

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Justice Mrs. Kausar Sultana Hussain.

**Criminal Appeal No.198 of 2020
Confirmation Case No.11 of 2020**

Appellant: Raufuddin S/o Waheeduddin
through Mr. Muhammad Ilyas
Awan, Advocate

For State: Mr. Muhammad Iqbal Awan,
Additional Prosecutor General.

Date of hearing: 16.11.2021.

Date of Announcement: 23.11.2021.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellant Raufuddin S/o. Waheeduddin in the instant appeal has assailed the judgment dated 20.02.2020 passed by Learned Ist Additional Sessions Judge/Model Trial Court (MCTC-I), Karachi Central in Sessions Case No.1273 of 2019 arising out of Crime No.183 of 2019 u/s. 302 PPC at PS Khawaja Ajmer Nagri; whereby the appellant was convicted and sentenced to death subject to confirmation by this court. The appellant was also directed to pay compensation amount of Rs.10,00,000/- to the legal heirs of the deceased as required under section 544-A Cr.P.C. and in default of payment he has to undergo simple imprisonment for six months.

2. The brief facts of the prosecution case are that the complainant Muhammad Asif son of Muhammad Aslam has stated that on 15.06.2019 at night time he has received information regarding torture and murder of his sister Sitara by her husband Raufuddin at his house. The dead body was lying at Abbasi Shaheed Hospital. On such information he reached there along with his relative and found the dead body of his sister Sitara. He saw several marks of torture, violence/injuries on her body, thus instant FIR was lodged against Raufuddin.

3. Investigation of the case was carried out by P.I. Irshad Ali Korai. He inspected the place of incident and secured blood stains from place of incident, photographs and other things under memo. He has also recorded statements of PWs. Accused was arrested by ASI Ali Nawaz Pitafi on the pointation of complainant. I.O. interrogated the accused who has confessed his guilt.

4. After completion of the usual investigation the case was sent up for trial. The charge was framed against accused Raufuddin to which he claimed to be innocent and claimed to be tried.

5. The prosecution in order to prove its case examined 09 witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied murdering his wife. He also gave evidence under oath where once again he denied murdering his wife.

6. After appreciating the evidence on record the trial court convicted the appellant and sentenced him as set out earlier in this judgment. Hence, the appellant has filed this appeal against his conviction and sentence.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 20.02.2020 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

8. Learned counsel for the appellant has contended that the appellant is completely innocent; that the FIR had been lodged after a delay of 2 days following consultation between the complainant party and the police in order to fix the complainant in this false case; that there is no direct evidence against him; that there are material contradictions in the prosecution evidence; that no murder weapon was recovered from the appellant; that as the body of the deceased was decomposed her cause of death could not be ascertained and for any of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions he placed reliance on the cases

of **Muhammad Safdar through Attorney v. The State** (2016 MLD 1325), **Tariq Ali Shah and another v. The State and another** (2019 SCMR 1391), **Muhammad Rafique alias Feeqa v. The State** (2019 SCMR 1068), **Hunar Shah alias Anar Shah and another v. Khan Zad Gul and another** (2014 YLR 1180) and Text book on Medical Jurisprudence and Toxicology by Modi 26th Ed.

9. On the other hand learned APG appearing on behalf of the State and the complainant has fully supported the impugned judgment. In particular he has contended that the delay in lodging the FIR has been explained; that all the prosecution witnesses can be safely relied upon; that the incident took place in the appellants own house which has not been denied; that the medical evidence supports the prosecution case and although this is a case of circumstantial evidence the prosecution has proved its case against the appellant beyond a reasonable doubt and as such his appeal should be dismissed. He has placed reliance on the cases of **Nasir Mehmood and another v. The State** (2015 SCMR 423), **Muhammad Ishaq v. The State** (2009 SCMR 135), **The State/ANF v. Muhammad Arshad** (2017 SCMR 283), **Solat Ali Khan v. The State** (2002 SCMR 820) and **Akhtar v. The State** (2020 SCMR 2020).

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

11. Based on our reassessment of the evidence especially of the PW witnesses, especially PW 9 Shahid Nizam who was MLO of Abbasi Shaheed Hospital who received the dead body of Ms Sitara (the deceased) from the appellant on 16.06.2019 with history of violence on face and various parts of the body which was dead and he then sent the dead body to the mortuary on 17.06.2019 to PW 6 Sharmeen who was working as Ghussala at Edhi cold storage found injury marks on her forehead, right cheek and neck which ties in with the post mortem report which was carried out after the exhumation of the deceased's body some two months later which found various chips to facial bones and the cause of death to

be by strangulation as per evidence of PW 7 Dr.Qarar Ahmed which opinion was not contradicted at trial and we find to be correct based on the above supportive medical evidence not with standing the decomposition of the deceased's body, the S.342 Cr.PC statement of the appellant and the appellant's evidence under oath, the blood stained chaddar, and card board found at the wardat which lead to a positive chemical report we find that the prosecution has proved beyond a reasonable doubt that the deceased on or about 15.06.2019 at 9pm was murdered at House No. H-109, Arsalan Homes, Sector 1-A/4, Karachi by beating and strangulation.

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

13. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge against the appellant for which he was convicted for the following reasons;

(a) That although the FIR was lodged with a delay of 2 days we find that such delay has been fully explained by the prosecution. This is because when the dead body was brought to Shaheed Abbasi Hospital there was no WMLO present. The dead body then had to be taken to JPMC where once again no WMLO was present. The body was then placed in the morgue before finally being handed over to the relatives. As such there would have been no time for the complainant party to cook up a false case against the appellant in league with the police. This is more so since the appellant has not suggested that any of the PW's had any enmity with him and had a reason to falsely implicate him in this case.

(b) That although there is no eye witness to the murder of the deceased who was the appellant's wife the murder took place in the house of the appellant and the appellant had a history of quarrelling with his wife to the extent that they had even divorced and remarried as per the PW's.

(c) The S.342 Cr.PC statement of the appellant along with his evidence under oath also reveal that the appellant by his own admission on the fateful day did in fact quarrel with his wife in his house, push her down before going out and shortly returning before taking her to the hospital as according to him on his return to the house a few hours after pushing her down he found her unconscious and he took her to the hospital where he confessed to the killing before PW 9 Shahid Nizam and was arrested from the hospital. In this respect we reproduce below extracts from the S.342 Cr.PC Statement and evidence under oath of the appellant.

STATEMENT OF ACCUSED UNDER SECTION 342 Cr.P.C.

Q.4. What you have to say about the injuries caused to your wife Sitara in your marital home resulting in her death?

Ans. Sir, I do not know. On 15.06.2019 at about MAGHRIB TIME quarrel occurred with my wife and me, I have thrown my wife in the room and I left the room but I do not know further. I left my house. I came back at the time of ESHAA PRAYER and saw wife was lying on bed in the house in injured condition and blood was oozing from her head injuries. I again went outside the house for ambulance and brought it. I shifted my wife to Abbasi Shaheed Hospital. I also called my mother in law on the way to hospital. It was about 10 or 11 PM. (bold added)

Q7. What do you say about your confession before MLO Dr. Shahid Nizam at Abbasi Shaheed Hospital?

Ans. Yes sir I have stated before him that there occurred quarrel b/w me and my wife and he called police and handed over me to police. I have not escaped from hospital.

STATEMENT OF ACCUSED ON OATH UNDER SECTION 340(2) Cr.P.C.

On 15.06.2019 I was available in my house No.H-109, Arsalan Homes, Sector 1-A/4, North Karachi, Karachi along with my wife. I came back from my work. It was about sunset time. There occurred quarrel b/w me and my wife Mst. Sitara Bibi. She was in a habit of taking tranquilizers. There was exchange of harsh word b/w us and I thrown her down. She was crying but I left the house and went outside. I came back in the house at about ESHA Prayer. I saw my wife in a room lying on ground near bed. I tried to take her up. I also sprayed some water on her face. I asked her what happened but she did not respond. I again went outside the house and tried to search for ambulance on my motorcycle. I brought one ambulance and then shifted my wife to Abbasi Shaheed Hospital and admitted her in emergency ward. Dr. Shahid Nizam was available in hospital. He asked me what happened. I replied that she is my wife. He disclosed that it is a police case and he will not check her without police letter. Dr. has directed me not to leave the hospital as it is a police case. Doctor Shahid Nizam brought me in another room and made me sit in the meantime he has called police. Police came in the Hospital. Police has arrested me. I have called my mother in law when I was shifting my wife in ambulance from house to hospital and informed her. My in laws also came at hospital when police arrested me. I was brought at Jinnah Hospital along with my wife in ambulance. Then I was shifted to PS-

Kh. Ajmeer Nagari. Since then I am in police custody. I was in police custody remand for 11 days. In the meantime media personnel also visited at PS and recorded my statements. I am innocent and I have not committed the offence. The police officials have deposed falsely against me. **I had contracted love marriage with Mst. Sitara, 05 years back. There were 03 children, out of them 02 have expired due to natural death. There occurred divorce b/w us after two children. In the meantime I have contracted another marriage with Mst. Saima. I again married with Mst. SITARA as I loved her. After our second NIKKAH, we lived together happily. There occurred quarrel b/w my both wives, therefore, I divorced Mst. Saima. We have one boy namely Shahriyar. My mother in law has asked me to leave Shahriyar with her as she would get him treated in the hospital. Since then Shahriyar is with my mother in law. There also occurred some quarrel b/w me and my wife SITARA on handing over of Shahriyar to my mother in law.** (Bold added)

(d) According to PW 5 Mehran the appellant told him that he had quarreled with his wife and had killed her. PW 1 Muhammed Asif who was the complainant in this case gave evidence that his mother told him that the appellant had quarreled with his wife and had killed her and was on the way to hospital with her. Although this is hearsay evidence and extra judicial confessions are not admissible in evidence it ties in with the appellants own evidence whereby he states that he informed his mother in law about the incident. In another case of circumstantial evidence the Supreme Court gave some weight to such extra judicial confessions where they were supported by medical evidence as in this case. In this regard reliance is placed on the case of **Akhtar** (Supra) which at P.2024 as under;

"5. It has been observed by us that there is no direct evidence in this case and the prosecution case hinges upon circumstantial evidence. The first piece of circumstantial evidence is the extra judicial confession of the appellant before complainant Shaukat Ali (PW4) and Muhammad Aslam (PW6). While appearing before the trial court, the complainant Shaukat Ali (PW4) and Muhammad Aslam (PW6) reiterated the contents of FIR with full confidence. They explained in detail how they on 15.08.2004 along with other witnesses went to the appellant asked him about whereabouts of Shahid Ali (deceased); how the complainant told the appellant regarding initiation of legal proceedings if he did not disclose the whereabouts of Shahid Ali; how the appellant disclosed before them that he took Shahid Ali to the house of Aslam, barber, with intention to commit sodomy with him and on his failure to do unnatural act with Shahid Ali, he with an iron wire strangled him and concealed his body in an iron box in that house. They further stated that after the extra judicial confession of appellant, they apprehended him and proceeded towards police station but the police met them near Cool Storage of Wahla Rahi, where the

complainant gave application (Ex.PB) to the police officer for registration of case. Despite lengthy cross-examination, the defence was not able to elicit anything from these PWs regarding false implication of appellant in this case.

6. The extra judicial confession of appellant is supported by the medical evidence furnished by Dr. Muhammad Shafee Saleem (PW-5), who conducted autopsy on the body of Shahid Ali and observed a contusion mark all around the neck of deceased; a contusion mark around right wrist except on inner side; a contusion mark into back side and both outer sides of left wrist. These observations of the doctor supplement the extra judicial confession of appellant that he with an iron wire strangled Shahid Ali and before that tied his wrists. The doctor in his cross-examination denied the suggestion that body of deceased was not identifiable. The appellant in his extra judicial confession also stated before the prosecution witnesses that he took Shahid Ali in a vacant house for committing unnatural act with him. Three swabs were taken from the anal region of deceased Shahid Ali by the doctor and were sent to the Chemical Examiner. According to report of Chemical Examiner (Ex.PH), the said swabs are stained with semen. The doctor (PW-5) in his court statement also endorsed the report of Chemical Examiner (Ex.PH)".

(e) That the medical evidence and reports as discussed above fully support the prosecution case.

(f) Although the appellant was not arrested on the spot he was arrested a few hours later by the police after he brought his dead wife to the hospital.

(g) No weapon was recovered from him as this was a case of manual strangulation.

(h) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669). We do not find based on the particular facts and circumstances of the case the contradiction about the place of arrest to be material and in this respect reliance is placed on the case of **Solat Ali Khan** (Supra).

(i) That the police PW's had no proven enmity or ill will towards the appellant and no reason to falsely implicate him in this case and in such circumstances it has been held that the evidence of the police PW's can be fully relied upon. In this respect reliance is placed on **Mustaq Ahmed V The State** (2020 SCMR 474). The other PW's who are related to the appellant had no reason to falsely implicate him in this case and none of them has been damaged despite lengthy cross examination and hence we have no reason to disbelieve them.

(j) Admittedly it is a case of circumstantial evidence however based on the particular facts and circumstances of this case where the appellant and the deceased had a history of quarrelling and had even divorced and then remarried, that the murder took place in the house of the husband, that he admitted his presence at the time of quarreling with his wife and pushing her down and that only a short period of time lapsed after pushing her down when he was said to be out of the house and his return to finding his wife dead, the fact that only he had the key to the house and no one else could have let themselves in to murder his wife, the fact that the wife had no enmity with any one and the appellant has not been able to put forward an alternate theory that some one else may have killed his wife we find that the only possible inference based on the particular facts and circumstances of the case is that the appellant beat and murdered his wife by strangulation

14. With regard to sentencing since this is a case based on circumstantial evidence and we need to take a great deal of care and caution before sentencing a person to death in such cases as was held in the case of **Azeem Khan and another v. Mujahid Khan and others** (2016 SCMR 274) and the fact that the appellant has a young son by exercising such care and caution we hereby reduce the appellant's sentence from death to RI for life.

15. The appeal is dismissed save that the sentence is modified as above with all other fines and penalties in the impugned judgment remaining in tact with the confirmation reference being answered in the negative.

16. The appeal and confirmation reference stand disposed of in the above terms.