

Swicide not murder

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CERTIFICATE OF THE HIGH COURT OF SINDH, KARACHI

Criminal Jail Appeal No-618 of 2021

Bashir

Vs.

State

HIGH COURT OF SINDH

Composition of Bench.

Single.

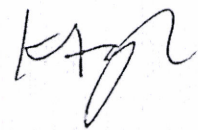
Mr. Justice Mohammad Karim Khan Agha

Dates of hearing : 23-10-2024

Decided on : 31-10-2024

(a) Judgment approved for Reporting

Yes



CERTIFICATE.

Certified that the judgment */Order is based upon or enunciates a principle of law */decides a question of law which is of first impression/distinguishes/. Over-rules/ reverses/ explains a previous decision.

* Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

نجدہ سیدہ ہائے کورٹ کراچی
U/S 302 & 201 PPC

① سیشنر سیشنڈنٹ سیشنر کورٹ کراچی

کورٹ کراچی

سیشنر

Versus

اشیر احمد ولد سعد احمد ذات بروہی

Sessions Case No. 306 of 2013

Crime No. 140/2013.

Police Station, Thatta.

U/Section 302 & 201 PPC

کورٹ کراچی آپیل U/S 410 C.P.C

سیشنر کورٹ ٹھٹہ کے جیم صاحب کے بتاریخ 14 Nov 2016 کے

ججمنٹ جس کے مطابق سائل کو عمر قید اور سٹینڈنٹ کمپنشن

(Rs. 1,00,000/-) آپل لاکھ روپے ادا نہ کرے سکتے پر مزید چھ ماہ

302 PPC U/S 201 PPC میں 4 سالہ قید اور پانچ ہزار روپے

(Rs. 50,000/-) جرمانہ ادا نہ کرے سکتے پر مزید آپل ماہ فینکے سزا

تجویز کے تحت سے غیر متفق اور غیر مطمئن ہوتے ہوئے ہذا

آپیل ہائے کورٹ سیدہ کراچی میں دائر کیا ہے۔ دو نوٹ سزا

آپل سائل کوٹلے اور U/S 382-B C/PK کا فائدہ بھی ملنا کو دیا گیا ہے۔

گزشتہ عرض ہے کہ سائل آپل شریف پاکستان شریف

جو کہ فاروق کے مددگار ہے کرتا ہے۔

کہ سائل آپل شریف آدمی ہے اور مزدور ہے کہ اپنے گھرانے

کنال کرتا ہے۔

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

CRL. JAIL APPEAL NO.618 OF 2021

Appellant;	Bashir Ahmed son of Saeed Ahmed Brohi through Mr. Ameet Kumar, Advocate.
Respondent;	The State through M/s. Muhammad Iqbal Awan, Addl. Prosecutor General, Sindh
Date of Hearing;	23.10.2024
Date of Announcement;	31.10.2024

JUDGMENT

Mohammad Karim Khan Agha, J: Appellant Bashir Ahmed was tried in the Sessions Court, Thatta in Sessions Case No.306 of 2013 in respect of Crime No. 140/2013 registered under Section 302 & 201 P.P.C. at P.S. Thatta and after full-fledged trial vide judgment dated 14.03.2016, he was convicted under section 302(b) P.P.C. and sentenced to suffer R.I. for life with fine of Rs.100,000/- as compensation in terms of Section 544 Cr.P.C. which would be paid to the legal heirs of deceased and in case of default, the accused shall suffer further S.I. for six months. He was also convicted under Section 201 PPC and sentenced to suffer R.I. for four years with fine of Rs.5000/- and in case of default of payment, he shall suffer further S.I. for a period of one month more. Both the sentences were to run concurrently; however, the benefit of Section 382-B Cr.P.C. was extended to the appellant.

2. The brief facts of the prosecution case are that complainant Haji Noor Ahmed s/o Haji Abdul Fattah Brohi lodged FIR on 19.08.2013 at 1645 hours, stating therein that his daughter Mst.Haleema; aged about 32/33 years was married with his cousin namely Bashir Ahmed Brohi, the spouse were usually residing in their Village Station Road Bochari town, Taluka Parro, District Shaheed Benazirabad and from the said wedlock, two sons and three daughters were born. Per him, accused Bashir Ahmed Brohi used to maltreat his daughter; who also complained him several times, later-on his cousin Bashir Ahmed alongwith his family members shifted to Thatta. On 13.08.2013 the complainant

was available at his village where he received information that his daughter namely Mst.Haleema has died. Accordingly, complainant, his son Ali Asghar Brohi and cousin Nabi Bux Brohi alongwith his family came to Thatta where they came to know that Bashir Ahmed Brohi has taken away the dead body to the house of husband of his sister at Pathan Colony, the complainant party, therefore went to Pathan Colony where Bashir Ahmed and others were ready to perform Namaz-e- Janaza, they sent their ladies in the house and accompanied with them to perform Janaz-e-Nimaz and buried the dead body at Makli graveyard. After burial ceremony, accused Bashir Ahmed Brohi informed the complainant that he went to Aamri Stop for purchasing milk in the morning at 06:00 am and returned back 08:00 am, his wife (deceased) was in the room and door was inside locked, he called her but she did not open the door, then he saw from the ventilator that his wife has committed suicide by hanging herself through rope with fan. The complainant further disclosed that after three days they returned to their village alongwith family where the complainant came to know that accused Bashir Ahmed Brohi had committed the murder of deceased lady in the above said manner. Hence, the complainant came at police station Thatta and registered the FIR.

3. After completion of investigation I.O. submitted charge sheet against the accused person to which he plead not guilty and claimed trial.

4. The prosecution in order to prove its case examined 8 witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied all the allegations leveled against him claiming that his wife had committed suicide and he did not murder her.

5. After hearing the parties and appreciating the evidence on record the trial court convicted the appellant and sentenced him as stated earlier in this judgment and hence, the appellant has filed this appeal against his conviction and sentence.

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

7. Learned counsel for the appellant has contended that the appellant is completely innocent and that his wife committed suicide; that the FIR was

delayed by an unexplained period of 6 days; that the medical reports do not definitively find that the deceased was murdered; that the appellant had no motive to murder his wife; that there was no eye witness to the deceased's death; that the rope was foisted on him and that for any or all of the above reasons the appellant should be acquitted of the charge by being extended the benefit of the doubt. In support of his contentions he placed reliance on the cases of **Lal Khan v. The State** (2006 SCMR 1846), **Peeru Ram v. The State** (2019 P Cr. L J 325) and one unreported judgment of Sindh High Court passed in Cr. Jail Appeal No.S-01 of 2011 Re: **Bhawan Das v. The State**.

8. On the other hand learned APG appearing on behalf of the State has fully supported the impugned judgment by relying on the evidence on record and contended that the appeal is without merit and should be dismissed. He has placed reliance on the case of **Deen Mohammad v The State** (2016 P Cr. L J Note-86).

9. I have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellant's counsel, and the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

10. I find that there are two main issues in this case. The first is whether the deceased committed suicide or was murdered and if murdered, secondly whether the prosecution have proved beyond a reasonable doubt that it was the appellant who murdered the deceased/his wife at the said time, date and location as per charge.

11. After my reassessment of the evidence I find that the prosecution has NOT proved the charge beyond a reasonable doubt namely that the deceased was murdered by the appellant as opposed to committing suicide for which the appellant was convicted keeping in view that each criminal case is based on its own particular facts, circumstances and evidence for the following reasons.

(a) That the complainant in his evidence states that on 13.08.13 he was informed by his son Asghar Ali Brohi, who had been informed by someone else, that his daughter had died. Hence he left his village in Shaheed Benazirabad for Thatta where his daughter Mst Haleema (deceased) was living with her husband/accused and reached the accused house after about 3 hours. The complainant finding the deceased house was locked went to house of Behnoi namely Sher Muhammed where funeral prayers were offered and the dead body of the deceased was brought and buried. The accused was at the burial ceremony and they

stayed behind for three days to receive condolences before returning home. He also inquired that how Mst. Haleema expired from the accused, who disclosed to him that on the day of incident, at about 06:00 am, he went to purchase milk, his wife and children were present at the house. He further disclosed that he returned at about 08:00 am to the house and knocked-up the door but his wife did not open. He further disclosed that he scaled-up from the ventilator of bathroom situated at the southern side of the house. He disclosed further that when he entered inside the room he saw that his wife was hanged off with wings of the fan. He further disclosed that he removed the dead body from the position and then shifted to the house of his Behnoi at Pathan Colony. After three days, we went back to our village. I received an anonymous call that it was not the case of suicide but of murder by the accused. Then on 19.08.2013 I lodged the FIR at police station of the murder of my daughter against the accused. Hence the delay in the FIR has been fully explained and is not fatal to the prosecution case.

(b) One of the key issues is how the deceased actually died. Was it suicide or murder by strangulation and if so by whom?

(c) From the outset the appellant has maintained that his wife committed suicide when he was out of the house and when he reached the house the house was locked and he entered via the ventilator. This method of entry was corroborated by PW 6 Saleh Mohammed who was an independent witness and who lived above the appellant and would have no reason to give false evidence.

(d) There was no eye witness to the incident and no last seen evidence connecting the accused with his wife in respect of the incident. The house was locked from the inside which only the wife could have done.

(e) According to the complainant the deceased complained to him about the accused mal treating her. This however is not supported by any other evidence on record. For example, the complainant had been living in his village whilst the deceased had moved to Thatta with her husband about 20 years ago. PW 6 Saleh Muhammed who lived immediately upstairs from the appellant did not hear any arguments or quarrel coming from the house below where the accused and the deceased was living and the medical evidence did not support any recent acts of violence against the deceased apart from the neck injury. Hence there was no motive for the appellant to murder his wife especially as they had five children between them.

(f) The FIR lead to the exhumation of the body of the deceased on orders of the court and on 02.10.13 the body of the deceased was exhumed by a team of medical experts who also carried out a post mortem. The Dr's concerned who gave evidence PW 4 Dr.Nasreen Baloch and PW 7 Dr.Summaya found as under as regards the injuries to the deceased;

"Surface wounds and injuries.

Injury No.1. Contusions with deep blackish red discoloration on the upper lateral aspect of neck at the level of angle of Mandeville and under chin in the manner of imprint of rope on right and left sides.

Injury No.2. Contusions 8 cm x 6 cm, blackish red in color on the right shoulder, anterior aspect.

Injury No.3. Contusions 6 cm x 6 cm, blackish red on left shoulder anterior aspect.....

Opinion.

After examination the board was of the opinion that the death occurred due to asphyxia which resulted from constrictions of neck and hard and blunt injuries leading to cardio-respiratory failure.....

Cross to Mr. Faisal Ahmed Memon advocate for the accused.

Except the marks of injuries I have noted at the time of exhumation of dead body I did not find any other marks of injuries on the dead body of the deceased lady.....

Cross question under Section 161 Qanoon-e-Shahadat Order.

Q. Whether in your opinion, may it be case of suicide or murder?

Ans: On the basis of injury No.1 where manner of imprint of rope on both sides of the neck is horizontal, is strongly suggestive of the manner of death being homicide."

(g) Based on the above medical evidence without an eye witness to the murder and the appellants story that the deceased hung herself I find that the prosecution have not been above to prove beyond a reasonable doubt that the deceased was murdered and did not commit suicide as per the defence case. Even the medical evidence was not definitive of murder but was **only highly suggestive** which did not rule out the fact that the deceased's injuries might have been caused by her committing suicide by her hanging herself by rope from a fan as is the defence case. In this respect reliance is placed on the case of **Lal Khan** (Supra) which held as under in material part;

"The hanging is most common form of suicide whereas homicidal hanging is rare which may occur in very unusual circumstances and in the medical jurisprudence, no definite opinion can be given on the basis of ligature mark around the neck whether death was homicidal or suicidal. The causation of an injury found on the person of deceased, may be either homicidal or suicidal and in that the prosecution is under heavy burden to prove that the death was homicide and not suicide. "

(h) Even if the deceased was murdered the only piece of evidence against the appellant is that he apparently lead the police to a piece of rope on his pointation which was either used to murder the deceased or for the deceased to hang herself as in effect the cause of death was asphyxia which could have been caused by manual strangulation or suicide by being hung from a fan as is the defence case.

(i) It also raises eye brows that the independent witness PW 6 Saleh Muhammed who lived above the appellant was not used as a mashir on a

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single occasion when he was ready, available and on the spot and the police instead called mashirs who lived a distance of 3 hours away all of whom were related to the complainant.

(j) The anonymous person who first informed the complainant that the accused murdered the deceased was never found by the police and consequently his evidence which might have been vital to the prosecution case was lost.

(k) Any person in the accused village could have murdered his wife if she did not commit suicide

12. For the reasons discussed above I find that the prosecution case is doubtful and by extending the benefit of the doubt to the appellant I acquit him of the charge, the impugned judgment is set aside, the appeal is allowed and the appellant shall be released unless wanted in any other custody case.

KAGZ
JUDGE 31/10/24