

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Appeal No.D-235 of 2011

Confirmation Case No.12 of 2011

PRESENT:

Mr. Justice Naimatullah Phulpoto

Mr. Justice Rasheed Ahmed Soomro

Date of Hearing: 08.02.2017

Date of Judgment: 17.02.2017

*Appellant Qadir Bux Hajano: Through Syed Tarique Ahmed Shah,
Advocate*

Complainant: In person.

*The State: Through Syed Meeral Shah Bukhari,
Deputy Prosecutor General, Sindh.*

J U D G M E N T

RASHEED AHMED SOOMRO, J:- Appellant / accused Qadir

Bux faced trial before the learned Sessions Judge, Hyderabad for offence under Section 302 PPC. After trial, the appellant/accused by judgment dated 06.07.2011 was convicted under Section 302 PPC for causing murder of Mst.Noorjehan @ Noori and was sentenced to death as Ta'azir. Trial Court made reference to this Court for confirmation of death sentence as required under Section 374 Cr.P.C.

2. Brief facts of the prosecution case as per FIR lodged by complainant Mst.Rasti on 03.01.2004 are that she has given birth to eight daughters, out of whom, Mst. Noorjehan (now deceased) was at fourth number. She was married with one Imam Bux S/o Amir Bux Hajano. It is alleged in the FIR that two years prior to

the incident, accused Qadir Bux S/o Amir Bux Hajano had committed zina with Mst.Noorjehan. Such FIR was lodged by her husband namely Imam Bux; the accused Qadir Bux was arrested and was confined in Jail. Subsequently on the basis of compromise accused Qadir Bux was released one month before the occurrence. It is alleged in the FIR that accused Qadir Bux was the brother-in-law of deceased Mst.Noorjehan and after release from the Jail, he had issued threats to the complainant and her daughter deceased Mst.Noorjehan that as he had remained in jail on the basis of case lodged by Mst.Noorjehan, he would kill her. It is further alleged that on 03.01.2004 at 03:00 p.m., complainant Mst.Rasti was present near her house. She heard cries from the side of Otaq of one Rasool Bux, she went running there. Mst.Banoon Mallah, Muhammad Uris, Pappu and her daughter Mst.Rahima @ Kari were also attracted on the cries. They saw that accused Qadir Bux was dragging Mst.Noorjehan by catching-hold of her hair and declared that she would be murdered. Thereafter, it is alleged that accused Qadir Bux in presence of the above named witnesses caused hatched blows on her neck and she died. Resultantly, the head of Mst.Noorjehan was separated from her body and she fell down. It is further alleged that accused took the head of Mst.Noorjehan in a red coloured cloth and started running towards Matli City. The complainant party while raising cries chased the accused, who left the head at Gama Chowk and succeeded in running away. Complainant Mst.Rasti went to the

Police Station Matli and lodged the FIR, it was recorded vide Crime No.02 of 2004 for the offence under Section 302 PPC.

3. During the investigation, dead body was sent to the hospital for postmortem examination. The statements of the P.Ws under Section 161 Cr.P.C were recorded. The accused produced the hatchet used by him in the commission of the offence. Further statement of the complainant was recorded and on the basis of further statement, accused Muhammad Ashraf and Hashim were let off. Confession of accused was recorded on 08.01.2004. On completion of the investigation, the challan was submitted against the present appellant/accused for an offence under Section 302 PPC.

4. Charge was framed against the accused at Ex.02, in which, the accused pleaded not guilty and claimed to be tried.

5. At the trial, the prosecution examined P.W-01 complainant Mst.Rasti at Ex-09. She produced FIR as Ex.9/A, P.W-02 Mst.Rahima @ Kari at Ex-10, P.W-03 Banoon at Ex-11, P.W-04 Dr.Nazeeran at Ex-12, who produced letter of Police at Ex-13, Lash Chakas Form at Ex-14 and postmortem report at Ex-15, P.W-05 ASI Muhammad Bux at Ex-16, P.W-06 Muhammad Saleh at Ex-17, P.W-07 LNK Dadoo at Ex-18, P.W-08 SIP Azizullah at Ex-19, P.W-09 Muhammad Uris at Ex-23, P.W-10 ASI Muhammad Yousuf at Ex-25, P.W-11 Mr.Qadir Bakhsh, Judicial Magistrate at Ex-26, who produced confessional statement of accused at Ex-26/A and P.W-12 Tapedar Sooran Singh at Ex-27,

who produced sketch of place of wardat at Ex-27/A. Thereafter, learned D.D.P.P closed the prosecution side vide his statement at Ex-29.

6. The statement of accused was recorded under Section 342 Cr.P.C at Ex-30, in which the accused denied all the prosecution allegations and claimed his false implication in this case. Another statement of the accused under Section 342 Cr.P.C was recorded at Ex-33, in which accused once again claimed his innocence. The accused examined himself on oath under Section 340(2) Cr.P.C but he did not lead the evidence in his defence.

7. The Trial Court after hearing the learned Advocate for the accused as well as D.D.P.P for the State, convicted accused Qadir Bux under Section 302 PPC and sentenced him to death. Hence, this appeal is filed.

8. Syed Tarique Ahmed Shah, learned Advocate for appellant/accused argued that all the prosecution witnesses are closely related to deceased Mst.Noorjehan and interested. It is argued that independent persons of the locality were not examined by the prosecution to ascertain the truth. He has also argued that place of occurrence is disputed in this case. It is further argued that the medical evidence is contradictory to the ocular evidence, with regard to the number of hatchet blows. It is also argued that prosecution has failed to establish the motive at the trial. Learned Counsel for the appellant/accused lastly argued that the confession

made by the appellant/accused was not true and voluntarily and the prosecution case was highly doubtful. In support of his contentions, he has relied upon the cases reported as (i) 2003 YLR 166 (ii) 2005 PLD Karachi 18 (iii) 2010 P.Cr.L.J 1270 (iv) 2016 YLR 2815 and (v) 2017 SBLR 163.

9. Syed Meeral Shah Bukhari, learned D.P.G appearing for the State argued that it was daylight incident and it was witnessed by complainant Mst.Rasti, Mst.Rahima @ Kari and other eye-witnesses. Learned D.P.G further argued that eye witnesses had no motive to falsely implicate the accused, who is closely related to them. He has also argued that the presence of the eye witnesses at the time of the occurrence was natural because the incident had occurred in front of their house. With regard to the motive for commission of the offence, learned D.P.G argued that prior to this incident, accused had committed zina with deceased Mst.Noorjehan, such FIR was lodged at the Police Station and the accused was remanded to the Jail in that case. After release on the basis of the compromise between the parties, the accused took the revenge from Mst.Noorjehan for registration of the case against him. It is submitted that the motive has been established at the trial. Learned D.P.G further argued that there is no contradiction between the ocular and medical evidence. He submitted that according to the postmortem report the deceased Mst.Noorjehan had sustained injuries by sharp cutting weapon. Learned D.P.G lastly argued that the prosecution had fully established its case

against the accused beyond any reasonable doubt and the learned Trial Court has appreciated evidence properly and judgment of Trial Court requires no interference and prayed for dismissal of the appeal. In support of his contentions, he relied upon the cases reported as *2017 SCMR 188 (Ashiq Hussain V/s. The State)*, *2005 SCMR 1958 (Noor Muhammad V/s. The State)* and *2003 PLD Supreme Court 704 (Sh.Muhammad Amjad V/s. The State)*.

10. We have carefully heard the learned Counsel for the parties at length and perused the entire evidence with their able assistance. With regards to the unnatural death of deceased Mst.Noorjehan, P.W-04 Dr.Nazeeran has deposed that Matli Police had referred the deceased to her for conducting postmortem examination on 03.01.2004 and she conducted the postmortem examination of Mst.Noorjehan and found three inside wounds on her body. From the external as well as internal examination of the dead body, WMO was of the opinion that death of deceased Mst.Noorjehan @ Noori had occurred in the result of injuries No.2 & 3 leading to the separation of the head from the trunk. From the medical evidence, it has been established that Mst.Noorjehan died her unnatural death by receiving injuries with sharp cutting weapon. According to the prosecution case, the incident was witnessed by P.W-01 complainant Mst.Rasti, P.W-02 Mst.Rahiman @ Kari, P.W-03 Banoon and P.W-08 Muhammad Uris. All the eye witnesses have categorically deposed that on 03.01.2004 at 03:00 p.m. the present incident had occurred and at that time deceased

Mst.Noorjehan alongwith her sister Mst.Rahiman @ Kari were present in the street infront of their house near Otaq, where the accused Qadir Bux armed with axe appeared, dragged the deceased from her hair and caused her axe blows on her neck. Resultantly, her head was separated from her body. Thereafter, the accused took her head in the red coloured cloth and left it at Gama Chowk and ran away. As regards to the motive for the commission of the offence, all the eye witnesses have categorically stated that prior to this incident, the accused Qadir Bux had committed zina with Mst.Noorjehan, such FIR was lodged and in the said case the accused Qadir Bux was remanded to Jail. On the basis of compromise on Holy Qur'an, accused Qadir Bux was released from the Jail. For learning lesson, the accused committed murder of deceased Mst.Noorjehan. All the eye witnesses were cross-examined at length but nothing favourable to the appellant/accused came on record except some minor contradictions, same have no significance in the eyes of law. All the eye witnesses have given the same evidence against present accused with regard to place of incident, date and time of incident. The deceased was a lady and she had no enmity with any other person. The eye witnesses had also no motive to falsely implicate the accused in this heinous crime. In this case, the ocular evidence is fully corroborated by the medical evidence and recovery of weapon and the report of Chemical Examiner with regard to recovery of axe/hatchet is in positive. We have no hesitation to rely upon the ocular evidence, which is straightforward and reliable. The learned Trial Court has

also rightly relied upon prosecution evidence and has undertaken an exhaustive and in-depth analysis of the evidence available on record and came to the conclusion regarding the guilt of the accused. We have not been able to take a view different from the view taken by the learned Trial Court.

11. No mitigating circumstance has been pointed out by Syed Tarique Ahmed Shah, learned Counsel for the appellant/accused for reduction of the sentence. Death sentence in a murder case is a normal penalty, Court should give reasons for lesser sentence as held in the case of Dadullah and another v. The State (2015 SCMR 856), the Honourable Supreme Court of Pakistan has held as under:-

“.....Death sentence in a murder case is a normal penalty and the Courts while diverting towards lesser sentence should have to give detailed reasons. The appellants have committed the murder of two innocent citizens and also looted the bank in a wanton, cruel and callous manner. Now-a-days the crime in the society has reached an alarming situation and the mental propensity towards the commission of the crime with impunity is increasing. Sense of fear in the mind of a criminal before embarking upon its commission could only be inculcated when he is certain of its punishment provided by law and it is only then that the purpose and object of punishment could be assiduously achieved. If a Court of law at any stage relaxes its grip, the hardened criminal would take the society on the same page, allowing the habitual recidivist to run away scot-free or with punishment not commensurate with the proposition of crime, bringing the administration of criminal justice to ridicule and contempt. Courts could not sacrifice such deterrence and retribution in the name of mercy and expediency. Sparing the accused with death sentence is causing a grave miscarriage of justice and in order to restore its supremacy, sentence of death should be imposed on the culprits where the case has been proved.”

12. In another case of *Ashiq Hussain V/s. The State (2017 SCMR 188)*, it is held as under:-

“4. We have particularly attended to the sentence of death passed against the appellant and have noticed in that context that the appellant was a desperate person who used to associate with serious criminals and on the basis of such conduct of the appellant he had been rebuked and reprimanded by Haji Ghulam Nabi deceased who was otherwise a relative of the appellant. On the basis of the said rebuke and reprimand the appellant not only killed Haji Ghulam Nabi deceased but also, in the company of his co-accused, injured three others. Such conduct displayed by the appellant surely detracts from any sympathy to be extended to him in the matter of his sentence.

5. For what has been discussed above this appeal is dismissed.”

13. As regards to the sentence of death passed against the accused by the Trial Court, we have noticed that the accused had committed zina with Mst.Noorjehan prior to this incident and that FIR was lodged and the accused remained in Jail. After compromise, he was released, then accused killed the deceased in brutal manner, separated her head from body for taking revenge from her. Such conduct displayed by the appellant/accused surely detracts from any sympathy to be extended to him in the matter of his death sentence. Learned D.P.G has rightly relied upon the case reported as *2017 SCMR 188 (Ashiq Hussain V/s. The State)*. It may be mentioned here that the Trial Court has convicted the accused under Section 302 PPC and sentenced him to death as Ta'azir. We slightly specify the clause to 302(b) PPC death as Ta'azir. Trial Court was bound while convicting the accused for commission of the death to award compensation under Section

544-A Cr.P.C to the legal heirs of the deceased, unless reasons should have been recorded in writing for not granting the compensation. Reliance is placed upon the case of *Talib Hussain & Others V/s. The State (1995 SCMR 1776)*. Appellant/accused Qadir Bux shall pay the compensation of Rs.300,000/-, to be paid to the legal heirs of deceased, in case of default, to suffer S.I for 06 months more. Consequently, we do not find any justification to interfere with the conviction and sentence recorded by the Trial Court against the appellant/accused.

14. As sequel to the discussion made here-in-above, the instant appeal is dismissed and the reference for confirmation of sentence recorded against the appellant/accused Qadir Bux is answered in affirmative. Death sentence is CONFIRMED.

JUDGE

JUDGE