

\$~R-19 (Part-B)

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

% **Reserved on: 10th September, 2015**
Date of Decision : 19th October, 2015

+ **CRL.A. 139/2000**

SHABAB

..... Appellant

Through: Mr. Shaad Anwar, Adv.
versus

STATE

..... Respondent

Through: Ms. Aashaa Tiwari, APP

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.K.GAUBA

R. K. GAUBA, J:

1. The appellant stands held guilty and convicted, *inter alia*, for the offence under Section 302 Indian Penal Code, 1860 ("IPC") on the charge that, feeling jilted upon being rejected as suitor, he committed the murder of Saira @ Rani ("the deceased") by slitting her neck with a knife in the kitchen of her residence (House No.R-196, gali no. 21, Brahmpuri, Delhi at about 6:30 PM on 24.07.1997) and also, for the offence under Section 309 IPC, on the charge that immediately after committing the murder of Saira @ Rani, he attempted to commit suicide by causing cut injury, with the same knife, on his own neck. The findings of guilty on the two counts were returned by the trial court, by judgment dated 26.02.2000 (in Sessions case no. 14/1998) primarily believing the eye-witness account of Nazma (PW-5) and Farzaana (PW-7), the mother and *Mausi* (mother's sister), in addition

to the testimony of Masroor Ahmed (PW-9), the father of the deceased who statedly had come, on the scene, immediately after the occurrence.

2. By order dated 29.02.2000, the trial court awarded imprisonment for life with fine of ₹1000/- for offence under Section 302 IPC and simple imprisonment for six months with fine of ₹500/-, for offence under Section 309 IPC, directing both these sentences to run concurrently and the benefit of set off under Section 428 of the Code of Criminal Procedure, 1973 (Cr.P.C.) also to be available.

3. It will be of advantage to give a brief description of the persons involved in the case, and their inter-relationship.

4. Masroor Ahmed (PW-9) was married to Nazma (PW-5) in 1970-71. Seven children took birth out of this wedlock. They included four sons named, Saleem, Nadeem, Waseem and Imran. During the trial, at the stage of evidence (in 1999), Saleem was described to be about 25 years old, followed by Nadeem 22 years old, Waseem 16 years old and Imran 8 years old. The three daughters included Saira @ Rani (the deceased), the other two being Reshma and Salma, who according to PW-9, were born as the first offspring at the interval of 1½ years of each other after marriage. Saira @ Rani was indisputably 18/19 years old at the time of her death. The evidence of her mother (PW-5), and of her father (PW-9), coupled with the observations in the autopsy report (Ex.PW-10/A) in this regard has not been challenged.

5. Farzaana (PW-7) is sister of Nazma (PW-5) and, therefore, stood in the relationship of *Mausi* (mother's sister) to the deceased. This witness (20 years old housewife) married to a person from village

Amroha, and mother of three children, was living with the family of her sister (PW-5) for about eight months prior to the occurrence. The appellant did not dispute this fact during the trial.

6. There is indisputable evidence available that the appellant himself is a local resident of the same locality (House no. R-1/30, Gali no. 20, Brahmpuri, Delhi) and is closely related to the family of the deceased. He did not refute the testimony of Masroor Ahmed (PW-9) when the witness deposed that the appellant Shabab is the grandson of his *bua* (i.e. son of the son of father's sister). Thus, the deceased was a cousin to the appellant.

7. According to the prosecution case, the appellant was about 27-28 years old in July, 1997. This is how PW-5 and PW-9 would describe him, also for pointing out that there was age gap between him (the appellant) and the deceased, making him not a suitable match for her. The appellant has contested the prosecution case in this regard. He would claim that he was not as old as he was projected, his age being similar to that of the deceased. In this context, he relied on the medico legal report (Ex.PW-14/A) which had been prepared by Dr.T.R. Ramtake (PW-14), in the casualty of GTB hospital, when the appellant was taken there on 24.07.1997 in injured state. It may be noted that in the description of the person medically examined against the said MLC, the age of the appellant was mentioned as 18 years. The basis for the noting it is obvious is not indicated. It is possible the same i.e. the age may have been given by the appellant himself.

8. We are not inclined to disbelieve the evidence of PW-5, PW-7 and PW-9 with regard to the age of the appellant, since they are his close relatives and in a good position to give authentic information on the subject. The appellant could have produced someone close to his own family or come up with some other evidence (in the nature of documentary proof) as to his date of birth or age. He has made no efforts on the said score nor did he make any attempt to discredit the three prosecution witnesses with regard to their deposition about his age. Mere reference to the noting in the MLC cannot clinch the issue in favour of the defence plea on the subject.

9. Be that as it may, in our opinion, the question of the extent of age difference between the appellant and the deceased is not of great import. The meat of the matter is that the appellant wanted to marry the deceased but her family was not inclined to accept this proposal. This backdrop to the incident, which is at the core of the case, has been brought home not only by the prosecution witnesses but by the defence itself, thereby making it a common ground. It was stated by PW-5, PW-7 and PW-9 that the appellant had come up with a proposal for his marriage with the deceased, conveyed about 2/3 months prior to the date of incident through his mother and *Bhabhi* (brother's wife). It was suggested by the appellant to the three prosecution witnesses (PW-5, PW-7 and PW-9) that he and the deceased were involved in a love affair and wanted to marry each other but this was objected to by the family of the deceased. The suggestions to this effect were denied by each of the three witnesses.

10. Since no evidence has been led by the appellant to prove his claim that the deceased was involved in a love affair with him or that she herself was inclined to marry him, this theory cannot be given much credence but it certainly reflects and is evidence of the cause and motive.

11. There is no doubt about the fact that Saira @ Rani suffered homicidal death. Even if we keep aside, for the present, the eye-witness account of Nazma (PW-5) Farzana (PW-7) as also of Masroor Ahmed (PW-9), who had come on the scene on hearing the commotion, the evidence of SI R.D. Lakra (PW-20), Constable Bhagat Singh (PW-13), and that of the autopsy doctor (PW-10), clinches the issue on the subject. The evidence of Satender Kumar (PW-1), Head Constable Surinder Singh (PW-8), Head Constable Kushal Pal Singh (PW-11) adds strength to the prosecution charge to this effect.

12. The input about the murder had been received by Police Control Room (PCR) at about 7:00 PM on 24.07.1997. This was conveyed by the PCR to Head Constable Kushal Pal Singh (PW-11), who was on duty in a PCR van located in the area, as also to the police station Seelampur (the local police station) where Head Constable Surinder Singh (PW-8) was working as the Duty Officer. Head Constable Surinder Singh (PW-8) logged the input vide DD no. 60-B (Ex. PW-8/A) and passed on the same to SI R.K.Lakra (PW-20). While PW-20, accompanied by Ct.Bhagat Singh (PW-13), set out for the place of occurrence from the police station, PW-11 reached there, in the PCR van, ahead of them.

13. Head Constable Kushal Pal Singh (PW-11) has testified that he had found the deceased with injury on her neck lying dead on the cot in the courtyard of her house. He also found the appellant with injury on his neck, lying on another cot at the same place and, thus, took him to GTB hospital where he was examined against MLC. PW-20, corroborated by PW-13, has confirmed through his testimony that when he reached at the place, he had found the deceased lying lifeless on the cot with a *churri* (knife), blood-stained, lying close to it. It is PW-20 who would prepare the *rukka* (Ex.PW-20/A), based, *inter alia*, on the statement (Ex.PW-5/A) of Nazma (PW-5) – to the contents of which we shall revert later – as also his own observations of the scene and, on that basis, got the FIR (PW-8/C) registered in the police station at 8:50 PM on the same day.

14. The scene of the incident was arranged to be photographed with assistance of PW-1, a local photographer who has proved the photographs (Ex.PW-1/1 to Ex. PW-1/10) prepared by him. These photographs, particularly, Ex.PW-1/1 to Ex.PW-1/6, depict the deceased lying dead with bleeding injuries on her neck, on a cot.

15. The dead body was sent, in due course, to the mortuary of department of forensic medicine, University College of Medical Sciences and GTB Hospital, Shahdara with inquest papers including death report (Ex.PW-20/B) and was subjected to examination, after it had been formally identified (vide Ex.PW-6/A), *inter alia*, by Anwar Ahmed (PW-6) uncle of the deceased. The post-mortem examination was conducted by Dr.Anil Kohli (PW-10), who has proved the report (Ex.PW-10/A).

16. The evidence of the autopsy doctor (PW-10) has proved that the deceased had suffered an incised cut throat wound measuring 8cmX3cmX3cm over front of her neck above the thyroid cartilage, the upper border thereof being 4 cm below chin and the lower border 9cm above the sternal notch. The wound had cut the trachea and oesophagus, as also the major blood vessels (carotid and jugular) on the left side of the neck through and through, also slightly cutting the third cervical vertebra on the left side. In the opinion of the autopsy doctor, the incised cut throat wound of the neck had been produced by sharp edged weapon which was sufficient, in the ordinary course of nature, to cause death.

17. The evidence to above effect has gone unchallenged. We, thus, do not have the least doubt that the death of Saira @ Rani was one of murder within the meaning of the penal clause in Section 300 IPC. After all, the injury directed against the most vital part of the human body, apparently inflicted intentionally and voluntarily with a cutting instrument, could not have been inflicted but with the intention of causing death. Since the defence did not come up with any theory as could bring the case under any of the exceptions to Section 300 IPC, we have no hesitation in concluding that the case would squarely fall within the mischief of the offence punishable under Section 302 IPC. For the above reasons, we find the cases reported as *Babu @ Balasubramaniam and Another vs. State of Tamil Nadu (2013) 8 SCC 60*, *Rampal Singh vs. State of Uttar Pradesh (2012) 8 SCC 289*, *Kallu @ Kalyan Atmaram Patil vs. State of Maharashtra (2008) 13 SCC 438*, *Bhagwan Bahadure vs. State of Maharashtra (2007) 14 SCC 728*,

Venkatesh vs. State of Tamil Nadu 1993 Supp(3) SCC 301 and Babu Singh vs. State 1995 Crl.L.J. 2439 not applicable to the one at hand.

18. As noted above, the PCR official Head Constable Kushal Pal Singh (PW-11) had found the appellant with a cut wound across his neck lying with bleeding on the cot next to the cot on which the dead body of Saira @ Rani lay. He had taken him to GTB hospital immediately. Before examining the oral evidence as to the circumstances in which such injury was suffered by the appellant, the evidence about its nature must be taken note of.

19. Dr.T.R.Ramtake (PW-14) has proved the MLC (Ex.PW-14/A) which he had prepared in GTB hospital at 7:45 PM on 24.07.1997 after examining him. The MLC indicates that the appellant was conscious but not communicative when brought to the hospital by Head Constable Kushal Pal Singh (PW-11). According to the document, the history of the injury had been given as self-inflicted. The MLC, however, is not clear as to who had narrated the said history. The MLC records that the appellant was not communicative and apparently did not reveal how and who had inflicted the injury in the neck. It has to be assumed in the appellant's favour that the observation about the injury being self-inflicted would have been noted by the examining doctor on the basis of what was told to him by the police official (PW-11) who had brought the appellant to the casualty.

20. The MLC noted that the appellant had suffered an incised wound over throat which was horizontally placed, its size being 6cm x 1cm. The examining medical officer could not ascertain the depth of the

wound. He referred the appellant to ENT and Surgery department for further management. Dr.A.K. Gupta (Ex.PW-18), after examining the matter, later (on 29.09.1997) described the injury suffered by the appellant to be grievous in nature.

21. Having regard to the nature of the injury sustained and its situs (the neck), inflicted by sharp cutting instrument, we have no hesitation in holding that it was not only dangerous but also life threatening. A cutting wound across the neck could have caused harm to the major blood vessels (carotid and jugular) in the said region which may have proved fatal. Thus, the injury suffered by the appellant was such as was likely to result in his death.

22. The appellant did not contest the prosecution case that the deceased was murdered in her own home in the aforesaid manner at about 6:30 PM on 24.07.1997. He also did not contest the prosecution charge that he himself had suffered the cut wound on his own neck which was likely to result in his death. The prosecution case is that the appellant is responsible for the murder of Saira @ Rani and also for the near fatal injury on his own person, he being the author of both with the same weapon of offence, *churri* (Ex.P-1) seized from the scene of incident (vide Ex.PW-5/C) by PW-20, in the presence of PW-5, PW-9 and PW-13. The appellant disputes the prosecution case as to the role attributed to him. He took the defence that it was Saleem, the eldest brother of the deceased who had committed the murder of Saira @ Rani and had also attempted to kill him, feeling infuriated over the proposal of the latter for his marriage with the deceased girl.

23. PW-5 and PW-7 have testified that the appellant had come to her house at about 3:00 PM on 24.07.1997 when both of them with the deceased and the younger children of the former were at home. PW-9 was away at that stage having gone to the house of Imamuddin, located in the same street. It has come in the evidence of the first two mentioned witnesses (PW-5 and PW-7) that all of them, including the appellant, had been sitting in the courtyard on the cots chatting with each other. During the course of this meeting, Saira @ Rani had even prepared and served tea. Thus, the evidence clearly shows that the visit or prolonged presence of the appellant in the household had not been taken exception to. To put it simply, the appellant was not treated by anyone as unwelcome. PW-5 deposed that her sister Farzaana (PW-7) had gone up to the roof and that, at about 6:30 PM, Saira @ Rani had gone inside the kitchen, while she and the appellant had continued to sit on separate cots. At that stage, the appellant had suddenly got up and gone into the kitchen taking out the knife from his pocket. PW-5 testified that immediately thereafter she had heard Saira @ Rani shrieking and saw her rushing out with blood gushing from her neck. PW-5 avers that, on she raising an alarm, her sister Farzaana (PW-7) had also rushed downstairs. Saira @ Rani was helped by being made to lie on the cot with a cloth kept on her bleeding injury. PW-5 deposed that it was at that stage when she saw the appellant had lied down on the next cot and used the same knife to inflict cutting injury on his own neck from which he started bleeding.

24. The above sequence is confirmed in each detail by Farzaana (PW-7), who added that when her attention was drawn by the screams

of Saira @ Rani, she had seen from the upper floor Saira @ Rani being helped by Nazma (PW-5), in the manner stated, as also the act of the appellant thereafter lying on the other cot and inflicting cut injury on his own throat. Masroor Ahmed (PW-9) corroborated the statement of PW-5 and PW-7 by testifying that he had rushed to his own house when he had heard the shrieks emanating from there and had found Saira @ Rani dying with bleeding injury and the appellant lying on the cot with bleeding injury from his neck.

25. The cross-examination of PW-5, PW-7 and PW-9 could not bring out any inconsistencies as could render their testimony suspect. There are no contradictions whatsoever in their respective depositions. The evidence of Nazma (PW-5), in particular, is consistent with what had been her original version in the *rukka* (Ex.PW-5/A) on which basis the FIR had been registered.

26. It was suggested by the defence to PW-5 and PW-7 that her husband (PW-9) had also come back to the house when everyone, including the appellant, was taking tea. It was also suggested that PW-9 was perturbed on seeing this group, including Saira @ Rani with the appellant, sitting together and taking tea and further that, at that stage, it was her son Saleem who had given the knife injuries on the persons of Saira @ Rani and the appellant. Similar suggestions were given to PW-7 with added element of PW-9 having fought with Saira @ Rani over the persistence on her part, and of the appellant, to marry each other. Both PW-5 and PW-7 rejected these suggestions as incorrect. Interestingly, when PW-9 came in the witness box, it was suggested to him that he had even helped his son Saleem in the assault with the

knife on the persons of the deceased and the appellant. PW-9 refuted the said theory as a falsehood.

27. The defence plea that it was Saleem, the brother of the deceased girl, who was the author of injuries inflicted on Saira @ Rani and the appellant is unbelievable. PW-5 has explained in her evidence that Saleem was paralytic and would not be even in a position to move around except on his hips, both his lower limbs being of no help.

28. Pertinently, the appellant made no attempt to discredit Nazma (PW-5) about the differently abled state of her son Saleem on the date of incident. Yet, in his defence he examined three witnesses Mohd. Yameen, (DW-1), Misra Jamin Ali (DW-2) and Shah Nawaz Pappan (DW-3) to persist with the theory that it was Saleem who had inflicted knife injuries on the neck of the two persons. These witnesses were local residents. They claim to have come up to the house of PW-9, as part of a crowd, on hearing noise of a quarrel. These witnesses testified that each of them had seen PW-9 holding on to the appellant and Saleem giving a knife blow on his neck and upon Saira @ Rani (the deceased) coming in to intervene, she also having been hurt on her neck with the same weapon by Saleem. DW-1 went to the extent of deposing that he had known the family very well since 1993 and Saira @ Rani and the appellant were involved in a love affair and wanted to get married but her parents were raising objection.

29. The three witnesses mentioned above have tried to add more colour to the story than what is claimed even by the appellant. A specific role is attributed to PW-9 that he had aided and abetted Saleem by holding on to the appellant when he and Saira @ Rani were

attacked with knife. This was not a case put to PW-5, the prime witness for the prosecution.

30. During cross-examination of DW-1, DW-2 and DW-3, questions as to the state of health of Saleem were raised. Each of these persons conceded that Saleem was a differently abled person, who could not walk on his legs or even with the use of his hands. While admitting such to be the state of Saleem, DW-1 claimed that on the date of the incident, he was in good health condition thereby indicating that the disability had occurred later. DW-2, while explaining as to why (he though present, as per his version) had not intervened, first described Saleem as a person of unsound mind. When asked to elaborate, he referred to the physical disability of Saleem in walking on his own legs. DW-3 evaded the scrutiny by pleading ignorance as to the handicap of Saleem.

31. In our considered opinion, there is no reason why the statement of Nazma (PW-5) about the differently abled state of her son Saleem should be disbelieved. The contrary version attempted to be introduced by the defence does not inspire confidence, particularly as the three defence witnesses have come up with versions beyond what was set-up by the appellant himself.

32. The six photographs (Ex.PW-1/1 to Ex.PW-1/6) taken during investigation show the deceased lying dead with bleeding injury on her neck on a cot with wooden frame. Two photographs (Ex.PW-1/7 and Ex.PW-1/10) also taken at the same time show the other cot with iron frame lying at the same place with a blood spot prominently seen. It is the second cot on which the appellant is stated to have placed himself

while inflicting the knife injury on his own neck. The other two photographs (Ex.PW-1/8 and Ex.PW-1/9), as indeed those referred to earlier, show blood scattered all around on the floor and beneath the cots. The knife (Ex.P-1) can also be seen on the floor in the last mentioned photograph (Ex. PW-1/10).

33. The knife (Ex.P-1) was seized by the Investigating Officer (PW-20), after its sketch (Ex.PW-20/B) had been prepared, by way of seizure memo (Ex.PW-5/C). PW-5, PW-9 and PW-13, who were the attesting witnesses, have confirmed the word of the IO in this regard. During investigation, the IO had also collected the sample of the blood, with cotton swabs from the cot on which the dead body of Saira @ Rani had been found, the floor beneath the said cot as also from the other cot on which the appellant had lied down and inflicted knife injury on his own neck and on the floor beneath it, in addition to the blood lying nearby on the floor of the house, as per the seizure memo Ex.PW-5/B, also attested by the same set of witnesses. During autopsy the blood-stained clothes of the deceased and certain personal articles (*Nose-pin, Hairclip and black thread*) taken off the dead body had been sealed and preserved and handed over to the IO vide seizure memo (Ex.PW-13/A). At the time of his medical examination against MLC, the sample of blood of the appellant was also preserved and passed on to the IO vide seizure memo Ex.PW-16/A. All these exhibits were sent in due course to the forensic Science Laboratory (FSL).

34. Though the sample of the blood preserved at the time of MLC of the appellant was found to have putrefied, the blood sample collected

from, and beneath, the cot on which the appellant had laid down was found to be of human origin of group 'B'. Similarly, the sample of blood preserved during autopsy of the deceased had putrefied but the sample of blood taken from, and beneath, the cot on which her dead body was lying, has been found by FSL to be of human origin of group 'A'. The FSL reports (Ex.PW-13/A and PW-22/A) show that the knife (Ex.P-1) found at the spot also bore blood-stains of group 'A'.

35. In the facts and circumstances noted above, we find the evidence of Nazma (PW-5), Farzaana (PW-7) and Masroor Ahmed (PW-9) worthy of reliance. These witnesses had no reason, whatsoever, to state falsehood. The evidence unmistakably shows that it was the appellant who had been obsessed with the idea of marrying Saira @ Rani. This was not to the liking of her family. There is nothing available to even remotely show that Saira @ Rani may have been interested in the appellant or may have encouraged him in seeking her in marriage. It is undisputed that the appellant had come to the house of the deceased on 24.07.1997. Apparently, he wanted to press his point that he liked Saira @ Rani and wanted to marry her. He had carried along, in his pocket, the knife (Ex.P-1), which he used in the course of the incident. The manner in which he sat with the family for over three hours, had tea while conversing before following Saira @ Rani into the kitchen for causing the fatal injury on her neck shows it to be a pre-determined attack.

36. There is no merit in the appeal. The learned trial court has appreciated the evidence properly in the given facts and circumstances. There could have been any conclusion reached but the one arrived at

by the trial court in the impugned judgment. The fatal injury on the person of Saira @ Rani was inflicted by the appellant and no one else. The defence plea that this act was committed by Saleem is unbelievable for the reason Saleem is a paraplegic, who cannot even move around except on his hips, all his limbs having been rendered useless. He, thus, would not be in a position to reach up to the height of an adult male or his grown-up sister to inflict such serious injuries on their respective necks.

37. In the result, the impugned judgment and the order on sentence are upheld. The appeal is dismissed.

38. The appellant is on bail, the sentences awarded against him having been suspended, pending consideration of his appeal by order dated 09.08.2004. He is directed to surrender to custody within fifteen days of this judgment and to undergo the sentences awarded against him in the impugned judgment and order. The learned trial judge (successor judge) and the Station House Officer of Police Station Seelampur are directed to take necessary steps to ensure due compliance.

**R. K. GAUBA
(JUDGE)**

**SANJIV KHANNA
(JUDGE)**

OCTOBER 19, 2015/*mr*