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Mohd. Sarfaraj Vs. State

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Court : Delhi

Decided On : Mar-23-2010

Judge : Pradeep Nandrajog and; Suresh Kait, JJ.

Acts : Code of Criminal Procedure (CrPC) - Section 313

Appeal No. : Crl.A. 199/2010

Appellant : Mohd. Sarfaraj

Respondent : State

Advocate for Def. : M.N. Dudeja, APP

Advocate for Pet/Ap. : J.S. Kushwaha, Adv.

Disposition : Appeal dismissed

Judgement :

Pradeep Nandrajog, J.

1. While admitting the appeal on 24.2.2010, consent of learned Counsel for the parties was noted that printing of the paper book be dispensed with and appeal be listed for final hearing today in the category of 'After Notice Miscellaneous Matters'.

2. Trial court record has been received and arguments have been heard.

3. Vide impugned judgment and order dated 22.12.2009, appellant Mohd.Sarfaraj has been held guilty of murdering Mst. Rehana, wife of Salim, at around 8:40 AM on 7.8.2005 at the second floor of house bearing municipal number C-1/75, Second Floor, Raju Park, Delhi.

4. That the appellant was a tenant in a room on the second floor of house number C-1/75, Raju Park, Delhi and that the deceased along with her husband and daughter were also residing as a tenant in another room on the second floor of the same building are facts which have not been disputed before us by learned Counsel for the appellant. Indeed, the appellant has admitted said facts, evidenced by his answers to questions No. 1 to 4 put to him when he was examined under Section 313 Cr.P.C.

5. Learned Counsel for the appellant also concedes before us that the fact that the deceased was injured and died inside the room on the second floor under the tenancy of the appellant is not disputed by him.

6. In other words, the deceased was injured and murdered inside the room tenancy rights whereof were with the appellant is an admitted fact.

7. In response to question No. 34, when examined under Section 313 Cr.P.C., the appellant had to say as under:

Q 34. What else you have to say?

Ans: On the day of incident I along with other tenants had gone to Devli for verification of tenants where a police camp was organized in front of the bus stand. Whenever I got out I usually lock my room and accordingly on that day I locked my room and went away for tenant verification. There is also another key of my lock which is always lying with brother of the deceased named Murtza. When I was standing in the line of the persons for tenant verification I came to know at that place about the murder of Smt. Rehana by someone, so when I was along with other tenants coming to my rented room, I was picked up by two policemen in the middle of the way and I was told by them that I had murdered Smt. Rehana. I told the policemen that I was with other tenants for tenant verification at the camp

in Devli but police persons did not hear me and took me to police post. I have been falsely implicated in the case. I am innocent.

8. It is apparent that the appellant has tried to give a reason as to how Mst. Rehana came to be injured in his room and died soon after she received the injury inside the room, tenancy rights whereof were with the appellant. The statement of the appellant that another key of the room under his tenancy was with the brother of the deceased i.e. Murtza, evidences the fact of appellant seeking to give a justification for Mst. Rehana being injured in his room.

9. Murtza has appeared as PW-10.

10. No suggestion has been given to Murtza when he was cross-examined, that a duplicate key of the lock put on the tenanted room by the appellant was given by the appellant to Murtza.

11. It is apparent that this part of the defence of the appellant is completely false.

12. The appellant claims to have gone for police verification in respect of tenants. The appellant claims that he had locked his room when he went for tenant verification. He claims that when he was standing in the queue for tenancy verification he learnt that Mst. Rehana was murdered. He was in the process of returning to his room when he was picked up by the police and was told that he was the accused.

13. Mst. Rehana, PW-1, wife of Munna (lest there be a confusion, it may be noted that deceased is also named Rehana and so is PW-1, but they are wives of two different persons. PW-1 is the wife of Munna. Deceased Rehana was the wife of Salim) deposed that on 7.8.2005 at about 8:30AM cries of Nazmeen daughter of deceased Rehana were heard by her when she was in her residence on the ground floor of the same building. She went up and saw Rehana breathing her last, lying on the floor in a pool of blood. She saw Mohd.Sarfaraj in the room where Rehana was lying. She came down and raised a cry. Ladies in the neighbourhood collected. She became nervous.

14. The learned APP, with the permission of the court, put a leading question to Mst. Rehana, being that, whether she saw anything in the hands of the appellant. She replied that she was so nervous that she could notice nothing. Rehana PW- 1 was declared hostile and was cross-examined by the learned APP by putting suggestion to her that she saw a blood stained wood cutter in the hands of appellant. She denied, but volunteered that Nazmeen has said that fact to the police.

15. Relevant would it be to note that Rehana PW-1 has not been cross-examined by the appellant.

16. It is apparent that since Rehana did not support the case of the prosecution with reference to her statement recorded by the police where she claims to have witnessed the accused with a blood stained Dao (wood cutter) in his hands and his clothes smeared in blood; in ignorance of the fact that Rehana has supported the case of the prosecution to prove the presence of the appellant at the scene of the crime, unmindful of the consequences thereof, the appellant has chosen not to cross-examine Rehana PW-1. The uncorroborated testimony of Rehana PW-1, to the extent noted herein above, establishes that the appellant was seen by Rehana in the same room in which the deceased Rehana was lying injured. This falsifies the defence of the appellant that he had gone for police verification.

17. Nazmeen aged 13 years who would be 12 years when the crime took place has deposed as PW-2 and has proved the manner in which her mother was brutally assaulted by the appellant.

18. The only blemish in the testimony of Nazmeen is of deposing that the appellant threw the weapon of offence i.e. chopper (Dao) Ex.P-1 in the drain wherefrom it was lifted by the prosecution. It is apparent that Km.Nazmeen has fantasized the fact of recovery of the weapon of offence viz-a-viz what she saw in the hands of the accused when the accused launched the brutal attack on her mother. Keeping in view the tender age of Nazmeen such blemish has to be ignored and has to be explained as a small fantasy by a young child.

19. Ct.Narender PW-6 has deposed that he was stationed at the police post on 7.8.2005 when the appellant came in a perplexed condition and confessed to the guilt. He deposed that clothes of the accused i.e. the appellant were stained with blood which were taken into possession by the IO. He has also deposed that SI Balram Singh and ASI Har Sahay Dagar from police station reached the police post after information was given and that the statement Ex.PW-3/H of the accused i.e. the appellant was recorded, pursuant thereto the Dao was recovered from the drain.

20. Suffice would it be to record that Ct.Narender has been subjected to a very brief cross-examination. His credibility has not been shaken as a result of the cross-examination.

21. It is thus established that the clothes which the appellant was wearing soon after the crime were taken into possession. Relevant would it be to note that as per the report of the Serologist EX.PW-17/H and Ex.PW-17/I, human blood of the same group as that of the deceased was detected on the pant and the shirt which the appellant was wearing and was seized when the appellant reached the police post where PW-6 was stationed.

22. We concur with the view taken by the learned Trial Judge that the prosecution has successfully established that the deceased was grievously injured by the appellant.

23. Whether the act of the appellant constitutes the offence of murder or something else?

24. Post-mortem report Ex.PW-16/A of the deceased, proved through the testimony of Dr. Arvind PW-16, establishes the brutal assault on the deceased. Using a sharp edged weapon, injuries have been caused on the neck, shoulder and arms of the deceased. The injuries on the neck have been targeted to ensure that the trachea i.e. the wind pipe of the victim is cut. The post mortem report Ex.PW-16/A and the testimony of the doctor establish that the intention of the appellant was to murder the deceased.

25. The motive which is surfaced is the evil eye which the appellant was having on the deceased who probably was repelling the overtures of the appellant.

26. We find no merit in the appeal which is dismissed.

27. Since the appellant is in jail, we direct that a copy of the instant decision be sent to the Superintendent, Central Jail, Tihar.

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