

(1998) 03 AHC CK 0146

Allahabad High Court

Case No: Criminal Revision No. 1280 of 1980 Connected with Criminal Appeal No. 2069 of 1980 Connected with Govt. Appeal No"s. 2040 and 2039 of 1980

Mohd. Nabi

APPELLANT

Vs

Rafiq and Another

RESPONDENT

Date of Decision: March 25, 1998

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 313
- Penal Code, 1860 (IPC) - Section 109, 302, 394

Citation: (1999) CriLJ 3751

Hon'ble Judges: N.S. Gupta, J; G.S.N. Tripathi, J

Bench: Division Bench

Advocate: R.H. Zaidi, for the Appellant; A.G.A. and Y.K. Shukla, for the Respondent

Final Decision: Dismissed

Judgement

N.S. Gupta, J.

All the aforesaid criminal appeals and revision arise out of judgment and order dated 7-6-1980, passed by Sri P.C. Jain, the then 1st Additional Sessions Judge, Shahjahanpur, whereby the learned trial judge found the accused appellant Mohd. Sharif guilty u/s 302, I.P.C. and sentenced him to imprisonment for life. By the same judgment the learned trial judge found accused Rafiq and Yasin not guilty on the charges framed against them u/s 302/109, I.P.C. and 302/120-B, I.P.C. and acquitted them. Feeling aggrieved by the said judgment Mohd. Sharif preferred Criminal Appeal No. 2069 of 1980 and State preferred Government Appeal Nos. 2040 of 1980 and 2039 of 1980. The complainant too feeling aggrieved by the acquittal of Rafiq preferred Criminal Revision No. 1280 of 1980. Since all the aforesaid matters arise out of one and same judgment, they were heard together and are being disposed of by this common judgment.

2. The prosecution case briefly stated is as follows :-

The complainant Mohd. Nabi (P. W. 2) was the father of the accused appellant Sharif. Rafiq and Yasin were the friends of Mohd. Sharif. Sharif was residing in a separate house adjoining to the house of the complainant towards the north situate in Mohalla Khalik Sharqi, police station Kotwali, District Shahjahanpur. The deceased Smt. Ishrat Jahan was the second wife of the complainant Mohd. Nabi. Mohd. Nabi had two sons from his former wife viz. accused appellant Sharif and Shafi as also two daughters viz Nazma (P.W. 3) and Shahnaz. Shahnaz was divorced by her husband and used to reside with the complainant. Nazma (P.W. 3) was unmarried. The complainant Mohd. Nabi had married with the deceased in December, 1964. The deceased Smt. Ishrat Jahan had no issue. The complainant Mohd. Nabi (P.W. 2) sold about 1000 yards of land to Ishrat Jahan in the year 1967 and had executed a sale deed with regard to the said land. The said land was situate towards the west of the house of the complainant. It was lying vacant and was surrounded by a boundary wall. Rafiq and Yasin were living in separate houses at a distance of about 10-25 paces from the house of the complainant. The complainant was fighting out a case in respect of 200 yards of land with accused Rafiq since about two months prior the date of occurrence of this case. The complainant had filed a suit for issue of injunction order. The said suit was dismissed. Rafiq had threatened the complainant with dire consequences with regard to the said case about which the deceased Smt. Ishrat Jahan had submitted an application to the Superintendent of Police Shahjahanpur. The complainant was working as Office Superintendent in the Ordinance Factory at Shahjahanpur at the time of occurrence of this case. His duty hours were from 7.30 a.m. to 5.15 p.m.

3. The incident of this case took place on 15-9-78 at about 11.45 a.m. inside the house of the complainant Mohd. Nabi wherein the complainant's own son Sharif had committed the gruesome murder of the complainant second wife Smt. Ishrat Jahan who was then aged about 45 years by means of sword with the instigation and conspiracy of his associates Rafiq and Yasin. The complainant Mohd. Nabi (P.W. 2) was informed about this incident when he was going to offer Namaz during lunch hours at about 12-12-30 noon near the Courts at Shahjahanpur. He immediately rushed to his house and found his wife dead lying in a pool of blood. His daughter Nazma (P.W. 3), Sahnaz and daughter-in-law Hamida (P.W. 6) were sitting in the said Kothri where the deceased was lying. They all informed that accused appellant Sharif had committed the gruesome murder of the deceased at the instigation of Rafiq and Yasin who were standing near the window of his house and were shouting to kill the deceased. The prosecution maintained that the accused appellant Sharif first sprinkled the acid on the deceased and then killed her by means of a sword. The complainant took the deceased to the hospital where she succumbed to her injuries. He sent a telegram to the Inspector Kotwali, Shahjahanpur and thereafter he lodged a written report Ext. Ka 3 on the basis of which the machinery of law was set into motion.

4. S. I. Jagveer Singh (P. W. 7) who was then working as S. I. Inld at police station Kotwali, Shahjehanpur took up the investigation of the case. He immediately recorded the statement of the complainant Mohd. Nabi right at the police station and rushed to the scene of occurrence at about 5.30 p.m., where he recorded the statement of Hamida (P.W. 6), Shahnaz, Nazma (P.W. 3) and Mohd. Shafi. He referred Nazma (P.W. 3) for medical examination to the district hospital where he was examined by Dr. Mohd. Shafi (P.W. 5). Dr. Mohd. Shafi (P.W. 5) found a liner abrasion measuring 0.8 cm on outer front side of the base of thumb of Km. Nazma on her right hand. S. I. Jagveer Singh (P.W. 7) thereafter visited the Kothri inside the house of the complainant where the deceased was murdered. He recovered blood stained and simple earth and prepared recovery memo Exh. 12 about the same. He also recovered the award Ext. 1, Maggha Ext. 2, certain pieces of cloth burnt by means of acid and hair of the deceased in his possession and prepared recovery memos about the same. He also took Dupatta Ext. 7, pajama Ext. 8 and Kamiz Ext. 9 belonging to Sahnaz which appeared to have been tainted with acid, in his possession. He inspected the spot and prepared site plan Ext. Ka. 16. Accused appellant sharif was arrested by the police of the out-post Rajghat on 17-9-78. After concluding his investigation S. I. Jagveer Singh (P.W. 7) did not find any evidence against Yasin. He submitted charge-sheet against Mohd. Sharif and Rafiq on 10-11-78. The complainant filed a cr. complaint against Mohd. Yasin. After the committal of the case to the Court of sessions the case came up for trial before the 1st Addl. Sessions Judge who framed charges u/s 302, 1.P.C. as against Mohd. Sarif and u/s 302/109, 1.P.C. and further 302/120-B, I.P.C. as against Rafiq and Yasin, who pleaded not guilty and claimed trial.

5. The accused appellant Mohd. Sharif admitted to have been residing separately in another house which was situate towards the north of the house of his father Mohd. Nabi. He denied to have committed the murder of the deceased and maintained that the complainant Mohd. Nabi had filed a case u/s 394, I.P.C. against him regarding the extortion of ear ring of the deceased by him in which case the police has submitted final report. He stated that on 15-9-78 Mohd. Nabi all of a sudden came to his house where he found the deceased Ishrat Jahan and him lying on one and same bed. He scolded the accused and asked him as to why he came to his house. When the deceased Ishrat Jahan also retorted that Sharif would come to her house, the complainant Mohd. Nabi lost his temper. He picked out a sword which was kept in the almirah in the verandah and ran after him. He came out from the house. Thereafter he came to know that the complainant had himself murdered his wife and had falsely implicated him in this case.

6. Accused Rafiq and Yasin denied to have conspired or instigated regarding the murder of the deceased. Rafiq stated that he was falsely implicated into this case because the complainant had lost a case against him regarding the land. Yasin further stated that he was involved in the case because of the litigation of the complainant with Rafiq.

7. We have heard Sri P.N. Misra, learned senior counsel on behalf of the accused appellant Sharif as also accused respondents Mohd. Rafiq and Yasin and Sri D. N. Yadav, A.G.A. for State; considered their contentions and perused the record of the case.

8. It was vehemently argued by Sri P.N. Misra that there was no evidence worth the name on the record to connect Rafiq and Yasin with the ghastly murder of the deceased. Sri Misra further argued that the most important witness of the occurrence viz Sahnaz, the daughter of the deceased was withheld by the prosecution from examination and therefore, the learned trial judge grossly erred in convicting and sentencing the accused appellant Sharif on the basis of the evidence of Nazma (P.W. 3) and Hamida (P.W. 6). We proceed to examine the contention of Sri Misra as against Mohd. Sharif, Rafiq and Yasin separately as under:

Accused appellant Mohd. Sharif.

9. Admittedly the accused appellant Mohd. Sharif was the son of the complainant Mohd. Nabi (P.W. 2). He was admittedly residing in a separate house which was situate towards the north of the house of the complainant at the time of the occurrence of this case. The deceased Smt. Ishrat Jahan was the step mother of the accused appellant Sharif. The accused appellant Sharif has himself stated in his examination u/s 313, Cr.P.C. that prior to the occurrence of this case his father Mohd. Nabi (P.W. 2) had filed a report against him for the offence punishable u/s 394, I.P.C. regarding the earring of the deceased and in that matter the police had submitted final report. It is, therefore clear from the statement of the accused appellant Mohd. Sharif himself that he was living separately from his father; that his father had filed a report against him and that his relations with his father and step mother were not cordial since before the occurrence of this case.

10. The prosecution in proof of its case had examined as many as 11 witnesses, out of whom Km. Nazma (P.W. 3) and Hamida (P.W. 6) were the witnesses of fact who have given eye-witness account of the occurrence in question.

11. P. W. I Dr. B. C. Pal was the Superintendent of District Hospital Shahjahanpur on 16-9-78. He conducted autopsy on the dead body of the deceased at 3.40 p.m. that day and found the position as under :-

The deceased was aged about 45 years. About one day had elapsed since death. As many as 20 ante-mortem injuries described below were found; vide post-mortem report Ext. Ka-1. On internal examination it was found that the body was well built. Rigor mortis was well established on the whole body. Greenish colouration over illiac fossa was seen. Both the eyes were closed. Pupils were dilated. The injuries were as under :-

1. Incised wound 9 1/4 cm x 1 cm x bone deep right side of scalp 7 1/2 cm above ear front of back.

2. Incised wound 6 cm x 1/2 cm x bone deep 1 1/2 cm above injury No. 1. A piece of outer table of skull bone incised in the same direction as injury No. 1.
3. Incised wound 4 1/2 cm x bone deep, 2 cm above the injury No. 2 direction same as in injury No. 1 and part of skull bone was cut.
4. Incised wound 6 cm x 1 cm x bone deep, centre of skull, direction front to back. Bone below fractured. Margins were clean cut and three fissured fractures were present.
5. Incised wound 8 cm x 4 cm x bone deep 6 1/2 cm left and below the injury No. 4. Directions same as in injury No. 4. Multiple fracture of bone below, out of which one was clean cut.
6. Incised wound 7 1/2 cm x 1 cm x bone deep obliquely in front of injury No. 1 and 2.
7. Multiple incised wound which were connected with each other and skin and muscle are hanging. Whole back outer and inner side of right fore-arm, right radius bone, fractured. Margins were clean cut, 43/4 cm below the upper end and below dislocated.
8. Semi circular incised wound skin and muscle flap hanging at the base, below 10 cm x 6 1/2 cm x bone deep, 8 cm above the right elbow. Bone below fractured and margins were clean cut.
9. Incised wound 15 1/4 cm x 3 cm 1 3/4 cm back of left fore-arm, 6 cm below elbow.
10. Incised wound 9 1/2 cm 2 cm x 1 cm, 12 1/2 cm below injury No. 9.
11. Amputation of left little finger at root. Margins were clean cut.
12. Incised wound 2 cm x 3/4 cm x 1/2 cm back of left ring finger.
13. Amputation of left middle finger and amputated part was hanging by a skin flap. Margins were clean cut.
14. Incised wound 16 cm x 2 1/2 cm x 2 cm right side of abdomen obliquely above downwards.
15. Incised wound 13 1/2 cm x 3 1/2 cm, 2 3/4 cm right gluteal region, obliquely downward.
16. Incised wound 10 1/4 cm x 1 cm x 2 cm, 2 1/2 cm below and medial to injury No. 15, directing as injury No. 15.
17. Incised wound 5 1/2 cm x 1 cm x 1 3/4 cm below and medial to injury No. 16, direction as injury No. 16.
18. Incised wound 23 cm x 8 1/4 cm x chest cavity longitudinally on the right scapular region and back.

19. Incised wound 20 1/2 cm x 7 cm x I 1/2 cm longitudinally on the back, 4 cm medial to injury No. 18.

20. Incised wound 13 1/2 cm x 5 cm x 2 cm left scapular region, part of scapula was cut.

12. It was found that the skin over the part of the face, middle 1/3rd right side and lower part of abdomen stained black and- some of the wounds were also stained black. Sign of trickling down of fluid present. On internal examination subcutaneous haemorrhage under the scalp, haemorrhage over the surface of membranes and incised in two places Haemorrhage over the whole surface of the brain and on incised wound at centre 3 cm x 1/4 cm x 1/2 cm was found. Subcutaneous haemorrhage around injury Nos. 4, 6, 7 and 8, right rib were fractured and margins were clean cut under injury No. 18. Right pleural cavity contained about 8 ounce of blood and lacerated. Stomach empty and pale.

13. In the opinion of the doctor the death was due to shock and haemorrhage as a result of ante mortem injuries which were sufficient in the ordinary course of nature to cause death. Further it was opined that these incised wounds could be caused by a sword.

14. P. W. 4 S. I. Nathu Singh had prepared inquest report in respect of the dead body of the deceased. P. W. 5 Dr. Mohd. Shafi had medically examined Km. Nazma (P.W. 3) at district hospital Shahjahanpur on 15-9-78 at about 8.10 p.m. and found a linear abrasion measuring 0.8 cm on outer front side at the base of the thumb of left hand which injury Km. Nazma (P.W. 3) claimed to have sustained in the occurrence in question.

15. P. W. 8 constable Man Bahadur, P. W. 9. Head Constable Bheem Singh, P.W. 10 constable Ram Vilas and P. W. 11 Bhoodeo Prasad, A. S. I. were formal witnesses. P.W. 8 constable Man Bahadur Stated that on 3-9-78 he was on telephone duty at the residence of S. P. Shahjahanpur and that day the deceased had gone to the residence of S. P. Shahjahanpur and met him. Head constable Bhim Singh (P.W. 9) proved the entry regarding the submission of telegram sent by Mohd. Nabi (P.W. 2) to C. O. City. P. W. 10 Ram Vilas was the clerk constable of C. O. City. He produced the register of applications which were filed. He brought the register before the Court below containing entries of filing certain applications in the office of CO. City, P.W.

11 A. S. I. Bhoodeo Prasad was the record keeper of police record room. He brought the enquiry report as Ext. 10, application dated 20-11-78 (Ext. 11), application dated 3-9-78 (Ext. 12) and telegram (Ext. 13) before the Court below which were sent by the complainant. No evidence in defence was adduced on behalf of the accused persons.

16. It is clearly proved by the medical evidence of Dr. B. C. Pal (P.W. 1) that as many as 20 incised wounds caused by means of sword were found on the person of the deceased at the time of her post-mortem examination. According to the evidence of Dr. B. C. Pal the deceased could have died because of these injuries on 15-9-78 at about 2-3 p.m. He clearly opined that incised wounds found on the person of the deceased should have been caused by means of a sword. He further stated that he found certain blackening on face and stomach of the deceased which could have been caused by means of acid. During the course of his cross-examination Dr. Pal maintained that the deceased should have become unconscious immediately after sustaining injuries found on her person. She should not have been in a position to speak and if at all she would have tried to speak something she could be only muttering which could not be understood. He stated that he did not make a mention of any acid burn on the face of the deceased in his postmortem report and maintained that the gravity of the acid burn depends upon the strength of the acid. Thus it is duly established by the medical evidence on record that the deceased had died because of the injuries caused to her by means of sword on the date and time of occurrence suggested by the prosecution viz 15-9-78 at about 2-3 p.m.

17. Now the question which arises for our consideration is to determine as to who was responsible for causing the said injuries on the person of the deceased. Admittedly the accused appellant Sharif is the son of the complainant who had set the machinery of law into motion by lodging F.I.R. Ext. Ka. 3 at police station Kotwali, Shahjahanpur at about 4.15 p.m. The police station being situate at a distance of about three furlong from the house of the complainant. The said F.I.R. reads as under :-

Jheku bUlisDVj lkgc dksrokyh "kgtgkWiWj A fuosnu gSs fd esjs yMds eksgEen "kjhQ us vkt djhc ikSus 12 cts fnu tc eS QSDVh esa Fkk esjh chch b"kjr tgc ij rstkc Mkydj ryokj ls cgqr ekjk ml oDr ?kj esa esjh yMdh "kgukt ekStwn Fkh] NksVh yMdh utek vkSj esjh cgw gehnk Hkh vk x;h A esjh yMdh ds fpYykus ij vkSj okD;k bu rhuks us ns[kk A bl lkft" esa jQhd oYn lyker mYyk o ;lhu cUn gkfQt vgen gqLSu eksgYyk [kyhy "kdhZ gSa A ;g yksx f[kMdh ds ikl ekStwn Fksa A vLirky esa ys x;k tgcW 2&2 1@2 ?kaVs ckn mudh ekSr gqbZ A ejus ls igys mUgksaus eq>s crk;k fd "kjhQ us ekjk cdye eksgEen uch] 15&9&78 irk eksgEen uch cUn ettk] eksgYyk [kyhy "kdhZ] Fkkuk dksrokyh mez rdjhcu 58 lky**

18. A perusal of the said F.I.R. reveals that the complainant had fastened the liability regarding the murder of the deceased by means of acid and sword upon the accused appellant Sharif who was admittedly his son. Although he stated that Rafiq and Yasin were also involved in this conspiracy yet no further averment against Rafiq and Yasin as to how they were co-conspirators or instigators of the main assailant Sharif were made in this F.I.R. P.W. 3 Km. Nazma who is the daughter of the complainant and P.W. 6 Smt. Hamida who is the daughter-in-law of the complainant had given eye-witness account of the occurrence in question.

19. Nazma (P.W. 3) stated in her statement on oath before the Court below that the deceased was her step mother. She used to reside along with her mother and the father at the time of occurrence. She was unmarried at the time of occurrence. Her another sister Shahnaz also used to reside with her in the same house. She stated that at about 10.00 a.m. on the date of occurrence she had gone to the house of Sharif and Shafi who were her brothers. Sharif was present at his house. Shafi had gone on his duty, but his wife was very much there. She stated that Yasin and Rafiq came there. They called Sharif. Yasin delivered a "Maggha" to Sharif. Yasin and Rafiq asked Sharif to go and to accomplish the job. She stated that when she inquired from Sharif as to what the mug contained, Sharif informed her that there was some medicine in it and thereafter she went into the Kotha of Sharif. Sharif went into his room. She stated that after about half an hour she heard cries of her mother the deceased and sister Shahnaz. Thereupon she along with Hamida (P. W. 6) who was the wife of his brother came into the house of the deceased and found Rafiq and Yasin standing outside the window and crying "Jaldi Maar Bachne Na Paye Hamlog Phas Jayenge". She stated that she saw accused appellant Sharif assaulting the deceased by means of sword. Sharif was holding Maggha in his left hand. He was throwing the material which was there in the Maggha over the deceased and was killing her by means of sword. She stated that the deceased ran inside the Kotha. Then Sharif assaulted the deceased by means of sword there. She further stated that she, Shahnaz and Hamida tried to save the deceased and to catch-hold of the accused appellant Sharif. Sharif asked them not to come near him. She claimed to have sustained a bruise in the thumb of her left hand by means of sword. Sharif ran away through the window. Yasin and Rafiq also went away along with Sharif. Sharif had left the sword and Maggha on the spot. Thereafter at about 1.00 p.m. her father Mohd. Nabi came. Then she narrated the entire tale to her father who took the deceased to the hospital. She stated that when her father came inside her house, her mother told him that Sharif had assaulted him (her) and Rafiq and Yasin got her assaulted. During the course of her cross-examination she stated that when she reached inside her house, her mother was on Chabutra and Sharif was assaulting her. She stated that the Maggha was of white colour and had contained green and red flowers. It was so big as to contain one Kg. of milk. The said Maggha was at her house for the last about two years. Sword (Ext. 1) was not at her house. She stated that she had seen that sword for the first time when the accused appellant was assaulting her mother by means of the same. She stated that she had no particular purpose for going to the house of Sharif. After the departure of her mother to the hospital, S.I. of police and some constables came at her house at that time her father was not there. Shahnaz and Hamida (P.W. 6) were there. The police officials made enquiries from her but they did not record her statement. The sub-Inspector came to her house at about sun set, but he did not record her statement. She was of course sent for medical examination. She denied to have stated in her statement before the Investigating Officer "Sharif Kahin Se Tejab Laya Mainne Poocha Kya Hai Usne Kaha Dawai Hai." She stated that she had told to the investigating officer

about the arrival of the Rafiq and Yasin; about calling of Sharif and their giving a Maggha to Sharif, but those things were not there in her statement u/s 161, Cr.P.C. She stated that when Sharif went inside his Kotha along with Mug he had no sword with him. She did not notice Sharif going out of his room. She maintained that there were two rooms in the house of Sharif. In one room Sharif used to reside and in another Shafi used to reside. Both these rooms were towards the south of the house. She was talking to Hamida the wife of Shafi in the courtyard when Sharif went inside his Kothri. She went inside the Kothri of Shafi and started talking to Hamide. Sharif went away leaving his room open. The main gate of the room of Sharif was towards the east. The boundary wall of the house of Sharif was about eight feet high. She maintained that she had informed the investigating officer that Rafiq and Yasin were shouting outside the window that he should kill soon otherwise they would be involved to this case but this fact did not find place in her statement u/s 161, Cr.P.C. She specifically maintained that Sharif was responsible for murdering the deceased.

20. P. W. 6 Smt. Hamida is the sister-in-law of Nazma (P.W. 3) and daughter-in-law of the complainant. She fully corroborated the statement of Nazma on the point that on the day of occurrence at about 11.00 a.m. Nazma came to her house. She stated that on that day Rafiq and Yasin came to her house. They called Sharif and thereafter Sharif came out his room. Yasin gave a Maggha to Sharif and asked him that the job would be accomplished. She stated that after about half an hour she heard the cries of her sister-in-law Shahnaz and his mother-in-law, deceased Ishrat Jahan. She along with Nazma (P.W. 3) went inside the house of the deceased and saw the accused appellant Sharif assaulting the deceased. She stated that the deceased went inside the table to save herself. Sharif continued assaulting her by means of sword which was Ext. 1. She stated that she tried to catch hold of the hand of Sharif. The mug which Yasin had given to Sharif contained green and red flowers. She stated that when she caught-hold of the hand of Sharif, Nazma caught the sword from the hand of the accused and sustained a bruise in her hand. She stated that Sharif was having sword in one hand and Maggha in his another hand and maintained that in his right hand Sharif was holding sword and Maggha in his left hand. She stated that when she tried to catch hold to Sharif, Sharif ran outside through the window. Rafiq and Yasin ran away along with Sharif. Sharif left the sword and Maggha inside the Kothri. She stated that at that time her father-in-law had gone on duty. She sent information about this incident to her father in law through Imam Bux. Then his father-in-law came at about 1.00 p.m. She stated that when she went near the deceased, the deceased asked her to wash her eyes and give her water and scolded that Sharif, Rafiq and Yasin be destroyed. She stated that her father-in-law took the deceased to the hospital. During the course of her cross-examination she stated that her husband was residing at Nagpur. She was confronted with the omission in her statement before the investigating officer on the point that Rafiq and Yasin gave Maga to Sharif and asked him that the job would

be accomplished she failed to offer any explanation. She stated that the window through which Sharif had escaped was about 3-3 1/2 feet high and a man could jump through the same. In reply to Court's question she maintained that she saw the accused appellant Sharif throwing acid on her mother in law and assaulting her by means of sword and maintained that Sharif ran away from the house after about 1-2 minutes of her reaching into the house. She stated that the clothes which the deceased was wearing at the time of incident were burnt by means of acid and maintained that her father in law came to her house after about one and half hour of this incident and her husband came at about 3.00 p.m. She stated that when her father-in-law came the deceased was lying in a pool of blood. She stated that a number of people of the Mohalla visited her house before the arrival of her father-in-law but they all went away. She stated that the deceased was healthy and beautiful. She denied the suggestion of the defence on the point that the accused appellant Sharif was having illicit relations with the deceased. She rather stated that the deceased used to treat Sharif like her son.

21. It would thus be seen that the two close relations of the accused appellant Sharif viz. Nazma (P.W. 3) his own sister and Smt Hamida (P. W. 6) his own sister-in-law have clearly fastened the liability of the murder of the deceased upon the accused appellant Sharif.

22. True it is that Shahnaz was an important eye-witness of the occurrence but she was dis-charged from examination at the instance of the prosecution for the obvious, reason that her examination would not have given any better strength to the prosecution case than the statement of Nazma (P.W. 3) and Hamida (P.W. 6) who too were closely related to the accused appellant as sister and sister-in-law respectively and who have clearly stated in their statement on oath before the Court below that they had seen the accused appellant Sharif assaulting the deceased by means of sword with their own eyes.

23. The circumstances that soon after the occurrence the complainant Mohd. Nabi (P.W. 2), father of the accused appellant arrived at the spot and lodged report about the incident implicating therein his own son fully go to prove that the accused appellant Sharif was responsible for committing the ghastly murder of the deceased.

24. The circumstances that the investigating Officer recovered blood stained and simple earth from the scene of occurrence, Sword (Ext. 1) with which the deceased was done to death and the mug (Ext. 2) with which the accused appellant had sprinkled the acid upon the deceased lends assurance to the complicity of the accused appellant in the occurrence of this case. It is not believable that howsoever errant, a son may be, his father would falsely implicate him in the murder of his wife. The defence version set up by the accused appellant that seeing the accused appellant on the bed of his wife the complainant himself was responsible for committing the ghastly murder of his wile has got no legs to stand for the obvious

reason that after committing this cold blooded murder the complainant himself would not approach to the police authorities. We, therefore, upheld the finding of fact recorded by the Court below regarding the guilt of the accused appellant Sharif and find that there is no force in his appeal and the same is dismissed.

25. Accused respondent Rafiq and Yasin.

In the F. I. R. (Ext. Ka. 3) the complainant Mohd. Nabi (P. W. 2) had averred that Rafiq son of Salamatullah and Yasin son of Hafiz Ahmad Husain resident of Mohalla Khalil were involved in the conspiracy of the murder of the deceased and that these persons were present near the window. Although Nazma (P.W. 3) and Hamida (P.W. 6), the two eye-witnesses of the occurrence have made improvement in the prosecution version that they saw Rafiq and Yasin coming and talking to Sharif; giving mug to Sharif and then asking Sharif that the job would be accomplished, yet the fact remains that in their statement before the investigating officer this fact was not mentioned. Spot inspection made by the trial Judge reveals that any person standing on the western side of the window cannot possibly see the inner portion of the southern verandah or the room, that is the venue of occurrence and also Chabutra outside the verandah. It was further observed that if a person stands in the eastern portion of the northern verandah he could not see the face of any person who may stand close to the window but outside on the western side. That being so, Nazma (P.W. 3) and Hamida (P.W. 6) could not have seen the main assailant Sharif running away from the scene of occurrence along with these two accused persons. The omission regarding the participation of these two accused respondents by giving a mug containing acid in the statement of these two eyewitnesses before the investigating officer and further that they instigated the accused appellant Sharif to quickly kill the deceased, leads to the only inference that these two accused respondents were falsely arrayed in this case. There was admittedly litigation and enmity between the complainant Mohd. Nabi (P.W. 2) and Mohd. Rafiq on the point of land. Accused respondent Yasin had no litigation of any sort with Mohd. Nabi. He had therefore, no love-lost into the matter to join hands with the son of the complainant, to conspire or to instigate the main assailant Mohd. Sharif regarding the murder of the deceased.

26. Since Rafiq remained successful in the suit which was instituted against him by the complainant, there was no question of his having any grudge or hostility in his mind from the side of the complainant on this score. It was, therefore, rightly observed by the learned trial Judge that the prosecution miserably failed to prove the act of criminal conspiracy or abatement in between the main assailant Mohd. Sharif and these two accused respondents viz. Rafiq and Yasin. The statement of Nazma (P.W. 3) and Hamida (P.W. 6) regarding the participation of these two accused respondents in the occurrence of this case is belied by their own omission in their statement before the investigating officer. As such we find that the approach of the learned trial Judge in discarding the evidence of Nazma (P.W. 3) and Hamid

(P.W. 6) with regard to the presence of these two accused respondents viz Rafiq and Yasin appears to be quite correct as their statement in this behalf appears to be an afterthought and were supported by the fact of commission of this fact in their earlier statements as recorded by the investigating officer.

27. Under the circumstances we are of the opinion that the learned trial Judge rightly gave benefit of doubt to these two accused respondents viz Rafiq and Yasin and rightly acquitted them.

28. Thus in the result we find no impropriety, illegality or perversity in the approach of the learned trial Judge with regard to the acquittal of the accused respondents Rafiq and Yasin. The State appeals as also the complainant's revision against these two accused respondents therefore fail and are accordingly dismissed.

29. Thus all the appeals and revision fail and are hereby dismissed. The conviction and sentence of accused appellant Sharif is hereby sustained. He is on bail. His bail bonds are hereby cancelled. C.J.M. Shahjahanpur is directed to get the accused appellant Sharif arrested and committed to prison to serve out his sentence. The bail bond of accused respondents Rafiq and Yasin stand discharged.

30. Let a copy of this judgment alongwith the record of this case be sent to the Court below for needful compliance and report within a period of three months.