

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Pronounced On: 22.09.2017

CRL.L.P.386/2017 & CRL.M.A.10963/2017

STATE

..... Petitioner

Through: Ms. Rajni Gupta, APP with Inspector
Ramesh Dahiya & Inspector Manoj,
PS-Khajoori Khas

versus

SHABANA & ORS

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE A.K. CHAWLA

SIDDHARTH MRIDUL, J (ORAL)

1. The present leave petition instituted on behalf of the State, under Section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'), assails the judgment and order on sentence dated 02.02.2017, rendered by the Additional District & Sessions Judge, (North-East), Karkardooma Courts, Delhi, thereby acquitting respondents 1 to 4 in case titled as '*State vs. Shabana & Ors.*'; arising out of FIR No.49/2008; under Sections 302/201/34 of the Indian Penal Code, 1860 (hereinafter referred to

as 'IPC').

2. Briefly encapsulated, the case of the prosecution is that on 19.02.2008 at 07:33 a.m., Head Constable Hari Shankar (PW-3), Duty officer at Police Station Khajuri Khas, received a PCR call informing that a person was lying dead in Gali No.3, E-Block, near police station and that somebody killed him in the night. The DD No.2A [Ex.PW3/A] was conveyed to Sub-Inspector Ravi Karan, who along with Inspector Ramesh Dahiya (PW-19) reached the spot and found one person, aged about 40 years, lying dead with alleged marks of *rassi*/wire like object around his neck and blood emanating from his mouth. The respondent No.1 Shabana, the wife of the deceased Ali Jan, reached the spot and identified her husbands' body. Based on the statement of Shabana, *rukka* [Ex.PW-19/A] was sent to the police station at 9:05 a.m. and FIR [Ex.PW3/D] was registered on the same morning.

The post-mortem of the deceased Ali Jan was conducted on 19.02.2008 at 01:35 p.m., by Dr. Sumit Tellewar (PW-20), who opined the cause of death as 'asphyxia due to ante-mortem ligature strangulation, sufficient to cause death in ordinary course of nature'. The time since death, at the time of conducting the post-mortem, was opined to be approximately 12 hours. In other words, based on the medical opinion of PW-20, it can be

inferred that the deceased had died at about 01:30 a.m., on the night intervening 18/19.02.2008.

3. It is the case of the prosecution that Shabana, the wife of the deceased was interrogated and is stated to have made a disclosure statement [Ex.PW-14/A], wherein she disclosed that there were repeated quarrels between her and the deceased in relation to the marriage of their daughter Heena. The deceased wanted to marry Heena with somebody in Agra, which was not in accord with the wishes of Shabana, to get their daughter married to the accused Faisal. It was further allegedly disclosed by Shabana that the deceased was habituated to drinking and gambling, and used to subject her to physical assault and beating. Further, it was allegedly disclosed that along with accused Faisal and his friends; accused Imran Khan and Yamin, it was decided to eliminate the deceased and with the common intention, after making the deceased imbibe excess liquor, he was murdered by means of strangulation whilst he was sleeping. It was lastly allegedly disclosed that the accused Faisal, Yamin and Imran Khan carried the dead body of the deceased from the rented accommodation/room of Shabana at Gali No.1, Sri Ram Colony, Delhi, and threw it in Gali No.3, Sriram Colony, Delhi, in order to avoid suspicion.

4. On 20.02.2008, in pursuance to the disclosure statement made by Shabana and upon receipt of secret information, Inspector Ramesh Dahiya (PW-19), the Investigating Officer, arrested accused Faisal and Imran Khan from near the BSES office at Yamuna Vihar, Delhi [vide arrest memos Ex.PW14/B and ExPW14/C, respectively]. The latter are alleged to have made disclosure statements [Ex.PW-14/H and Ex.PW-14/J, respectively], admitting the commission of the murder of the deceased. Furthermore, they also pointed out the scene of crime [Ex.PW14/F and Ex.PW14/G, respectively] and accused Faisal got recovered one green nylon *rassi*/rope [Ex.P1], from under the stairs of the house of one Salauddin, at B-Block, Gali No.8, Moti Wala Chowk, Sri Ram Colony, Delhi [vide seizure memo Ex.PW2/A]. Further, PW-19 also seized a bundle of nylon *rassi*/rope [Ex.P2], from the shop of one Nasim Ahmed (PW-7), on the disclosure statement of accused Imran Khan [vide seizure memo Ex.PW5/A].

Subsequently, on 21.02.2008, on receipt of secret information, PW-19 is stated to have arrested accused Yamin from Wazirabad Road, Sri Ram Colony, Delhi [vide arrest memo Ex.PW14/K], and recorded his disclosure statement [Ex.PW-14/M] admitting the commission of the murder of the deceased. The accused Yamin pointed out the scene of crime vide pointing

out memo Ex.PW14/N.

5. The seized material was sent to Forensic Science Laboratory (FSL) for forensic examination. According to the FSL report [Ex.PX], the microscopic characteristics of fibres on cellophane tape were similar to those of the nylon *rassi*/rope [Ex.P1]. Further, on physical examination of the nylon rope [Ex.P1] and bundle of nylon rope [Ex.P2], it was found that they were similar in respect of colour, texture, type of twist, number of strands, dimensions and U.V. fluorescence. According to the FSL report [Ex.PY], the viscera of the deceased were found containing ethyl alcohol, admeasuring 232 mg/100 ml of blood.

6. On completion of the investigation, charge sheet was filed and the accused Shabana, Faisal, Imran Khan and Yamin were charged under sections 302/34 IPC and sections 201/34 IPC, to which they pleaded not guilty and claimed trial.

7. During the trial, the prosecution has examined twenty witnesses, as under:

“(a) PW-1 Israr Ahmad was foster brother of the accused Shabana. He stated that he had seen three boys carrying the deceased in Gali No. 1, E-Block, Sri Ram Colony. He stated that he had asked the said boys as to what had happened to the deceased but they replied that the deceased had stomach pain and they were taking him to doctor. He has not identified the accused Faisal, Imran Khan and Yamin as the said boys.

(b) PW-2 Aas Mohd was a recovery witness in respect of nylon Ex.P-1. He stated that police officials had taken out something from the drain in street No. 8 and left. He denied that on 20.02.2008 at about 5:00 p.m., the accused Faisal got recovered one 3 meter green nylon from under the stairs of house of Salauddin.

(c) PW-3 HC Hari Shankar was Duty Officer, PS Khajuri Khas. On 19.02.2008 at 07.33 a.m., he recorded the PCR call vide DD No. 2A Ex.PW3/A. At 09.20 a.m., he recorded kayami DD Ex.PW3/B and got recorded the case FIR Ex.PW3/D and made endorsement Ex.PW3/C on the rukka regarding registration of FIR.

(d) PW-4 Nurul Chaman was elder brother of the deceased. He received the dead body of the deceased vide memo Ex.PW4/A. He stated that he had not visited the house of his brother Ali Jaan. He stated that he has no personal knowledge regarding the incident.

(e) PW-5 Naseem Ahmad was the owner of hardware shop at E-143, 60 foota Road, near Shaitan Chowk, Sri Ram Colony, Delhi. He stated that police officials seized a bundle of rope from his shop. He could not identify the nylon Ex.P1 and Ex.P2. He denied the suggestion that the accused Imran purchased the nylon rope Ex.P1 from his shop on 18.02.2008 at 07.00 p.m.

(f) PW-6 Nisar Bano was mother of the deceased. She was residing in Aligarh. She stated that the accused Shabana was not happy with the engagement her daughter Heena in Agra. She stated that Rizwan, son of the deceased and the accused Shabana knew the facts. In her cross-examination, she stated that she had visited the house of the deceased 7½ months before the date of incident. She denied that her statement was recorded by the police. She stated that Heena died due to burn in Sikanderabad where she was married.

(g) PW-7 Ct. Mahabir Singh was the photographer. He had taken 10 photographs Ex.PW7/A to Ex.PW7/J of the place of the recovery of the dead body of the deceased and negatives whereof are Ex.PW7/K (colly.).

(h) PW-8 Rizwan was the son of the deceased and the accused Shabana. He was not examined by the Investigating Officer. He appeared before the Court on 13.07.2009. He deposed about the incident.

- (i) PW-9 Insp. Rajesh Dogra was In-charge, Crime Team. He inspected the place of recovery of the dead body. He prepared Scene of Crime (SOC) Visitation Report Ex.PW9/A.
- (j) PW-10 Ct. Jaswant Singh taken rukka to the police station. He received viscera petty, sealed parcel containing clothes and neck strapping of the deceased alongwith sample seal from Autopsy Surgeon and handed over to PW-19 Insp. Ramesh Dahiya vide seizure memo Ex.PW10/A.
- (k) PW-11 Laal Mohd. was the informant. On 19.02.2008 at about 7.00/7.30 a.m., he had seen the dead body of the deceased in Gali No. 3, E-Block, Sri Ram Colony, Delhi and made call at 100.
- (l) PW-12 Mohd. Hanif was cousin brother of the deceased. He identified dead body of the deceased as that of his cousin brother Ali Jan vide memo Ex.PW12/A.
- (m) PW-13 Ct. Tarun Kumar Sharma taken photographs of the scene of crime Ex.PW7/F to Ex.PW7/J and negatives whereof are Ex.PW13/A (colly.).
- (n) PW-14 Ct. Ashok Kumar was special messenger. He delivered copy of FIR to Area Magistrate, Joint CP (New Delhi Range) and DCP (North-East).
- (n) PW-14 HC Virpal Singh was MHC (M). He proved relevant entries in malkhana register regarding deposit of articles deposited with him.
- (o) PW-15 HC Pramod Kumar was a parcel depositor. He deposited two sealed cloth parcels and one envelope parcel in FSL, Rohini.
- (p) PW-16 Ct. Naseem Ahmad was another parcel deposited. He deposited sealed viscera box in FSL, Rohini.
- (q) PW-17 HC Mahesh Kumar was MHC (M). He proved relevant entries in malkhana register deposit of case properties.
- (r) PW-18 SI Mahesh Kumar was draftsman. He prepared Site Plan to the Scale of the scene of crime and place of incident Ex.PW18/A.
- (s) PW-19 Insp. Ramesh Dahiya was Investigating Officer. In his cross-examination, he stated that he had not examined Rizwan. He stated that he had no information that Rizwan was an eye witness of the incident. He stated that he had not made any enquiry from Hina, elder daughter of the deceased. He stated that he had not made any enquiry from

the children of the deceased. He stated that the children of the deceased were staying in their house when the accused Shabana was arrested. He stated that no evidence regarding relationship between the accused Shabana and Faisal came to his knowledge. He stated that landlord of the house of the deceased was not examined.

(t) PW-20 Dr. Sumit Tellewar was the Autopsy Surgeon. On 19.02.2008 at about 1.30 p.m., he conducted post-mortem on the dead body of the deceased. He proved post-mortem report Ex.PW20/A. He opined that time since death was about 12 hrs. He opined the cause of death 'Asphyxia due to ante-mortem ligature strangulation, sufficient to cause death in ordinary course of nature'.

8. Subsequent thereto, on 03.09.2012, the accused persons were examined under Section 313 of the Cr.P.C., where it was claimed on behalf of Shabana that she has been falsely implicated and subjected to third degree by the police to coerce her into signing blank papers. She denied each and every circumstance that the prosecution alleged against her and disclaimed knowing the accused Faisal, Imran Khan and Yamin. The other accused persons also made similar statements.

9. Thereafter, the court having found that material circumstances and evidence have not been put to the accused persons, examined them afresh under Section 313 Cr.P.C., so as to afford them an appropriate opportunity to vindicate their defence.

10. Shabana was again examined under Section 313 Cr.P.C. on

15.10.2016, wherein she stated that her son Rizwan was not present in the house at the time of the incident. She has further stated that she went to the house of her foster brother Israr, to know the whereabouts of her husband, but he had not told her anything about him. She has further stated that her husband was a drunkard and therefore she had not searched for him during the night. Thereafter, on 18.10.2016, the accused Faisal was examined under Section 313 Cr.P.C., wherein he has denied each and every material circumstance put to him. He has stated that no nylon rope, as alleged, was recovered at his instance. On 20.10.2016, accused Yasmin was examined and he reiterated his earlier defence. Further, on 25.10.2016, accused Imran Khan was examined and he also reiterated his previous defence.

11. Shabana examined three witnesses in support of her defence. The examination in chief of the said witnesses examined by Shabana in her defence are extracted hereinbelow:-

“DW-1 Imran was elder son of the deceased and the accused Shabana. He stated that the deceased left the house at about 07:00-08:00 p.m. and thereafter, all of them slept. He stated that the deceased did not return during the entire night. He stated that he along with the accused Shabana searched his father. He stated that his grandmother had taken him and pressurized them to make a false statement. He stated that Rizwan made false statement as at her instance. He stated that his sister also pressurized but she refused to make statement. He stated that his grandmother forcibly married his sister against her wishes.

DW-2 Ikhlq was father of the accused Shabana. He stated that there was a dispute in respect of a property in Aligarh. He stated that PW-6 Nisar Bano asked to divide the said property between them. He stated that the deceased was denied any share.

DW-3 Shahid was brother-in-law of the deceased and brother of the accused Shabana. He stated that the deceased used to consume liquor. He stated that Rizwan was not well and he was in his house for treatment. He stated that he along with Rizwan went to the house of the accused Shabana after receiving information about the incident. He stated that there was a dispute regarding ancestral property in Aligarh. He stated that Ali Jan wanted to have the entire property whereas PW-6 Nisar Bano wanted to divide it in equal share in all her six heirs including the deceased.”

12. On behalf of the prosecution, it has been asserted that the testimony of the eye-witness Rizwan (PW-8), the son of the deceased and accused Shabana; who was not examined by the Investigating Officer (PW-19) and on 13.07.2017 had appeared before the Court on his own, lucidly recounted the incident as follows:

“PW-8 Rizwan (aged 8 years) son of Ali Jaan, Mohalla Charak Wala, Aligarh.

Since the witness is minor some general questions are being put to him in order to ascertain whether he is able to understand the nature of questions put to him, or not.

- Q. What is your name?
A. Rizwan.
Q. What is your father’s name?
A. Ali Jaan.
Q. What is your mother’s name?

- A. Shabana.
Q. Do you go to school?
A. I have never been to the school.
Q. With whom you have come to the Court today?
A. With my grandmother.
Q. Do you know the name of your grandmother?
A. No.

The answer given by the witness suggest that he understands the nature of questions put to him. Now a question is being asked from the witness to ascertain whether he understands the meaning of oath or not.

- Q. Do you understand the meaning of oath?
A. By oath I mean to speak the truth and nothing else.

The answer given by the witness suggests that he understands the meaning of oath, as such, oath is being administered to the witness, before his examination.

On SA.

My father is not alive. He has been murdered. My father was murdered in the night in the rented accommodation where we used to reside. I was present in the house when my father was murdered. My mother had given intoxicating tablet to me but I did not took the same and threw the same under the cot. The three accused persons present in the Court today, came to our house on the night of the incident.

On the said night, my administered intoxicating tablet to my father, and he was also made to consume liquor. Thereafter my mother after putting a pillow on the legs of my father, sat down on the same. Thereafter one of the accused put pillow on the mouth of my father and sat over the same while the remaining two tied a rope around the neck of my father and strangulated my father. When I tried to raise alarm my slapped me and threatened to kill me in the manner in which my father was killed. I did not tell about the incident to anyone.

After committing murder of my father, my father was taken on the shoulders and accused persons took out my

father from the house and while they were taking the dead body of my father, I followed the accused persons. In the street, the dogs started barking at the accused persons, the accused persons threw the dead body of my father on a heap of brick in the Gali. Thereafter I ran back towards my house.

Earlier my parents used to live peacefully but later on, on the point of engagement of my sister, they started quarreling with each other. I can identify the plastic rope with which my father was strangled.

(At this stage learned counsel for the accused persons has stated that before opening the case property the witness may be asked about the colour and length of the rope. Request allowed.)

The rope was of white colour. The length of the rope was about 1-½ meters.

At this stage MHCM has produced an envelope duly sealed with the seal of the Court. The same is opened from which a polythene bag containing nylon of green colour is taken out and shown to the witness. The witness has identified the rope as the same which was used by the accused persons to strangle his father.”

13. On behalf of the accused persons, it was submitted before the Trial Court that Israr Ahmed (PW-1), who is stated to have witnessed three boys carrying the deceased Ali Jaan in Gali No.1, E-Block, Sriram Colony, Delhi, on the fateful night, has been unable to identify the accused Faisal, Imran Khan and Yamin, as the boys seen by him. It was also submitted on behalf of the accused persons that Aas Mohd (PW-2), the prosecution witness to the recovery of the nylon rope [Ex.P1], has denied that the accused Faisal got recovered the nylon rope [Ex.P1] from under the stairs of the house of Salauddin. It was also argued on behalf of the accused persons that Naseem

Ahmed (PW-5), the owner of the Hardware Shop from where the nylon rope in question [Ex.P1] was allegedly sourced, has denied the suggestion that the accused Imran Khan had purchased the said nylon rope from his shop at any point of time. It was also submitted that the testimony of Nurul Chaman (PW-4), the elder brother of the deceased Ali Jaan, was based on hearsay, since he had never visited the house of the deceased. It was also submitted that the deposition of Nisar Bano (PW-6), who was a resident of Aligarh, was to the effect that she had visited the house of the deceased 7½ months before the occurrence of the incident. Lastly, it was submitted that the testimony of PW-8 Rizwan was not trustworthy or credible, in view of the circumstance that he had been tutored to make the statement against the accused persons by PW-6, with whom he had been residing since two days after the date of the occurrence of the incident.

14. In this behalf, it is also observed that neither Heena, the daughter of the accused Shabana and deceased, who was allegedly the bone of contention for the quarrels between the latter couple, was not examined, nor was any of the neighbour examined. Further, the IO has failed to make any enquiries from any of the children of the accused Shabana and the deceased.

15. The learned Trial Court having considered the testimony of Rizwan

(PW-8), the child witness, in the light of the principles of rule of corroboration, as laid down in, inter alia, State of U.P. vs. Ashok Dixit & Anr. reported as (2000) 3 SCC 70 and Suryanarayana vs. State of Karnataka reported as (2001) 9 SCC 129, encapsulated the testimony of PW-8, so as to ascertain its credibility, as under:-

“33. Let us peruse the testimony of PW-8 Rizwan so as to ascertain its credibility. PW-8 Rizwan deposed as under:-

My father is not alive. He has been murdered. My father was murdered in the night in the rented accommodation where we used to reside. I was present in the house when my father was murdered. My mother had given intoxicating tablet to me but I did not took the same and threw the same under the cot. The three accused persons present in the Court today, came to our house on the night of the incident.

On the said night, my administered intoxicating tablet to my father, and he was also made to consume liquor. Thereafter my mother after putting a pillow on the legs of my father, sat down on the same. Thereafter one of the accused put pillow on the mouth of my father and sat over the same while the remaining two tied a rope around the neck of my father and strangulated my father. When I tried to raise alarm my slapped me and threatened to kill me in the manner in which my father was killed. I did not tell about the incident to anyone.

After committing murder of my father, my father was taken on the shoulders and accused persons took out my father from the house and while they were taking the dead body of my father, I followed the accused persons. In the street, the dogs started barking at the accused persons, the accused persons threw the

dead body of my father on a heap of brick in the Gali. Thereafter I ran back towards my house.

Earlier my parents used to live peacefully but later on, on the point of engagement of my sister, they started quarreling with each other. I can identify the plastic rope with which my father was strangled.

(At this stage learned counsel for the accused persons has stated that before opening the case property the witness may be asked about the colour and length of the rope. Request allowed.)

The rope was of white colour. The length of the rope was about 1-½ meters.

At this stage MHCM has produced an envelope duly sealed with the seal of the Court. The same is opened from which a polythene bag containing nylon of green colour is taken out and shown to the witness. The witness has identified the rope as the same which was used by the accused persons to strangle his father.”

16. Consequently, the learned Trial Court observed as follows:-

“34. From the evidence of PW-8 Rizwan, it can be gathered that he claimed that the accused Shabana had given a intoxicating tablet to him which he had not taken and the accused Faisal, Imran Khan and Yamin came to his house in the night. He claimed that the accused Shabana administered intoxicating tablet to the deceased and made him to consume liquor and thereafter, the accused Shabana placed a pillow on the legs of his father and sat thereon and one of the accused put pillow on the mouth of the deceased and sat thereon and the remaining two accused strangled the deceased with a rope. He claimed that when he tried to raise alarm, the accused Shabana slapped him and threatened to kill him in the manner the deceased was killed. He claimed that the accused persons taken the deceased on their shoulder and he followed them and the accused persons thrown the dead body on the heap of bricks in the gali. He stated that he came back

running to his house.

35. At this juncture, it would be appropriate to take note of relevant portion of his cross-examination which is as under:-

“....Myself, my brothers, sister and my parents used to reside together in the said tenanted accommodation. On the day of incident, my elder brother was sent to the house of my Nana. On the day of incident myself, my brother Farman and sister and my parents were present in the house. There were five rooms in the said rented accommodation. We were residing only in one room. The other rooms were occupied by other tenanted. It was winter season when the incident took place. We used to sleep after bolting the door. At the time of incident, I did not wake up my sister. When I woke up, the door of the room was open. ...My sister & my younger brother did not wake up. ...I woke up suddenly. Our tenanted room was situated on the first floor. I followed the accused persons for about 20-30 yards. I did not wake up my sister & brother before following the accused persons. I did not raise any alarm. I did not wake up my sister & brother after coming back to the tenanted room. ...I did not call any persons from the neighbouring room. ...I narrated the incident to my uncle Chaman after 1 or 2 months of the date of occurrence when Chaman came to Aligarh. My grandmother came to our house on the next day of incident. I did not tell about the incident to my grandmother when she came to our house at Delhi. I narrated the incident to my grandmother after about two days of the incident and I went to Aligarh after two days of incident. My grandmother took me to the police station at Aligarh for narrating the incident to the police. I have come Delhi Yesterday. ...My father used to take liquor on every evening. My mother never asked my father not to take liquor. Prior to the incident,

my grandmother never visited our house. After my leaving Delhi for Aligarh I have come to Delhi yesterday for the first time. ...I had come in the Court on the last date. Prior to the said date, I did not visit Delhi in the month of April, 2009. ...On the day of incident, my father had consumed liquor all alone before I went to sleep. ...I did not narrate the incident to my brother and sister. ... Police did not make any enquiry from me, my brother or sister. There was no light in the room.”

36. On the careful examination of the evidence of PW-8 Rizwan in the light of the evidence of PW-4 Nurul Chaman, PW-6 Nisar Bano and PW-19 Insp. Ramesh Dahiya, this Court is of the considered opinion that it is highly unsafe to rely on his statement. PW-8 Rizwan stated that the accused Shabana had given him intoxicating tablet but he had thrown the same under the cot and at the same time, in his cross-examination, he stated that when he woke up, the door of the room was open. He stated that he woke up suddenly. He stated that the accused Shabana administered an intoxicating tablet to his father but FSL Report Ex.PX pertaining to viscera of the of the deceased does not show existence of any sedative/intoxicating substance. PW-8 Rizwan stated that he had tried to raise alarm but the accused Shabana slapped him and threatened to kill him in the same manner in which the deceased was killed. Quite surprisingly, he stated that the accused persons taken the deceased on their shoulder from the house and he followed them. If the accused Shabana threatened him not to raise alarm, she would not permit him to follow the accused persons when they were carrying the dead body of the deceased. PW-8 Rizwan stated that the dogs were barking at the accused persons and they had thrown dead body of the deceased on a heap of bricks in the gali and he came running back to his house. PW-8 Rizwan does not state anything regarding PW-1 Israr Ahmed who claimed that he had seen three boys carrying Ali Jan in the street.

37. According to PW-8 Rizwan, the deceased was made to consume liquor. In the FSL Report Ex.PY, ethyl alcohol 232 mg./100 ml. of blood was found in the viscera of the

deceased. PW-8 Rizwan categorically stated that his sister Heena and brother Farman were present in the room at the time of incident. He stated that there were five rooms in the rented accommodation. He stated that the said rooms were occupied other tenants. It means at the time of incident, there were 8 persons in one room. According to the Site Plan to Scale Ex.PW.18/A, the size of the room was 3.8 meter x 2.45 meter which can be stated as 12.5x8 foot. It cannot be believed that such an incident, if had taken place in such a small room wherein 8 persons were present, it could escape the notice of Heena and Farman. PW-8 Rizwan could follow the accused persons to the heap of bricks despite warning of the accused Shabana but he did not wake-up his sister Heena and brother Farman. PW-8 Rizwan stated that he narrated the incident to PW-4 Nurul Chaman after one or two months from the date of occurrence when he visited Aligarh. Quite surprisingly, PW-4 Nurul Chaman has neither stated that PW-8 Rizwan was a witness of the incident nor that he had told him anything about the incident. PW-8 Rizwan stated that he narrated the incident to his grandmother after reaching Aligarh. He stated that he narrated the incident to his grandmother after two days from the incident. However, PW-6 Nisar Bano has not stated as to when PW-8 Rizwan told her that he had witnessed the incident.

38. PW-8 Rizwan stated that PW-6 Nisar Bano, his grandmother had taken him to police station in Aligarh for narrating the incident to the police. It would be relevant to state that PW-6 Nisar Bano has not stated so. She stated that she had told to the police in Aligarh regarding an attempt of kidnapping of the children of the deceased. PW-8 Rizwan stated that the accused Shabana made the deceased to consume the liquor but at the same time, he stated that the deceased used to consume liquor on every evening and on the date of incident, his father consumed liquor on alone before he went to sleep. PW-8 Rizwan stated that he came to the Court on the last date that could be 03.06.2009 or 09.06.2009. He stated that he had not visited Delhi in the month of April, 2009. He even stated that after leaving Delhi, he came to Delhi yesterday i.e. 12.07.2009 for the first time. However, PW-6 Nisar Babu had a different story. She went to the extent of stating that she brought Rizwan to the house of

Chaman about one month before 13.05.2009. She stated that a quarrel had taken place in her locality and she had produced PW-8 Rizwan before the police which had recorded his statement. This fact was neither deposed by PW-4 Nurul Chaman nor by PW-8 Rizwan. PW-6 Nisar Bano stated that the children of the deceased are staying with her since 3rd day of death of the deceased. PW-6 Nisar Bano stated that PW-8 Rizwan knew the fact but she did not state as to what he knew. She even could not state as to whether the deceased was murdered inside or outside his house.

39. To put an end, it would be relevant to state that PW-8 Rizwan and his brothers and sisters were staying with PW-6 Nisar Bano in Aligarh since 3rd day of the death of the deceased and after arrest of the accused Shabana. She stated that children of the deceased respect her wishes. Heena was married by PW-6 Nisar Bano in Sikandarabad. She was never examined in this case. Neighbours/tenants of the 1st floor of the house of the accused Shabana were not examined.

40. PW-19 Insp. Ramesh Dahiya arrested the accused Shabana on 20.02.2008 at about 1.30 p.m. from her house. According to the prosecution, the accused Shabana disclosed about the incident in her disclosure statement. Despite that, PW-19 Insp. Ramesh Dahiya did not examine the children of the deceased including PW-8 Rizwan who could be the most natural witness. PW-19 Insp. Ramesh Dahiya stated, in his cross-examination, that he had no information that PW-8 Rizwan was an eye witness of the incident. He stated that the children of the deceased were staying in their residence when the accused Shabana was arrested. He stated that he had not made any enquiry from Heena, elder daughter of the deceased.

41. Finally, it would be relevant to state that this witness came into picture on 13.07.2009 after more than one year and six months from the date of incident. According to him, he had narrated the incident to PW-6 Nisar Bano two days after the incident. During investigation, he was not examined. This Court is of the considered opinion that he is not a credible witness.”

17. Therefore, as an outcome, the Trial Court held the testimony of the

purported eye-witness Rizwan (PW-8), to be unreliable.

18. Furthermore, the Trial Court observed that PW-4 and PW-5 are not credible witnesses and their evidence is hearsay in nature. It has been further observed by the Trial Court that there are contradictions between the testimony of PW-6 and PW-8 and the testimony of the former does not inspire confidence. The circumstance of last scene, as deposed to by Israr Ahmed (PW-1), also does not support the case of the prosecution, as his testimony does not inspire confidence.

19. Insofar as, the alleged recovery of the nylon rope [Ex.P1] and the bundle of nylon rope [Ex.P2]; fibres of which as per the FSL report matched with the neck strapping of the deceased, at the instance of the accused Faisal and Imran Khan, respectively, are concerned, the Trial Court has disbelieved the recoveries. PW-2, the recovery witness has denied that the accused Faisal got recovered the nylon rope [Ex.P1]. Further, the owner of hardware shop from where the weapon of offence i.e. nylon *rassi*/rope [Ex.P1] allegedly was sourced; formed part of the bundle of nylon *rassi*/rope [Ex.P2] seized therefrom, has denied that the accused Imran Khan purchased the same or that the accused Imran Khan identified his shop as the place from where he had purchased the said weapon of offence i.e. Ex.P1.

20. Having heard Ms. Rajni Gupta, learned APP appearing on behalf of the State and having perused the Trial Court Record, as well as, the impugned judgment, we are in agreement with the determination made on behalf of the Trial Court that the prosecution has failed to prove any circumstance, much less than a chain of circumstances, unerringly pointing towards the guilt of the accused persons.

21. In view of the foregoing discussion, in our view, the impugned judgment and order dated 02.02.2017 does not warrant any interference of this Court.

22. The leave petition is accordingly dismissed with no order as to costs. Pending application also stands disposed of.

23. Trial Court record be sent back.

SIDDHARTH MRIDUL, J

A.K. CHAWLA, J

SEPTEMBER 22, 2017
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