

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Amjad Ali Sahito

Spl. Crl. Anti-Terrorism Appeal No. 37 of 2018

Appellant: Hanif Khan @ Adnan
Through Mr. Mehmood Baloch,
Advocate

Respondent: The State
Through Mr. Sagheer Ahmed Abbasi,
Assistant Prosecutor General, Sindh

Dates of hearing: 19.02.2019 & 13.03.2019

Date of judgment: 13.03.2019

J U D G M E N T

Amjad Ali Sahito, J.- Appellant Hanif Khan @ Adnan son of Muhammad Rafique was tried by learned Judge, Anti-Terrorism Court No.II, Karachi in Special Case No.1889/2016 arising out of the FIR No.169/2015 registered at Police Station Jamshed Quarters for offence punishable under Sections 302/324 PPC read with Section 7 of Anti-Terrorism Act, 1997, whereby the appellant was convicted and sentenced to suffer imprisonment for life under Section 7 (a) of ATA, 1997 and under Section 307 of PPC read with Section 302 of PPC. However, he was also extended the benefit of Section 382-B Cr.P.C.

2. Briefly, the facts of the case, as depicted in the FIR, are that on 27.05.2015 at 1940 hours on the basis of the statement of Mst. Zuberah Ali recorded under Section 154 Cr.P.C. on 27.05.2015 at 1830 hours by ASI Akhtar Aziz in the Burns Ward are that she had claimed that she got married to Hanif with the permission of the parents and has two children. After the wedding her husband did not work and used to maltreat her. Her elder

brother used to provide her the ration. She had asked her husband many times to work but he never did any work. That on the night on 27.05.2015 at about 1145 pm she was present in the house with her children when her husband had come and asked her for the food and she had told him that there was nothing to be cooked whereupon he got angry and he started abuses her and beaten her. In the house there was kerosene oil in the water bottle which he sprinkled on her and lit her on fire whereupon his body including her both arms got fire whereas her husband kept looking at her and did not save her when on her hue and cry the mohalla people had assembled whereupon her husband had thrown water on her and extinguish the fire and thereafter she was taken to Abbasi Shaheed Hospital from where she was brought to Civil Hospital. Her husband had threatened her that if she took his name he will also burnt her children thereafter the police came she feared of threat due to killing of her children by fire she had not taken the name of her husband and had not given any statement against him now when her brother Amjad and sister Sidra and Shumaila and the brother in law Rashid and Aqil had come she can give statement without fear. She complained that her case is against her husband for killing her by throwing kerosene oil on her and lit her on fire, therefore, action be taken.

3. The charge was framed against accused on 16.01.2017 to which he pleaded not guilty and claimed to be tried.

4. At the trial, in order to establish accusation against the accused, the prosecution examined the following witnesses.

- i) PW-1 Amjad Ali at Ex.P/1, who produced memo of inspection of place of incident and recovery at Ex.P/2, memo of arrest at Ex.P/3, inspection of dead body at Ex.P/4, inquest report at Ex.P/5, taken over the dead body at Ex.P/6, judgment of Khula containing 16

pages at Ex.P/7, picture of the bottle and matchbox at Ex.P/8.

- ii) PW-2 Muhammad Aqil at Ex.P/9.
- iii) PW-3 Inspector Akhtar Aziz at Ex.P/10, who produced entry No.31 at Ex.P/11, statement recorded by him u/s 154 Cr.P.C. of Mst. Zubera at Ex.P/12, arrival entry No.41 at Ex.P/13, FIR No.169/2015 at Ex.P/14, a letter written to RMO at Ex.P/15.
- iv) PW-4 Sidra Zafar at Ex.P/16.
- v) PW-5 Dr. Mubarak Ali at Ex.P/17, who produced the ML report at Ex.P/18, photocopy of the chart from burns ward at Ex.P/19.
- vi) PW-6 Rubina Muneer at Ex.P/20, who produced the statement at Ex.P/21.
- vii) PW-7 ASI Muhammad Aminat at Ex.P/22, who produced entry No.61 at Ex.P/23, permission from MLO at Ex.P/24, arrival entry No.66 at about 730 hours at Ex.P/25.
- viii) PW-8 SIP Syed Mardan Shah at Ex.P/26, who produced entry No.42 at Ex.P/27, photograph at Ex.P/28, written permission from MLO at Ex.P/29, arrival entry No.53 at about 01:00 am at Ex.P/30, letter written to CRO at Ex.P/31, application filed for statement to be recorded of child u/s 154 at Ex.P/32, entry No.47 at about 2020 hours at Ex.P/33, permission at Ex.P/34, arrival entry No.52 at PS at about 2145 hours at Ex.P/35, road certificate by which he had sent recovery for chemical examination at Ex.P/36, and chemical report dated 15.06.2015 at Ex.P/37.

- ix) PW-9 Ehmar-Al-Ibran Consultant Plastic Surgeon, Incharge Department of Burn Civil Hospital, Karachi at Ex.P/38, who produced a letter of Burns Ward Admin Incharge at Ex.P/39, letter of Addl. Medical Superintendent to the Incharge of Burns Ward at Ex.P/40 and letter of this Court at Ex.P/41, death certificate of Mst. Zubera Ali wife of Hanif at Ex.P/42.
- x) PW-10 Inspector Ishtiaq Ahmed Abbasi at P/43, who produced the order of the SSP at Ex.P/44.

Thereafter, learned DDPP for the State closed the side vide statement at Ex.45.

5. Statement of the accused was recorded under Section 342 Cr.PC at Ex.46, wherein he denied the prosecution allegations leveled against him. Appellant has also examined himself on oath under Section 340(2) Cr.P.C. at Ex.47, but he has not led any evidence in his defence.

6. The learned trial Court, after hearing the learned counsel for the parties and appraisal of the evidence, convicted and sentenced the appellant to vide judgment dated 25.01.2018. The conviction and sentence recorded by the learned trial Court have been impugned by the appellant before this Court by way of filing the instant Spl.Crl.Anti-Terrorism Appeal.

7. Learned counsel for the appellant argued that the impugned judgment is against the law and facts of the case; that the appellant is innocent and has falsely been implicated in this case due to enmity; that learned trial Court has failed to appreciate the evidence available on record in its true perspective and given an arbitrary perverse and framed decision against the appellant causing him serious prejudice; that the impugned order is bad in law and resulted of misreading and non-reading of cross-examination of PWs, therefore, the impugned judgment is liable to be set aside and consequently acquitted the appellant from the

charge; that there are major contradictions between the evidence of prosecution witnesses. He lastly argued that the prosecution has miserably failed to prove its case against the appellant and thus, according to him, under the above-mentioned facts and circumstances, the appellant is entitled to his acquittal.

8. While rebutting the above contentions, learned Assistant Prosecutor General, Sindh argued that the entire case is based upon the statement of the deceased Zubaira and other evidence collected by the I/O of the case which connects the appellant with commission of offence; that no proof of enmity was brought by the learned counsel for the appellant which may justify his false implication in this case at the hands of complainant party being interested witness. He further argued that no material contradictions and discrepancies were pointed out by the learned counsel for the appellant to show his false implication in this case; learned trial Court has rightly recorded the conviction and sentence against the appellant in accordance with law and thus, he lastly prayed for dismissal of the instant appeal.

9. We have heard the learned counsel for the parties and have perused the record available with their able assistance.

10. The case in hand is in respect of domestic violence and as per prosecution case, deceased Mst. Zubera aged about 22 years young lady was murdered by her husband/appellant by sprinkling the kerosene oil upon her and set her on fire due to which she sustained burnt injuries on face, entire body, both hands, and buttocks, whereas, the claim of the appellant was that after finishing meal deceased Zubera was preparing tea in the kitchen and inside the kitchen water bottles were lying and one more bottle lying containing kerosene oil, at that time, bottle colour was green, when she was preparing tea in the kitchen kerosene oil was lit upon her due to nervousness kerosene oil sprinkled, on her hue and cry her husband/appellant thrown

water to extinguish the fire and thereafter she was shifted to the hospital by her husband, mother, and father of the appellant.

11. It is a settled principle of law that the dying declaration itself is not strong evidence being not tested by way of cross-examination. In this case, the deceased had given two statements, one in the presence of the appellant and second in the presence of her family members and she has given a reason in the second statement that her husband has threatened her that if she will give the evidence against him he will set on fire her two children and under pressure and coercion she has given the statement, but subsequently in the presence of her family members, she has given true and correct statement that her husband has sprinkled kerosene oil upon her then set on fire. Since the statements of the deceased being not tested by way of cross-examination and dying declaration by itself is not strong evidence, which require corroboration, furthermore the statement was recorded in the presence of the doctors but they were not examine as they left their job, hence it is appropriate to discuss other evidence available on record, to see whether same is connecting to the appellant with the commission of the murder of deceased. In the instant case, the prosecution has heavily relied upon the circumstantial evidence, recovery of incriminating articles so also medical evidence, but yet capital punishment can be awarded if an unbroken chain of circumstances from the stage of sprinkling the kerosene oil upon the deceased and the deceased was set on fire and till her death is established by conclusive evidence. PW-1 Amjad Ali, brother of deceased Zubera, who in his evidence has produced a copy of joint compromise filed in Family Suit No.497/2012 between the deceased and appellant in the case of dissolution of marriage by way of khulla and recovery of maintenance/expenses, in which the deceased had disclosed that after rukhsati, appellant has failed to maintain her and used to beat her on petty matters, and also insulted, abused and maltreated her due to cruel conduct of the appellant she filed a

suit for dissolution of marriage and subsequently due to intervention of the elders filed joint compromise application in which the appellant undertook that he will not maltreat, humiliate or torture the deceased and not pressurized to her to live with his parents at his parents' house, which shows that the appellant being short tempered person has maltreated the deceased Zubera on petty matters and for his cruel and unbearable conduct she filed a suit for dissolution of marriage and recovery of maintenance/expenses. Furthermore, the said PW deposed in his evidence that when they reached Civil Hospital, her sister/deceased disclosed that she was burnt by her husband by throwing kerosene oil on her. He further deposed that statement of the deceased was recorded through a mobile phone, which was saved by brother-in-law into CD and produced in Court in which she has clearly stated that her husband had committed her murder by sprinkling kerosene oil. The evidence of PW-1 finds corroboration through pictures, which was produced at Ex.P/8, which shows that kerosene oil bottle was lying in the kitchen along with matchbox and matchstick, neither the same was burnt nor any damage has been shown in the kitchen, which believed that the deceased due to mistaken put kerosene oil in the teapot and subsequently fall upon her, hence this piece of evidence of PW-1 also finds corroboration that the appellant has sprinkle kerosene oil upon deceased and set on fire. Furthermore, in presence of PW-4 Sidra, deceased had disclosed that when she reached at Civil Hospital and saw that her sister was burnt, which was black with burning with no clothes on, in presence of the doctor she disclosed that Hanif had fight with her and had gone to his mother's house, when he came back at 12 in the night he asked her to make tea for him, when she went to the kitchen to make tea he threw kerosene oil over her from the back and then lit her on fire with matchbox, she had been making hue and cry to save her life but Haneef had put the latch from inside, when the mohallah people heard her hue and cry voice for help, they had

been knocking and also hampering the door with the dandas to open, when the door was not opened they had beaten the door with dandas to open it, Haneef was not opening the door, she told her that first he had put the bucket of water over her and then he had opened the door, thereafter, mohallah people had put her and Haneef in rickshaw and had taken to the hospital for treatment. Such a statement also finds corroboration from the statement of PW-5 Dr. Mubarak Ali, who had examined the deceased and found following fire burns on the parts of the body of the deceased:

“Head 5%, Neck 2%, Interior trunk 13%, Posterior trunk 12%, right arm 10%, left arms 10%, buttocks 1%, right leg 4%, left leg 5%, total burns percent was 62½% patient was admitted at burns ward duration was fresh. Kind of weapon fire burn nature of injury dangerous to life. He had prepared the ML No.2401/15 on the same date and informed the concerned PS Jamshed Quarter vide entry No.27 by ASI Irfan. He produced the said ML report as Ex.P/18.”

12. For a moment, if we will be believed the statement of the appellant that she was preparing tea and by mistaken she had put kerosene oil in the teapot and due to nervousness, she became injured due to burn of fire, then naturally she be burnt from the front side, but as per doctor report, fire burn involving interior trunk 13%, posterior trunk 12%, left and right arms, both 10%. It seems that the entire body of the deceased has been burnt and as per doctor report, the total burnt her body was 62½%, hence it cannot be believed that by putting kerosene oil in the teapot entire body of the deceased can be burnt, which can only be possible when any person throws kerosene oil and thereafter he/she set on fire. Further, in the first statement of the deceased Ex-P/12, she disclosed that **“after finishing my meal was preparing tea in kitchen”** whereas in the statement of the appellant recorded on oath under section 340 Cr.PC he deposed that **“she had come from Punjab 15 days prior to this incident. After a while she gave me tea. My youngest child**

Talha 2 years old was irritating my wife. I had gone to bed with my little son. I was watching TV and went asleep while watching TV. I woke up with the cry of my wife. I went to the kitchen and I saw my wife in a fire. I brought my wife from kitchen to the warnda and put the water bucket over her.” If

it is true that she has already prepared tea then what she was doing in the kitchen? The Investigating Officer of the case has taken photographs of the kitchen, which shows that a Dew bottle and matchbox including live matchsticks, along with two bathtubs (Balti) are present in kitchen which was not burnt except deceased which is not appealing to our mind, even teapot was not in the pictures/recovered to believe the version of the appellant that she was preparing tea, the second link of the chain also connected the appellant with the commission of offence. Furthermore, the prosecution has also examined PW-6 Rubina Muneer, who in her evidence deposed that on 27.5.2015 her husband received a call from Zuberah who is her sister and wife of appellant Haneef that her husband has sprinkled kerosene oil and lit her on fire, thereafter, they rushed to the hospital and find that her sister was shifted in ICU, she was still in screaming to save her life and she disclosed her that her husband has sprinkled kerosene oil and lit her on fire, in ICU they were allowed to meet her and she was continuously saying that her husband has burnt her and was saying that to save her and her children, she was saying that on the way she was threatened that if you deposed against him/appellant he will burn her children. She further deposed in his evidence that in her presence one policeman, namely, Amin came in civil clothes and had taken the statement of her sister and had forcibly taken their signature, he had told Amin that this statement was not recorded before them therefore they will not ready to sign it but the police keep saying that what is right and what is wrong will be decided by police, the statement of her sister Mst.Zuberah was recorded wherein she has given detail of the incident that her husband has thrown kerosene

oil upon her then he set on fire. In cross-examination, she objected that the police has taken her signature forcibly. The prosecution has also examined PW-8 SI Syed Mardan Shah, who has arrested the appellant on the pointation of the witnesses on the allegation that the appellant has sprinkled the kerosene oil and set on fire the deceased Mst. Zubera. He further deposed that Mst.Zubera was expired on 01.06.2015. He has also secured bottle, matchbox and sealed it and sent to the Chemical Examiner for analysis and such report was received in which kerosene oil deducted in the article No.1, which is a green colour plastic bottle, but the same has not been found kerosene oil on the matchbox. He has also recorded the statement of the deceased lady Zubera with the permission of RMO in which **she complained against her husband who had burnt her** and at the pointation of the complainant Amjad Ali, the appellant was arrested from the Civil Hospital. During course of investigation, the appellant/accused disclosed that her wife asked him for large intestine (Ojri) which he could not get and brought tikka, upon which she became angry and was watching TV, then his daughter informed him that Mama has burnt herself and he put the water upon her to extinguish the fire. He has also recorded the statements of the neighbors and they informed him that they had seen flame of the fires the door was closed from inside and they had kicked the door which was opened after a while and saw Zubera was burnt and her husband was standing closed by and on 01.06.2015 Zubera was expired, he also sent articles to the Chemical Examiner. In cross-examination, he admitted that **“it is correct to suggest that brothers and sisters of the victim had stated that Hanif has killed his wife vol. says even victim has said it so”**.

13. According to the standard proof, required to convict a person on circumstantial evidence, the circumstances relied upon in support of the conviction must be fully established and chain of evidence furnished by the circumstances must be so complete as

not to leave any reasonable ground for the conclusion consistent with the innocence of the accused. The circumstances from which the conclusion of the guilt is to be drawn have not only to be fully established, but also that all the circumstances to establish should be of conclusive nature and consistent only with hypothesis of the guilt of the accused and should not be capable of being explained by any other hypothesis is accept the guilt of the accused and when all the circumstances cumulatively taken together should lead to the only irresistible conclusion that the accused alone is the perpetrator of the crime, wherein the prosecution has to provide all links in chain and unbroken one where it's one end touches the dead body while the other neck of the deceased. In this case, the relation of the appellant with the deceased was so aggressive as revealed from Ex.P/7 suit for dissolution of marriage, the behavior of the appellant was cruel and on the petty matters he used to torture, insult, disgrace and maltreated her and the same contentions are available in joint compromise, which was filed before the learned IInd Civil & Family Judge, Karachi Central, in which the defendant/appellant undertook that he will not maltreat, humiliate or torture the deceased/plaintiff. Furthermore, while preparing the memo of place of incident the I.O. has secured dew plastic bottle having kerosene oil along with Matchbox, picture further shows that two plastic bathing tubs (baltis) are present in the kitchen, but there is no smoke or burnt marks on the said bottle or baltis, even matchsticks are in live conditions. Picture further shows that no fresh colour paint is available on the walls to believe that the kerosene oil was available in the kitchen. The ocular account furnished by the witnesses also consistent with the medical evidence in which PW-5 Dr. Mubarak Ali examined the deceased Mst. Zubera and found 62% burnt and from the perusal of chart it shows that the entire body of the deceased was burnt, kind of weapon fire burn nature of injury dangerous to life, if it would be believed that due to mistaken of the deceased she put kerosene oil

in the teapot instead of water and due to nervousness the kerosene oil put on her cloth, at the most only front side of the body can burn not entire body, which is not believable. The plea taken by the appellant/accused that on the day of incident, he was present in the house and watching TV and went asleep while watching TV and woke up on the cries of his wife and went to kitchen and saw that his wife was on fire, he brought his wife from kitchen to veranda and put the water bucket over her, but his hands and clothes were not burnt to believe that the appellant has shifted the deceased from kitchen to veranda, the water bucket was available in the kitchen not in the veranda. He has also taken the plea that he has called Rani Aunty, but he has not produced her as his defense witness to support his version. Further, on the way, he has called Sidra and Rubina and informed them that her sister Zuberah had burnt but both witnesses deposed that her deceased sister called them. The plea was taken by the appellant in his statement recorded under section 340(2) Cr.P.C. which is inconsistent with the first statement given by the deceased Zuberah, as she claimed that she put the kerosene oil in teapot instead of water. The evidence collected by the I.O. finds corroboration from the ocular evidence along with circumstantial evidence coupled with medical evidence leads towards the end that the accused/appellant is a real culprit, who has set on fire deceased Mst. Zuberah resultantly she died during treatment.

14. The upshot of the above discussion is that the prosecution has successfully established its case against the appellant through circumstantial evidence, which is corroborated by the medical evidence and recovery. Learned counsel for the appellant has failed to point out any material illegality or serious infirmity committed by learned trial Court while passing the impugned judgment, which in our humble view, is based on an appreciation of the evidence and the same does not call for any interference by this Court. Thus, the conviction and sentence awarded to the

appellant by learned trial Court are hereby maintained and the instant appeal filed by the appellant was dismissed while passing short order dated 13.03.2019 and these are the reasons of the same.

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