

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision : 01st February, 2010

+ **Crl. A. No. 630/2005**

BASIR Appellant
Through: Ms.Rakhi Dubey, Advocate

versus

STATE Respondent
Through: Mr.M.N.Dudeja, A.P.P.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest?Yes

PRADEEP NANDRAJOG, J. (Oral)

1. Noting that the incriminating circumstances emerging against the appellant through the testimony of PW-1, PW-4, PW-5, PW-6 and PW-7 were not put to the appellant, we had summoned the appellant and further examined him under Section 313 Cr.P.C.

2. We reproduce the incriminating circumstances additionally put to the appellant by us and his answers thereto.

The same are as under:-

"Q: Whereas it is in evidence, through the testimony of Julfikar Khan PW-1 that you were a tenant in his house bearing Municipal No.A-361,

Transit Camp, Govind Puri, Kalkaji where you were staying with your wife and children as on 18th July 2003?

A: It is correct.

Q: Whereas it is in evidence against you as deposed to by your daughters Shehnaz PW-5 and Noorjahan PW-6 that on the night of 17th July 2003 you slept with your wife Lal Bano in a room under your tenancy?

A: It is correct.

Q: Whereas it is in evidence against you as deposed to by your daughter Noorjahan PW-6 and Abdul Qayum PW-11, the nephew of your wife Lal Bano, that in the night of 17th July 2003 you had a quarrel with your wife?

A: It is false. I did not quarrel with my wife.

Q: Whereas it is in evidence against you as deposed to by Abdul Qayum PW-11 that in the night of 17th July 2003 you quarreled with your wife suspecting her of having illicit relations with another man?

A: People used to say that my wife had illicit relations with a man but I had no knowledge of the same. I made no allegations against my wife.

Q: Whereas it in evidence against you as deposed to by PW-4 Manju Devi, your neighbour, and Shehnaz PW-5, your daughter, that at around 5:00 AM on 18th July 2003 you were seen on the staircase leading up to your house while you were leaving your house?

A: It is false. I left for the mandi at 3:00 AM in the

night.

Q: Whereas it is in evidence against you as deposed to by Smt.Manju PW-4, your neighbour that while leaving your house at 5:00 AM on 18th July 2003 you were saying 'Aaj Sali ka kam kar diya'?

A: It is false. I had left for the mandi at 3:00 AM.

Q: Whereas it is in evidence against you as deposed to by your daughter Shehnaz PW-5 as also Manju Devi PW-4 your neighbour that at around 5:00 AM on 18th July 2003 they saw your wife Lal Bano with fresh injuries on her neck and blood oozing out from the wounds?

A: I do not know.

Q: Do you want to say anything?

A: I had, as per usual practice, left for the mandi at 3:00 AM to purchase vegetables because I used to sell vegetables in retail. As per practice when I returned home at around 2:00 PM in the afternoon of 18th July 2003 I learnt that my wife had been murdered. I immediately went to the police station where police refused to listen to me and arrested me. My children have deposed against me due to pressure. The other witnesses have deposed falsely against me.

Q: Do you want to lead any defence evidence?

A: No."

3. The appellant has not denied that the deceased Lal Bano was his wife and that he was residing with his wife and

children at Municipal No.A-361, Transit Camp, Govindpuri, Kalkaji. The appellant has also not denied that Julfikar Khan was his landlord. The appellant has admitted that on the night of 17th July, 2003, he slept with his wife Lal Bano in a room forming part of his tenanted premises. He has denied that a quarrel took place between him and his wife in the night of 17th July,2003.

4. To the question that there used to be a quarrel on account of appellant suspecting his wife of having illicit relations with another man, the appellant stated that people used to talk of his wife having illicit relations with a man but that he did not make any such allegations.

5. Other incriminating circumstances put to the appellant have been denied.

6. We need not pen a lengthy judgment for the reason the incriminating circumstances put to the appellant, which circumstances have emanated through the testimony of PW-1, PW-4, PW-5, PW-6 and PW-11 show that it is the appellant and no other who could have committed the offence.

7. Briefly noted, the police reached the premises bearing No.A-361, Transit Camp, Govindpuri, Kalkaji pursuant to recording of an information vide DD No.59 at 5.10 A.M. that Basir i.e. the appellant had murdered his wife.

8. SI Ramesh Dahiya PW-12 reached the spot and found a female lying dead with her neck cut. Smt.Manju Devi PW-4 neighbour of the appellant was present whose statement Ex.PW-4/A was recorded and after making the endorsement Ex.PW-12/B the tehrir was dispatched at 6.45 A.M. from the spot itself for FIR to be registered.

9. The appellant was found missing from his house and was apprehended in late evening.

10. Shehnaz PW-5, aged 10 years when she deposed in court on 05.04.2004, who was 9 years old when the crime was committed, deposed that she and her younger sister were sleeping in a room on a cot and her parents were sleeping on a Chatai in a room. She heard cries of her mother and when she woke up she saw blood oozing from the neck of her mother. Her father was not in the room. She saw him running down the staircase.

11. Noorjahan, aged 16 years when she deposed on 27.04.2004, is the second daughter of the appellant who deposed that on 18.07.2003 she was sleeping on the roof of the house of her neighbor. Her parents were sleeping in their room along with her younger sister. On the night before there was a quarrel between her parents which was resolved due to intervention. In the morning of 18.07.2003 she heard cries of

her sister Shehnaz and when she went to her house she saw her mother with neck chopped off. An iron Dau Ex.P-1 which was purchased by her father a few months ago was lying nearby stained with blood.

12. Suffice would it be to state that the two young girls who are the daughters of the appellant have proved the fact that the appellant and his wife i.e. the deceased slept in a room in the night of 17.07.2003 and that before sleeping together the two had a fight.

13. As per the testimony of Shehnaz it stands proved that around 5 in the morning when the slumber of Shehnaz was broken by the cries of her mother, she saw her mother with neck cut and blood oozing out. She saw her father leaving the house. The place where she saw her father is staircase leading up to the house. No further evidence needs to be noted to sustain the impugned decision.

14. But, we may note that there is further highly incriminating evidence against the appellant through the testimony of Smt.Manju Devi PW-4, a neighbor of the appellant who resides at A-353, Transit Camp, Govindpuri, Kalkaji. She deposed that she got up around 5.00 A.M. on 18.07.2003 to fetch water. At that time she heard noise from the opposite house. She woke up her husband and the two knocked at the

door of the landlord of the said house. She saw the appellant in the staircase of her house and while leaving he said “AAJ SALI KA KAAM KAR DIYA”.

15. Abdul Qayum PW-11 has deposed that in the night of 17.08.2003 (it is apparent that the date has to be read as 17.07.2003) he had quenched the quarrel between the appellant and his wife.

16. The evidence establishes that the appellant and his wife had a quarrel on the night of 17.07.2003. After the quarrel both slept in the same room at 5.00 A.M. The next day the daughter of the appellant heard the cry of her mother. She woke up and saw her mother with fresh injuries on the neck. She saw her father leaving the house. While leaving the house the appellant uttered “Aaj Sali Ka Kaam Kar Diya”.

17. It is apparent that it is the appellant who has committed the ghastly act. That the offence committed by the appellant is murder is proved through the Post Mortem report Ex.PW-8/A of the deceased and the testimony of Dr.Sanjeev Lalwani as per which there were as many as 8 injuries, all directed towards the neck. The Arteries and Veins as also the Trachea in the neck were cut.

18. The appeal is dismissed.

19. Since the appellant is in Jail, a copy of this order be

sent to the Superintendent, Central Jail, Tihar for being supplied to the appellant.

PRADEEP NANDRAJOG, J

SURESH KAIT, J

FEBRUARY 01, 2010/'nks'