. He went inside their house where her father was standing near the gate of the house. He immediately attacked her father with knife. Her father pushed Mohd.Vakil to save himself however, he overpowered his father and hit him with knife. Her father started crying with pain, her

mother came to save her father and grabbed Mohd.Vakil but Mohd.Vakil hit her mother with the knife several times and both her mother and father fell down on the ground. Thereafter Mohd.Vakil fled away leaving the motorcycle near their house. While Mohd.Vakil was fleeing their neighbour Rizwan tried to stop Mohd.Vakil but he showed the knife and fled away.

9. Rizwan, PW-6, the neighbour has also appeared in the witness box and deposed that at about 5.00 PM on September 22, 2009 he heard a noise “*maar diya, bachao bachao*”. When he came out he saw Vakil Ahmed fleeing with a knife in his hand. His uncle Bhushan called the police at 100 number. They saw Abdul Hameed and his wife injured and soaked in blood and Shahista was shouting that Vakil Ahmed had killed her mother and father by stabbing them.

10. Further, Imtiaz PW-2, though not an eye witness has also deposed seeing Mohd.Vakil fleeing with blood stained clothes. He deposed about the entire incident as stated by Shahista in rukka on the basis of which FIR was registered and the cause of quarrel. He also deposed that Mohd.Vakil was insisting his father to give him a motorcycle which his father was not in a position to give and that Mohd.Vakil was annoyed as his sister was not obeying him and that his father, he along with the mediator and Yasin had gone to the matrimonial home of her sister on the day of Eid to get the matter settled. He further deposed that on September 22, 2009 he was at home when his father received a call from Mohd.Vakil. he told his father that he would kill Imtiaz and his father asked him to be alert. Thereafter his father again received a call from Mohd.Vakil asking him to take away his sister or else he will kill her. His father went to the house of Mohd.Vakil at 4.00 PM on the same day. Later, Shahista’s mother in law called his father

informing that her son would be coming and she has made him understand the matter and told his father to send Shahista back with Mohd.Vakil. At about 4.45 PM he went to the market to buy some eatables. While going to the shop he saw Mohd.Vakil coming to their house on motorcycle. After buying the eatables while he was coming back to his home, he saw Mohd.Vakil was going away on foot and his shirt was soaked in blood and the knife was bent. He was taking off his shirt which was soaked in the blood and coming towards him. On seeing Mohd.Vakil he turned towards one side and asked Mohd.Vakil about the matter on which he said that he should go home and see for himself. When he reached home he found his parents lying in the pool of blood.

11. Gulsita PW-5 the younger daughter of deceased also deposed about seeing Mohd.Vakil on the road with blood stains on his clothes as she had gone to call her brother Imtiaz whom she could not find in the market. From the version of the eye witnesses Shahista and Gulzar and Imtiaz, Gulsita and Rizwan, who saw Mohd.Vakil running away from the spot with blood stained clothes, the prosecution has been able to prove beyond reasonable doubt the offence committed by Mohd.Vakil in committing the murder of Abdul Hameed and his wife Ameena. The version of the witnesses is further corroborated from the recovery of the blood stained clothes of the appellant and the knife and according to Dr.Arvind Kumar the injuries received by the two deceased were possible by the knife recovered from the appellant.

12. As noted above witnesses have consistently stated that when Mohd.Vakil went out, his clothes were blood stained. Pursuant to the arrest of Mohd.Vakil at his instance his blood stained clothes were seized, which

were sent to FSL. As per the FSL the shirt, pant, baniyan of Mohd.Vakil gave blood group of human origin with 'AB' Grouping. Clothes of the two deceased i.e. Aameena and Abdul Hameed were also sent to the FSL. The blood group on Aameena's clothes was of 'A' Group and that on Abdul Hameed of 'B' Group which explains the presence of blood group of 'AB' origin on the shirt, pant and baniyan of Mohd.Vakil.

13. The plea of Mohd.Vakil is one of alibi. According to him he was at Safdarjung Hospital at the time when the alleged incident took place. Though he has sought to prove his location by calling officer from the service provider of his mobile phone however the witness neither filed CDR nor the location of the mobile phone of the appellant at the relevant time. As per the MLC of the appellant exhibited by the prosecution Ex.PW-24/A Mohd.Vakil was examined on September 22, 2009 at 9.30 PM after he was apprehended. As per the MLC he had CLW over left side parieto occipital scalp 3 x 1 cm. The injury was simple in nature. A perusal of the evidence of Gulzar would show that when Mohd.Vakil attacked Mohd.Hameed with knife Mohd.Hameed pushed him to save himself however, Mohd.Vakil overpowered him and hit him with knife. Thus this simple injury being caused in the said incident cannot be ruled out. The version of the appellant that he was in the Safdarjung hospital due to an accident at around 5.00 PM is not fortified as the MLC of Mohd.Vakil was prepared at 9.30 PM on September 22, 2009 and not around 5.00 PM.

14. Dhanvir PW-18 a private photographer who has taken the photograph of the place of incident has exhibited the photographs along with the photographs of the motorcycle and the cover of the knife as deposed by the witnesses.

15. Mani Bhushan Prasad PW-8 a neighbour appeared in the witness box who stated that he heard the noise in the street saying “*Maar Diya, Maar Diya*”. When he came out in the street he saw Ameena and Abdul Hameed lying in the pool of blood. He also deposed that children of Hameed and Ameena namely Gulzar, Gulsita and Shahista were present on the spot. This witness has not been cross-examined on this point.

16. In view of the evidence on record, we find no error in the impugned judgment convicting the appellant and order on sentenced passed by the learned Trial Court. Appeal is accordingly dismissed.

17. The appellant will suffer the remaining sentence.

18. T.C.R. be returned.

19. 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

OCTOBER 14, 2014
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