

(2007) 07 AHC CK 0185

Allahabad High Court

Case No: None

Sarfaraz and Abdul Jabbar

APPELLANT

Vs

The State of U.P.

RESPONDENT

Date of Decision: July 17, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 324, 34

Hon'ble Judges: S.K. Jain, J; K.S. Rakhra, J

Bench: Division Bench

Final Decision: Allowed

Judgement

S.K. Jain, J.

This criminal appeal has been preferred by appellants Sarfaraz and Abdul Jabbar against the Judgment and order dated 16.8.1982, passed by learned II Addl. Sessions Judge, Allahabad in ST. No. 419 of 1980 convicting and sentencing appellant Sarfaraz and Abdul Jabbar to life imprisonment for the offence punishable u/s 302 I.P.C. and 302 read with Section 34 I.P.C. respectively.

2. Appellant Abdul Jabbar died during the pendency of appeal asisuch the appeal against him stood abated vide order of this Court dated 10.7.2007.

3. The facts essential for the purpose of this appeal are as follows:

The prosecution case in brief is that on 16.10.1979 at at 8.30 p.m. Shakir Hussain PW 1 submitted a written report Ext. Ka-1 at police station Atarsuiya. The prosecution story as unfolded in this report is that on that day the first informant PW 1 due to some personal work had come to the house of his brother in law, deceased Nazim. He was gossiping with deceased and his wife in the outer room in the house of deceased. The daughter of deceased, Rukaiyya, PW 7 was standing out side the door of that room. The first informant, deceased and his wife saw, that appellant

Sarfaraz, at about 6.00 p.m. who was standing near the boundary of his house, pointing out towards Rukaiyya appellant Sarfaraz said "Hai Dhanho." This remark of Sarfaraz was not liked by the first informant and his companions. Deceased scolding appellant Sarfaraz said that he was out of his head, he should be ashamed of teasing a minor girl. Appellant Sarfaraz became rash and said that he could do whatever he likes, if he felt bad about the same he should: keep his daughter under lock. Deceased said to appellant Sarfaraz that if he repeats the same he would pull out his tongue. Appellant Sarfaraz with open knife in his hand came out of the house and started hurling abuses at the deceased. A quarrel took place between appellant Sarfaraz and deceased. Appellant Abdul Jabbar, who is father of appellant Sarfaraz also arrived and scolded the deceased that he was making false allegation against his son and thereby insulting him. The deceased said Tum Logon Ko Sharm Haya Nahi Rah Gayee Hai Aur Ulte Apne Ladake Ki Galat Tarafdari Karne Chale Aye Ho. As soon as the deceased uttered these words appellant Abdul Jabbar exhorted Sarfaraz Sala Bada Akad Ke Bol Raha Hai Mar Sale Ko. Appellant Sarfaraz on his exhortation gave a blow of knife on the thigh of deceased Nazim. The occurrence was witnessed by Zamir, Haidar, Wazir, Mehadi and others. When they challenged the appellants they ran away towards their house. The deceased Nazim fell down on the ground. His wound was bleeding. Seeing his serious condition PW1 with the help of family members got him admitted to the Hospital at Allahabad, where he was declared dead.

4. On the basis of this written report Ext. Ka-1, Head Constable Kesh Narain PW5 prepared a chick report Ext. Ka-3 and made entry in the G.D. Ext. Ka-4. PW 9 S.I. Avadh Raj Singh in whose presence this case was registered took up the investigation. He arrested the two appellants on 24.10.1979 and on the basis of statement of appellant Sarfaraz on his pointing out recovered and sealed the knife by which he had caused injuries to Nazim. The knife was recovered from the back side of the house of appellant Sarfaraz in presence of witnesses Abbas Naqvi, Sayed Zamir, Haider (PW 6). Its recovery memo Ext. Ka-5 was prepared. He prepared site plan of the place of occurrence, Ext. Ka-7. He took into possession the blood stained and simple earth from the place of occurrence and sealed them and prepared its Fard Ext Ka-1 and after completing the investigation remitted the charge sheet Ext. Ka-10 against the two appellants. The Investigating Officer prepared the inquest report and after preparing necessary papers for the post mortem sent the dead body to the Government Hospital, Allahabad.

5. Dr. Anil Kumar P.W. 2 conducted the post mortem examination of the dead body of Nazim Hussain on 17.10.1979 at 3.30 p.m. He found the following ante mortem injuries on his body:

Incised wound 5 cm x 2 cm x 2 cm deep on the front, upper portion medial aspect of thigh.

6. All major blood vessels and upper part of thigh were found cut on account of the injury.

7. On the internal examination, the doctor found semi digested food. The bladder was full. In the opinion of the doctor the death of the deceased took place due to shock and haemorrhage on account of the ante mortem injuries. He prepared post mortem report which is Ext. Ka-2 on the record.

8. The appellants pleaded not guilty to the charges framed against them.

9. Appellant Sarfaraz in his statement u/s 313 Cr.P.C. stated that he has been falsely implicated in this case. The occurrence took place with the mother. Deceased appellant Abdul Jabbar in his statement u/s 313 Cr.P.C. stated that deceased Nazim Hussain had kept hens. His hens used to come at his door and spoiled the Angan of his house. His wife made a complaint of the same to the deceased, Nazim Hussain. The deceased quarrelled with his wife and inflicted knife blow on the chest of his wife. His wife caught the hand of the deceased and during struggle¹ the knife struck the thigh of the deceased. A report of this incident was lodged at the police station and his wife was also medically examined.

10. The prosecution examined the first informant Shakir Hussain as PW1, Dr. Anil Kumar who conducted the post mortem examination of the deceased as PW2. The affidavit of constable Darshan Lal PW3 was filed to show that lie took the dead body of the deceased in sealed condition for post mortem, Iqwal Hussain eye witness of the occurrence as PW4, Head Constable Kesh Narain who wrote the chick FIR made entry in the GD as PW5. Sayed Zamir Haider in whose presence the alleged recovery of knife was made on the pointing out of accused appellant Sarafaraz as PW6, Rukaiyya, as PW7. Sayed Wazir Mehadi as PW8, Sub Inspector Avadh Raj has been examined as PW9. PW1, PW4 and PW8 are the witnesses of fact.

11. The appellants in their defence examined Saida Bibi as DW1, Head Constable Kesh Narain as DW2 and Dr. Nagendra Singh as DW3.

12. DW1 Saida Bibi deposed before the Court that she knew deceased Nazim. The occurrence took place about three years three months ago. The hens of Nazim had entered her house and her courtyard and made the same dirty. She drew away the hens, cleaned the place and after sun set she went to the house of Nazim. The house of Nazim is in front of her courtyard. She made a complaint to Nazim about the hens and said that the hems come to her house and made hot house dirty, in past also she had made this complaint 2-3 times. Nazim became angry and started scolding her and said that she should go away, otherwise he would kill her. He brought a knife from his house and caused knife blow on her chest. She suffered knife: injury towards right side of her chest. The ladies of the house of the Nazim were also present. When Nazim again tried to cause another blow on her, she caught his wrist by her both hands, the knife tilted towards the thigh of Nazim and caused injury on his thigh. Nazim fell down. At that time, Sajjan, Mukhtar and

toddlers were present. She came back to her house then went, to her mother's house. She with her mother went to the police station, where Diwanji saw her injury and she was sent to the Hospital, where she was admitted for seven days. At the time of occurrence her brother and husband were not present at the place of occurrence.

13. DW2 Head constable Kesh Narain Pandey stated that on 16.10.1979 at 7.25 p.m. Saida Bibi made a oral report which he proved as Ext. Kha-4. As per Ext. Kha-4 DW1 Saida Bibi has stated in report that Sayed Nazim¹ lives in front of her house. His hens had entered her Ahata. She had entered her Ahata. She had gone to make complaint about the same to the house of Nazim. Sayed Nazim became angry and started causing injuries to her by means of knife. Mohallawalas arrived there. She had suffered injuries on the right side of her chest and on anal region.

14. DW3, Dr. Nagendra Singh on 16.10.1979 at 8.00 p.m. medically examined DW1 Saida Bibi and found the following injuries on her person:

There is an incised wound elliptical in the shape of 3 1/2 cm. X 1 cm size placed vertically 2 cm medial to middle 1/4 of ant. axillary fold. The injury could not be probed due to bleeding. The depth of the wound could not be ascertained. The patient was advised admission. The injury was fresh in nature and in the opinion of the doctor this injury could be suffered by Saida at 6.00 to 7.00 p.m. on the day of examination.

15. After considering the evidence led by the prosecution and the defence the learned Trial Judge came to the conclusion that the prosecution has succeeded in established its case beyond reasonable doubt and accordingly convicted and sentenced the appellants as indicated above.

16. We have heard the learned Counsel for the appellants Sri Kamal Krishna, learned AGA and perused the record.

17. Learned Counsel for the appellants has contended that the prosecution has suppressed the true facts from the court and has presented a distorted version of the incident. It is fully established, on the record that deceased Nazim suffered injuries in the manner stated by DW1 Saida Bibi. It has been argued by the learned Counsel that both the sides suffered one knife blow. The deceased had caused knife injury on the chest of DW1 and when he tried to repeat his blow, Saida Bibi in her self defence caught his hands and as stated by her the knife tilted and caused injury to the deceased. It has further been argued that Saida Bibi had lodged her report Ext. Kha-1 at 7.25 p.m. while the report made by the prosecution was lodged at 8.30 p.m. It has also been argued that the prosecution does not explain the injuries suffered by Saida Bibi. Thus, the learned Counsel submitted that in all probabilities the occurrence took place in the manner alleged by the defence and since the prosecution has suppressed the true facts and did not explain the injury of Said Bibi, the appellants are entitled for acquittal.

18. Per contra, the learned AGA submitted that it is clear from the statement of Dr. Nagendra Singh DW3 that this injury could be self inflicted, hence it was not obligatory on the prosecution to explain the injury of Saida Bibi. The witnesses examined by the prosecution fully support the prosecution version.

19. It is not disputed that the incident had occurred at the house of deceased Nazim. Now it has to be seen whether the occurrence took place as alleged by the prosecution or in the manner alleged by the defence. It has also to be seen whether the prosecution has suppressed the true facts and deliberately did not explain the injuries of Saida Bibi.

20. We have given our thoughtful consideration to the submissions made by the learned Counsel for the parties. From the perusal of the record and the evidence on record, it appears that there was a cross version of the prosecution story. The cross version of the occurrence has been unfolded in the report made by DW1, Saida Bibi, which is Ext. Kha-1 u/s 324 I.P.C. on record. This FIR was made on the same day at 7.25 p.m. before lodging of the FIR by the prosecution at 8.30 p.m.

21. Deceased Nazim had suffered one knife injury as per the prosecution case. From the medical report of Saida it appears that she has suffered an incised wound elliptical in shape of 3 1/2 cm x 1 cm size, placed vertically 2 cm medial to middle of art. axillary fold was present. The probing could not be done, considering the bleeding and hence the depth of the wound could not be ascertained and she was kept under observation. As per her statement she was admitted in the Hospital for seven days.

22. From the statement of Dr. Nagendra Singh DW3, it appears that in his opinion the injury suffered by Saida could be suffered by her at 6.00 to 7.00 p.m. on the day of examination, i.e. the day of occurrence on 16.10.1979. As per the prosecution story as well as from perusal of the FIR lodged by Saida, it appears that the occurrence had taken place at the house of deceased Nazim. Under these circumstances, an explanation was certainly due from the side of the prosecution about the injury suffered by Saida. It may also be mentioned here that the deceased as well as Saida both suffered one knife injury. The injury of Saida can not be said to be superfluous. The injury was bleeding, its depth could not be probed and was on her chest.

23. As per the prosecution case, the injury was caused by appellant Sarfaraz by knife. In the FIR lodged by the prosecution there is no mention of the injury suffered by Saida, the mother of appellant Sarfaraz. The FIR is also silent about the use of weapon by the deceased.

24. At the trial the ocular testimony of the prosecution case, has been given by Shakir Hussain as PW1, Iqbal Hussain as PV4 and Sayed Wazir Mehadi as PW8. PW1 is the informant of the occurrence. PW1 Shakir Hussain has nowhere stated in examination in chief that Saida suffered injury in this occurrence, his cross

examination he has denied that the mother of appellant Sartaraz, Saida suffered injury in the quarrel, which took place with deceased Nazim. he also showed his ignorance about the FIR lodged by Saida. He has specifically stated that he does not know about the injury of Saida.

25. Similarly, PW4 Iqwal Hussain has denied this suggestion that the mother of appellant Sarfaraz had come at the door of Nazim to make complaint about the hens on which a quarrel took place. Nazim caused injury on the chest of the mother of Sarfaraz and in quarrel Nazim suffered injury. Thus it appears that both the witnesses denied the presence of injury on the body of Smt. Saida

26. PW8 Wazir Mehadi also does not say any thing about the injury suffered by the mother of appellant Sarfaraz. He has denied the suggestion that Nazim gave a knife blow on the chest of the mother of Sarfaraz and he suffered injury in the quarrel.

27. Thus it appears that neither in the prosecution FIR nor in the ocular testimony given at the trial by the aforesaid three witnesses there was no explanation of the injury suffered by Saida. In fact there is a categorical denial that Saida suffered injury in the occurrence. PW7 Rukaiyya has stated that when she came out, his father has already suffered knife injury. She did not see Sarfaraz and she does not remember whether the mother of Sarfaraz was there or not.

28. It is thus, clear that the prosecution version of the occurrence is not truthful and the prosecution has suppressed the true facts. The probability that the incident took place in the manner as suggested by the defence can not be ruled out and it is difficult to sustain the conviction of appellant Sartaraz.

29. For the reasons aforesaid, the appeal is allowed. The conviction and sentence of appellant Sarfaraz is hereby set aside. He is in custody. He be released forthwith, if not wanted in any other case.

30. Let a copy of this Judgment be sent to the learned Sessions Judge concerned for information and compliance. The compliance report shall be submitted by the learned Sessions Judge concerned to this Court within a month from today.