

\$~R-54 & 55

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

% *Date of Decision : May 10, 2016*

+ **CRL.A. 885/2001**

SABRA Appellant

Represented by: Mr.I.S.Kapur, Advocate

versus

STATE Respondent

Represented by: Mr.Varun Goswami, APP with
SI Madan Meena, PS Kapashera

CRL.A. 889/2001

KHURSHID Appellant

Represented by: Mr.Harsh Prabhakar, Advocate
(Amicus Curiae) with Mr.Aditya
Vikram, Advocate

versus

STATE Respondent

Represented by: Mr.Varun Goswami, APP with
SI Madan Meena, PS Kapashera

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. Having heard learned counsel for the appellants today, we proceed to decide the fate of the appellants, who have been vide impugned judgment

dated October 19, 2001 passed by the learned Additional Sessions Judge New Delhi, in Sessions Case No.13/2000, held guilty for having committed the offence punishable under Section 201/34 IPC; and further appellant Khurshid guilty for having committed the offence punishable under Section 302 IPC.

2. We may highlight that, erringly, no finding whatsoever has been returned by the learned Additional Sessions Judge on the charge framed against Sabra for having committed the offence punishable under Section 302/34 IPC despite the fact that the said charge had been expressly framed against her vide order dated June 27, 2000.

3. In terms of the order on sentence dated October 20, 2001, appellant Khurshid has been sentenced to undergo imprisonment for life and pay fine in sum of ₹5,000/- for having committed an offence punishable under Section 302 IPC; in default, to undergo simple imprisonment for a period of six months. For the offence punishable under Section 201/34 IPC, both the appellants have been sentenced to undergo imprisonment for a period of seven years and pay fine in sum of ₹2,000/-; in default of which they have been directed to undergo simple imprisonment for a period of three months.

4. Pithily stated, the gravamen of the allegations adduced by the prosecution is that sometime around the intervening night of August 2/3, 1999 the appellants in furtherance of their common intention committed the murder of Noor Ahmed (husband of appellant Sabra) at his residence : House No.226A Village Brijwasan, Delhi by manual strangulation and with a view to screen themselves from legal punishment, appellant Sabra in furtherance of common intention gave false information regarding the illness

of the deceased as the cause of his death, hoping that the death of her husband would not be investigated by the police.

5. Finding of guilt has been returned by the learned Trial Judge by placing reliance upon the testimonies of Nawabuddin PW-1, the elder brother of the deceased and Shahid Ahmad PW-5, the nephew of the deceased; who reside opposite the house of the deceased.

6. The testimony of the said witnesses which has been perused by us clearly establishes the presence of appellant Sabra at her residence along with her husband Noor Ahmed on the night in question.

7. The testimony of Shahid Ahmad has been accepted by the learned Trial Judge to believe the presence of the appellant Khurshid at the residence of the deceased between 10:00 - 10:30/40 PM on the fateful night of occurrence. Further, the testimony of Nawabuddin coupled with the evidence of SI Virjanand PW-14 has been held to have established the fact that the appellant Sabra misled the investigating agency and the public at large that her husband died a natural death owing to weakness ensuing as a result of vomiting and diarrhoea.

8. As a matter of fact, the unassailable medical evidence available in the form of the Post-Mortem Report Ex.PW-7/A belied her stance and unequivocally evinces that the deceased suffered homicidal death owing to manual strangulation which resulted in asphyxia. Significantly, the doctor who performed the autopsy upon the body of the deceased estimated the approximate time of death to be around the same time when the appellant Khurshid was also stated present at the *locus in quo* along with appellant Sabra; her confederate in crime.

9. Dealing firstly with the evidence against the appellant Khurshid, the singular evidence connecting him with the offence is the testimony of Shahid Ahmad, the nephew of the deceased; who resided opposite the house of the deceased and claims to have seen Khurshid visiting the house of the deceased on the fateful night at around 10:00 PM and subsequently leaving after about thirty-forty minutes. The said circumstance would assume high potency of incrimination when viewed in conjunction with the expert opinion tendered by Dr.K.Goel PW-7 who conducted the post-mortem and has categorically opined that the approximate time of the death of the deceased was around 10:00 PM i.e. the same time when Khurshid is alleged to have been present at the *locus in quo*.

10. However, upon microscopic analysis of the testimony of Shahid Ahmad PW-5, it would not be safe to believe him to establish the presence of Khurshid at the residence of the deceased on the fateful night.

11. Our reason for the opinion above is that the perusal of the record of the case reveals that even though since the very inception the investigation agency was inquiring into the death of Noor Ahmed to explore the possibility of foul-play, Shahid Ahmad did not divulge this vital information to the police personnel and neither to his family members till August 12, 1999. It is the admitted case of the prosecution that the family members of Shahid Ahmad were being questioned by the local police in connection with the death of his uncle and their statements in this regard are also available on record. SI Virjanand PW-14 has categorically deposed that on August 03, 1999 when the police reached the spot, Shahid Ahmad was present. It is rather astounding and militates against natural human conduct that Shahid Ahmad remained tight lipped even though he admits in cross-examination

that there were discussions amongst his family members with regard to the death of his uncle for several days following August 02, 1999. Interestingly, he has deposed in his examination-in-chief that the police recorded his statement on August 03, 1999 itself, however, during course of cross-examination he contradicts himself by stating that no such statement was recorded on August 03, 1999.

12. It is evident that the belated statement of Shahid Ahmad recorded on August 12, 1999, *sans* any plausible explanation for delay cannot be acted upon without corroboration to hold that Khurshid visited the residence of the deceased on the fateful night.

13. If indeed Khurshid had been seen by Shahid Ahmad visiting the house of Noor Ahmad in the intervening night of August 02, 1999 and August 03, 1999, upon finding Noor Ahmad dead the next morning and police being informed by somebody that the death was suspicious and SI Virjanand being in the house early morning of August 03, 1999, it is unbelievable that Shahid Ahmad who is the nephew of the deceased and lives in the house opposite to that of the deceased and was present in the house of the deceased when SI Virjanand came to the house did not disclose said fact. His statement under Section 161 Cr.P.C. recorded on August 12, 1999 i.e. after 10 days of the incident records said fact. But what has happened to his statement recorded on August 03, 1999, remains a mystery. As noted above, in his examination-in-chief he said that police recorded his statement on August 03, 1999 but later on resiled therefrom. It is not believable that on August 03, 1999, the Investigating Officer did not record any statement. Whilst it may be true that pending post-mortem report FIR was not registered, but there is no reason why daily diary entries were not made

recording what the members of the house who were quizzed told SI Virjanand.

14. There being no other evidence available on record to even remotely probablise the presence of Khurshid in the house when the deceased was manually strangled, his link with the offence in question snaps irretrievably and he is entitled to be acquitted of both charges framed against him.

15. Now adverting our consideration to the case of the prosecution against appellant Sabra.

16. We find that Sabra has been held guilty for having committed the offence punishable under Section 201/34 IPC, and to our utter dismay we find that there is no finding returned by the learned Trial Judge on the charge framed against her of having committed an offence punishable under Section 302/34 IPC despite the fact that a charge to the said effect has been expressly framed against her vide order dated June 27, 2000. Since neither the State nor the victim has preferred any leave to appeal, on this count we are constrained to confine ourselves on the propriety of her conviction for the offence punishable under Section 201/34 IPC i.e. on account of having furnished false information of the illness of the deceased as the cause of his death; with a view to screen herself from legal punishment.

17. It would be apposite to note that Sabra did not dispute her presence in her matrimonial home on the day in question when her husband died. She admits said fact in her statement recorded under Section 313 Cr.P.C.

18. The testimony of Nawabuddin coupled with that of SI Virjanand evidences the fact that she misled the investigating agency and public at large that her husband died a natural death owing to weakness ensuing as a

result of vomiting and diahorrea. Her statement to the said effect was reduced in writing on August 03, 1999 itself and has been proved at the trial as Ex.PW-14/DY. The said statement is signed by her and was made in course of inquest, much before the registration of the FIR. It assumes significance that such statement has only been belatedly disowned by her whilst being examined by the Court in terms of Section 313 Cr.P.C. But we find that during cross-examination of Nawabuddin and SI Virjanand, it has not even been vaguely controverted that Sabra did not make any such statement or adopted such stance. Absence of necessary suggestions to witnesses at the stage of cross-examination cannot be covered up by belatedly propounding novel version/explanation during examination in terms of Section 313 Cr.P.C. as was held in the decision reported as (2005) 9 SCC 15 Devender Kumar Sangla v. Baldev Krishna Sangla.

19. The unassailable medical evidence available in form of the Post-Mortem Report Ex.PW-7/A clearly belies the fatuous version conceived by Sabra and unequivocally evinces that the deceased suffered homicidal death owing to manual strangulation which resulted in asphyxia. It would also be pertinent to highlight that the findings of Dr.K.Goel to said effect have not been controverted by means of cross-examination on her behalf. Therefore, there is no scope of interference against the conclusion of the learned Trial Judge on the count that the Sabra is guilty of having committed the offence punishable under Section 201 IPC.

20. Resultantly, for the reasons expressed by us in the preceding paragraphs, Criminal Appeal No.889/2001 preferred by appellant Khurshid is allowed. The impugned judgment of conviction dated October 19, 2001 and order on sentence dated October 20, 2001 passed by the learned

Additional Sessions Judge in Sessions Case No.13/2000 qua him is set aside. He is acquitted of all charges. Being on bail, the bail bonds and surety bonds furnished by him are discharged.

21. Criminal Appeal No.885/2001 preferred by appellant Sabra is devoid of merit and is therefore dismissed. Since co-accused Khurshid has been acquitted of all charges, including the charge under Section 201/34IPC, the conviction of Sabra under Section 201/34 IPC must necessarily be altered to one under Section 201 IPC.

22. As regards the sentence, upon endowing anxious consideration to the matter we are inclined to modify the sentence imposed by the learned Trial Judge. Sabra is a lady aged around forty six years as of today and has no criminal antecedents other than the instant. The incident pertains to the year 1999 and the appeal preferred by her has been pending since fifteen years. We may observe that relegating a convict to serve the remainder custodial sentence after a decade of liberty could cast a detrimental jolt to the prospects of her integration into the society and leading a reformed life. We cannot be oblivious of the fact that it becomes virtually impossible for the convicts placed in such precarious situation to re-integrate into the society after serving remainder sentence at an advanced stage of their life. Means of sustaining livelihood once withdrawn under such circumstances, may never be gained again. The commitments and duties owed towards the family are jeopardised. There exists an imminent possibility that such convicts, upon being released after having served the remainder sentence belatedly, may be rendered misfit in the society. The importance of expediting the hearing of criminal appeals cannot be underscored enough. Such delays are bound to have a deleterious impact on the lives of convicts whose fate remains

hanging in the Courts, burdened with ever multiplying judicial dockets. The constant fear and feeling of uncertainty looming over a convict endlessly awaiting adjudication of an appeal till eternity is in teeth with the spirit of reformative penal jurisprudence imbibed by any civilised legal system across the world; India being no exception. Perusal of the record reveals that Sabra has undergone a sentence of one year and approximately one month. We deem it expedient in the interest of justice to sentence her to the period already undergone by her in custody. Therefore, being on bail, bail bond and surety bond furnished by her are discharged.

23. TCR be returned.

24. Copy of this decision be sent to the Superintendent Central Jail Tihar for updating of the jail record.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

MAY 10, 2016

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