

Faiz Mohd. and anr. Vs. State

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Court : Delhi

Decided On : Sep-24-2014

Judge : Pradeep Nandrajog

Appellant : Faiz Mohd. and anr.

Respondent : State

Judgement :

\$~8 & 9 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: September 24, 2014 + CRL.A. 534/2014 FAIZ MOHD. & ANR. Represented by: Appellants Mr.S.K.Sharma, Advocate with Mr.Puneet Relan, Mr.Prayas Aneja, Mr.Archit Vasudeva, Mr.Rahul Sharma, Advocates versus STATE Represented by: + Respondent Ms.Aashaa Tiwari, APP for the State with Insp.Harpal Singh, PTS Wazirabad CRL.A. 777/2014 MOHD ANISH Represented by: Appellant Mr.S.K.Sharma, Advocate with Mr.Puneet Relan, Mr.Prayas Aneja, Mr.Archit Vasudeva, Mr.Rahul Sharma, Advocates versus STATE Represented by: Respondent Ms.Aashaa Tiwari, APP for the State Insp.Harpal Singh, PTS Wazirabad CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

(Oral) 1. Having heard learned counsel for the parties, we are of the opinion that whereas Crl.A.No.534/2014 filed by Faiz Mohd. and Salma, the father and mother respectively of Mohd.Anish has to be allowed, the matter needs to be remanded for further evidence to be led concerning Mohd.Anish the appellant in

2. Our reasons for acquitting Faiz Mohd and Salma and for the remand concerning Mohd.Anish.

3. Dead body of Manju @ Shahin, who was a Hindu by birth but converted to Islam after contracting marriage with Mohd.Anish admittedly died in her matrimonial house and information regarding the death was received at the Police Control Room on September 22, 2009 at 16:07:03 hours.

4. One Pramod had conveyed the information to the Police Control Room which was noted in the PCR Log by L/H.Ct.Nimmo. She wrote on the PCR log that a caller had informed that a Hindu girl had been killed by Muslim.

5. Appearing as PW-16, L/Ct.Nimmo has proved only limited part of the PCR form as Ex.PW-16/A. A further writing by her in the PCR log at 16:50:38 hours that the in-charge of the PCR van which had reached the spot had met the husband at the house and had told him that his wife died due to infection on applying mehendi has not been proved.

6. On the evidence led, there being no evidence that Mohd.Anish was present in his house when his wife died, and the time of death being late afternoon, the learned Trial Judge has wrongly applied the law that where a husband is present in the house when his wife dies, unless he satisfactorily explained how she died, if the death is homicidal, an adverse inference can be drawn. In the instant case the evidence does not prove that Mohd.Anish was present in the house.

7. Unfortunately, the prosecution which had with it a very lethal evidence in the form of a second writing on the PCR log has led no evidence to prove the said writing on the PCR log. The prosecution has not examined the in-charge of the PCR van which had reached the spot and had sent, over the wireless, the information which L/Ct.Nimmo wrote at the second instance in the PCR log. In the second entry of the PCR log it is recorded the husband of the deceased was present in the house.

8. As regards the conviction of the three appellants for the offence punishable under Section 498A IPC, the reasoning by the learned Trial Judge is sans any credible evidence.

9. Testimony of Mohd.Kalimuddin PW-3 would establish that he was the Quazi who performed the Nikaah between Mohd.Anish and Manju @ Shaheen on June 05, 2009. The testimony of Gian Devi PW-12 and her husband Babu Ram PW-13, the parents of unfortunate Manju establishes that Manju ran away and got married to Mohd.Anish. As per them, to save their reputation they did not lodge any complaint with the police. As per Gian Devi after about 10-15 days of the Nikaah when she was going to the subzi mandi, Manju met her and told her that her in-laws were harassing her saying Tere Maa Baap Ne Kuch Nahe Diya Hai Aur Humein Jewellery Chahiye. She deposed that four days thereafter she met Manju and Anish on the way to the market and Anish asked her to give `2 lakhs otherwise he will harass Manju. After a month she received a telephone call from Manju informing her of being treated with cruelty for not fulfilling the dowry demand. Babu Ram has said that his wife told him on two or three occasions that on the way to the market she had met Manju who complained of being harassed for dowry.

10. It needs to be noted that as per Gian Devi and her husband Babu Ram after their daughter eloped and got married she and her husband started residing at Harola and only came to the house at New Ashok Nagar 2-3 months back. Gian Devi and Babu Ram reside in New Ashok Nagar. Thus, the question of Manju meeting Gian Devi 10 or 15 days of the Nikaah and again after four days thereafter does not arise. The question of their being any dowry demand does not arise because Manju eloped with Mohd.Anish against the wishes of her parents to get married and obviously the marriage was without any promise of any dowry being given.

11. Regretfully, the learned Trial Judge simply has gullibly lapped up the testimony of Gian Devi and Babu Ram overlooking the fact that there was intrinsic evidence that Gian Devi could not have met her daughter in the market firstly after 10 or 15 days of the marriage and then 4 days thereafter.

12. We accordingly set aside the impugned decision dated April 05, 2014 to the extent it had held Mohd.Anish, Faiz Mohd. and Salma guilty of the offence punishable under Section 498A IPC.

13. We set aside the impugned decision insofar Mohd.Anish has been convicted for the offence of murdering his wife.

14. We remand the matter for further evidence to be led before the Trial Court on October 27, 2014. But limited to Mohd.Anish being further tried for the offence of murdering his wife. The additional evidence would be to summon and examine the in-charge of the PCR van which reached at the spot after receiving information of a girl being killed. It would concern proof of the second writing on the PCR log.

15. TCR be returned forthwith.

16. The file shall be placed before the learned Trial Judge on October 27, 2014.

17. Appellant Mohd.Anish would be at liberty to seek bail before the learned Trial Judge.

18. Copy of this decision be handed over to the learned APP for being delivered to the Commissioner of Police. CrI.M.B.No.9952/2014 Dismissed as infructuous. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA) JUDGE SEPTEMBER24 2014 skb

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