

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Criminal Appeal No.639 of 2019

Appellant: Haroon S/o. Nazeer through Mr. Ghulam Abbas, Advocate.

Respondent/State: Mr. Muhammad Iqbal Awan, Addl. Prosecutor General, Sindh, Sindh

Date of hearing: 21.02.2024.

Date of announcement: 28.02.2024.

J U D G M E N T

Mohammad Karim Khan Agha, J.- Appellant Haroon S/o. Muhammad Nazeer has preferred this appeal against the impugned judgment dated 26.08.2019 passed by the Model Criminal Trial Court/Ist Additional District & Sessions Judge Malir, Karachi in Sessions Case No.06/2017 arising out of F.I.R. No.203/2016 u/s. 302/34 PPC registered at P.S. Ibrahim Hyderi, Karachi whereby the appellant was convicted and sentenced to Life Imprisonment along with fine of Rs.10,00,000/- (Ten Lac. Only) as a compensation which would be paid to the legal heirs of deceased as per Shariah and in case of default of payment, he shall suffer S.I. for six months more. The benefit of section 382-B Cr.P.C. was also extended to the appellant.

2. The brief facts as per FIR of the complainant Muhammad Shamim S/o. Muhammad Badruddin, resident of House No.H-75, Sarfaraz Colony, Noor Manzil Landhi Colony, Karachi are that he is residing at the above given address along with his family members and doing private job. His brother Tanveer was residing along with his family at Ilyas Goth and there was dispute on the marriage of his daughter namely Kanwal aged about 18 years. His brother was inclined to give the hand of his daughter to the son of the brother of his wife namely Azeem, while my Bhabhi Mst. Anwar Jahan was not happy, as she wanted to give this engagement to a Bangali Haroon who is resident of Ilyas Goth upon which time to time quarrel has broken out. Today I was present in my house when one person namely Qadeer who is neighbor of my brother informed

me today that my brother Tanveer died. Upon which I along with my relatives immediately reached there and saw that the dead body of my brother was lying with strangulation mark on his neck so my neighbor telephoned the police, who also came at the spot. In my presence inquiry was conducted and came to know that intoxicant had been given to my brother at night time, due to enmity my Bhabhi Anwar Jahan and Haroon Bangali murdered my brother. Whose dead body was taken to hospital where I recorded my statement. My complaint is against the accused persons namely Haroon Bangali son of Nazeer Ahmed and Mst. Anwar Jahan wife of deceased Tanveer on 07.11.2016 at the midnight given intoxicant to my brother and thereafter they murdered my brother by strangulation.

3. After completion of usual investigation charge was framed against the accused persons to which they plead not guilty and claimed to be tried.

4. The prosecution in order to prove its case examined 07 witnesses and exhibited various documents and other items. The appellant in his statement under Section 342 Cr.P.C denied the allegations against him. He however, did not give evidence on oath or call any DW in support of his defence case.

5. After hearing the learned counsel for the parties and assessment of evidence available on record, learned trial Court vide judgment dated 26.08.2019 convicted and sentenced the appellant as stated above, hence this appeal has been filed against his conviction. It is noted that co-accused Mst Anwar Jan died during the course of the trial and the case against her abated.

6. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the appellant is innocent and has been falsely implicated in this case on account of enmity; that the eye witness was not named in the FIR and as such she is a planted witness whose evidence needs to be discarded as it is completely unreliable; that there were material contradictions in the evidence of the witnesses and as such for any or all of the above reasons the appellant should be acquitted by extending him the benefit of the doubt.

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8. Learned Additional Prosecutor General Sindh who was also representing the complainant fully supported the impugned judgment. In particular, he contended that the sole eye witnesses evidence was trust worthy, reliable and confidence inspiring and could be safely relied upon; that the medical evidence supported the ocular evidence and that the item used in the murder by strangulation (dopeta) had been recovered at the scene of the crime where the appellant had also been arrested on the spot and as such the prosecution had proved its case beyond a reasonable doubt and the appeal be dismissed. In support of his contentions, he placed reliance on the cases of *Niaz-ud-Din and another v. The State and another* (2011 SCMR 725), *Qasim Shahzad and another v. The State and others* (2023 SCMR 117), *Ijaz Ahmad v. The State* (2009 SCMR 99), *Muhammad Ehsan v. The State* (2006 SCMR 1857), *Rafaqat Ali v. Chief Secretary, Government of Punjab Lahore and others* (2024 SCMR 34) and *Sohail Akhtar and another v. The State and another* (2024 SCMR 67).

9. I have heard the learned counsel for the appellant as well as learned APC and have also perused the material available on record and the case law cited at the bar.

10. Based on my reassessment of the evidence of the PW's, especially the medical evidence, I find that the prosecution has proved beyond a reasonable doubt that Muhammed Tanveer (the deceased) was murdered by strangulation on 07.11.2016 at midnight inside house No.B-712, Ilyas Goth, Ibrahim Hyderi Karachi.

11. The only question left before me therefore is who murdered the deceased by strangulation at the said time, date and location?

12. After my reassessment of the evidence on record, I find that the prosecution has NOT proved beyond a reasonable doubt the charge against the appellant for which he was convicted for the following reasons;

- (a) I find that the entire prosecution case hinges on whether I believe the evidence of the sole eye witness Ms Ulfat Jahan who stated in her evidence as under;

"In between 7/8 November 2016, I was sleeping in my house situated at Ilyas Goth. At about 03:00/3:30 AM, I woke up and found my father was sleeping on floor, whereas my mother Anwar Jahan was not present in the room. I went outside and found main door of the house was opened and my mother was talking with Haroon. My mother was

complaining about the behavior of my father and Haroon told her that they will strangle my father. Then after I returned back to my room, meanwhile my mother alongwith Haroon came inside the room and with red and black colour dopata Haroon strangled neck of my father and my mother put the pillow on my father's face due to this my father expired at spot. Accused Haroon and my mother told me that do not disclose about this incident to any person. Accused Haroon while extending threats left the house. At about 05:30 AM, my uncle reached at house, who found marks of strangle on the neck of my father, therefore, he called police, police took me and my mother to police station, where police recorded my statement. On 11.11.2016 my statement under section 164 Cr.P.C. was recorded by Magistrate. Accused Haroon and Anwar Jalian present in court are same so also case property." (bold added)

The eye witness is the daughter of the deceased and wife of the accused. It has come in evidence that there was a dispute between husband and wife concerning the marriage of the witness to Haroon as opposed to another suitor and that there was ill will between them all on account of her marriage to Haroon. Furthermore, all witnesses are related to the deceased as well as the applicant which immediately puts me on caution as to the evidence of the witnesses including this sole eye witness.

It is settled by now that I can convict the appellant based on the evidence of this sole eye witness provided I find it to be trust worthy, reliable and confidence inspiring as provided in most of the authorities relied upon by the APG.

I however do not find the evidence of the above sole eye witness to be trust worthy, reliable and confidence inspiring and as such I place no reliance on it for the reasons mentioned below.

- (i) She states in her evidence that she woke up in the night and heard her mother and the appellant plotting to murder her father on account of the disputes between her mother and father over her marriage to Haroon. No doubt she is a natural witness (though why Haroon, if he was living elsewhere, should be at her house at 3am talking with her mother whilst she is asleep) is less clear but I find it some what doubtful/coincidental that she would wake up in the middle of the night, go out of her room and hear her mother and Haroon loudly speaking about murdering her father. Even more damaging to her evidence is the fact that despite returning to her room where her father was sleeping on the floor she took no steps to wake him up and warn him of the plan of his wife and Haroon to murder him. This conduct does not appeal to logic, commonsense and reason and is contrary to natural human conduct and is simply not believable. In this respect reliance is placed on the case of *Muhammed Asif v The State* (2017 SCMR 486)
- (ii) Even more damaging to her evidence is that she is wide awake when her mother and Haroon enter her room and start murdering her father with a dopeta around the neck in

the case of Haroon and by putting a pillow over his mouth in respect of her mother yet she does nothing to intervene and rather allows her mother and Haroon (husband) to murder her father. Again this conduct does not appeal to logic, commonsense and reason and is contrary to natural human conduct and is simply not believable. In this respect reliance is again placed on the case of **Muhammed Asif** (Supra)

- (iii) Once her father has been murdered and Haroon has left the house she remains in bed and does not raise the alarm which conduct again does not appeal to logic, commonsense and reason and is contrary to natural human conduct and is simply not believable. In this respect reliance is again placed on the case of **Muhammed Asif** (Supra)
- (iv) In fact it is her 4 year old brother who raises the alarm to the neighbor who was sleeping in the same room at the time of the murder but was not even woken up by the struggle or the eye witness after the murder. Furthermore, the eye witness does not tell her brother about who committed his father's murder and nor does she share the information with her sister. Her brother who would have been about 7 at the time of the trial was also not called to give evidence.
- (v) When her uncle, the complainant, arrives at the crime scene she fails to tell him that she witnessed the murder and as such is not even named in the FIR as being an eye witness to the murder.
- (vi) If she was married with Haroon why was she not living with him in his house and why were they living apart?

Thus, based on my disbelieving the evidence of sole witness to the murder as mentioned above what other supportive/corroborative material is there against the appellant?

- (b) Admittedly the medical evidence and post mortem report fully support the eye-witness/ prosecution evidence that the deceased died from in effect strangulation. However the medical evidence cannot indicate who actually caused the injuries. The chemical report found a chemical in the blood of the deceased however this chemical could have been administered by the deceased himself who had recently been staying with the complainant and was unwell. There is no evidence that this chemical which was found in the blood of the deceased caused his death or was administered by any one but himself and in fact as per the medical evidence he died in effect on account of strangulation as mentioned above as opposed to poisoning.
- (c) No actual recovery was made from the appellant at the time of his arrest. Both the dopeta and pillow were found in the bedroom where the deceased was murdered which is a natural place for them to be.
- (d) If the deceased was arrested at the house in the morning that would not be that unusual as he had every reason to go and visit his wife in the house where she was living as they were not living together,

13. Thus, based on the above discussion, by extending the appellant the benefit of the doubt I find that the prosecution has NOT proved its case against the appellant beyond a reasonable doubt for the offence for which he has been convicted and sentenced in the impugned judgment and as such he is acquitted of the charge, the appeal is allowed, the impugned judgment is set aside and the appellant shall be released unless he is wanted in any other custody case.