

THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No. 506 of 2018

[Attaullah versus The State]

Appellant : Attaullah through Mr. Muhammad Farooq Advocate.

The State : Through Ms. Seema Zaidi, Deputy Prosecutor General, Sindh alongwith SIP, Ali Asghar.

Complainant : Haji Noor Muhammad in person.

Date of hearing : 05-12-2019

Date of decision : 24-02-2020

JUDGMENT

Adnan Iqbal Chaudhry J. - The Appellant was found guilty of the murder of Latif @ Sagar. Therefore, vide judgment dated 25-09-2018 passed by the learned Vth Additional Sessions Judge Karachi East in Sessions Case No. 2254/2015, the Appellant was convicted for the offence punishable under section 302(b) PPC and sentenced to imprisonment for life, and to pay compensation of Rs.100,000/- to the legal heirs of the deceased under section 544-A Cr.P.C; and on failure thereof to undergo a further simple imprisonment for six months.

2. The deceased Latif @ Sagar was the nephew of the Complainant Noor Muhammad, and the husband of Shabana. The events as narrated in FIR No. 212/2014 are as follows. A few months prior to the incident, Latif and Shabana had eloped to Punjab and got married. When they came back to Karachi, Shabana went to live with her family, and Latif went elsewhere. Shabana's brothers were furious over the marriage. On 04-10-2014, the Complainant, a resident of Rahim Yar Khan, was in Karachi to sell sacrificial animals at Sohrab Goth, when his nephew Imran came to him at 2:00 p.m. and informed him that one Shabana was on the phone and wanted to talk to the Complainant. Shabana informed the Complainant that

her brothers namely Attaullah (Appellant), Arshad and Rafiq had murdered Latif. After that Shabana came to the Complainant at Sohrab Goth and informed him that around 8:00 a.m. (on 04-10-2014) Latif had come to visit Shabana at her house; that at the time her mother was present but her brothers were away for slaughtering sacrificial animals on the occasion of Eid-ul-Azha of the Bohri community; that when her brothers came back around 11:30 a.m., Shabana sent Latif to the roof of the house but was seen by her brother Attaullah (Appellant) who got furious; armed with a knife, Attaullah wanted to go to the roof after Latif but was stopped by his brothers and mother; thereafter Shabana's three brothers and her mother went to the roof and started to talk to Latif while Shabana went to the washroom for a bath; when she came out she saw her brothers on the ground floor of the house, their hands, legs and clothes were stained with fresh blood; Shabana got scared and ran from the house and contacted the Complainant. Both the Complainant and Shabana then went to the Police Station to report the matter. The Police accompanied them to Shabana's house and on her pointation they discovered the dead body of Latif inside the washroom on the roof of Shabana's house. Latif's hands and legs were tied with a rope and his neck had been slit with a sharp-edged object. The dead body was eventually handed-over to the Complainant in the wee hours of 05-10-2014. FIR No. 212/2014 was lodged at P.S. Brigade, Karachi, at 13:30 hours on 05-10-2014 against Attaullah (Appellant), Arshad and Rafiq (Shabana's brothers) under sections 302 and 34 PPC for the murder of Latif.

3. The Appellant was arrested on 24-02-2016 (Exhibit 16/A). On interrogation he is said to have confessed that he and his brothers had murdered Latif. However, that remained an extra-judicial confession only. The charge-sheet nominated the Appellant Attaullah and his two brothers, Arshad and Rafiq, as accused. The latter two were declared absconders. Charge was framed against the Appellant on 23-01-2017 to which he pleaded not guilty.

4. At the trial, PW-1 Shabana (Exhibit 11) contradicted the FIR and the prosecution case. She deposed that on the morning of 04-10-2014 her husband, Latif, was present in her house sleeping on the roof; that her mother was not present; that her three brothers, Attaullah (Appellant), Arshad and Rafiq had gone for slaughtering sacrificial animals as it was Eid-ul-Azha of the Bhorī community; that she (Shabana) went to take a bath, but when she came out, Latif was not in the house; that she went out of the house in search of Latif; that when she could not find Latif, she contacted the Complainant for help and then went to meet the Complainant; that the Complainant accompanied her to the Police Station and the Police accompanied them to her house where they found Latif's dead body. She deposed that she had married Latif without the consent of her family; and that she did not know who had murdered Latif.

5. The trial Court permitted the DDPP to cross-examine PW Shabana as a hostile witness. On cross-examination by the DDPP, PW Shabana denied that her brothers were present in the house when Latif was murdered; and she denied telling the Complainant that her brothers had murdered Latif. On cross-examination by the Appellant's Counsel, PW Shabana agreed with the suggestions that Latif had been residing with her at her house for one month; that her brothers had accepted her marriage with Latif; that the Appellant was an air-conditioner mechanic and ran a repair shop in the locality; that the Appellant was training Latif in air-conditioning repairs and Latif used to accompany her brothers for such work; that Latif and his brother-in-law Younus were in business to sell sacrificial animals at Sohrab Goth for Eid-ul-Azha; that it was possible that someone murdered Latif for the money of such business; that Latif's murder had in fact been committed by the Complainant along with Jan Muhammad and Younus; and that the Appellant had been falsely implicated in the case by the Complainant.

6. PW-2 Noor Muhammad (Exhibit 12) was the Complainant. He was also witness to the discovery of the dead body. He deposed that he had come to Karachi from Rahim Yar Khan for selling sacrificial animals at the cattle market at Sohrab Goth; that about 09:00 to 09:30 hours on 04-10-2014 his nephew Imran brought his cell-phone and asked Noor Muhammad to take the call of Shabana who then informed him that her brothers had murdered Latif; that thereafter Shabana came for help to the Complainant at Sohrab Goth and the Complainant took her to the Police Station; that the Police accompanied them to Shabana's house where they reached around 13:00 hours; that Shabana pointed the Police to the roof where the dead body of Latif was found in the bathroom, hands and feet tied and the throat cut with a sharp weapon; and that the rope with which the deceased had been tied had been sealed by the Police in his presence. When the parcel of the rope was opened and shown to the Complainant, he stated that it was not the same rope, as the rope that had been seized by the Police was thicker and blood-stained, whereas the rope shown to him was thin and did not have blood stains. He stated that he had seen Shabana for the first time when she met him at Sohrab Goth; that he had never seen the brothers of Shabana and therefore could not identify the Appellant from before. On cross-examination by the Appellant's counsel he denied the suggestion that Latif was in the business of selling sacrificial animals or that he may have been murdered by someone over such business.

7. PW-3 SIP Munir Ahmed Siyal (Exhibit 13), who was the duty incharge at the Police Station on 04-10-2014, deposed that the Complainant along with PW Jan Muhammad and PW Shabana had arrived at the Police Station around 21:45 hours to report Latif's murder; that the Police accompanied them to Shabana's house; that PW Shabana went to the roof-top and pointed the Police towards the bathroom; that door of the bathroom was tied with a rope; that when the bathroom was opened, the dead body of Latif was found, his hands and feet tied with rope and his throat cut through; that the rope with which the deceased was tied was seized and sealed. On

cross examination he acknowledged that there was no blood stain on the rope that was produced in the Court.

8. PW-5 Jan Muhammad (Exhibit 15) was a fellow villager of the deceased and the Complainant and a companion of the Complainant. He was also witness to the discovery of the dead body. He deposed that he was with the Complainant when Shabana informed the Complainant over the phone that her brothers had murdered Latif; that he along with Imran and Younus had accompanied the Complainant to Al-Asif Square (at Sohrab Goth) where they met Shabana, who told them that her brothers had murdered Latif; that all of them then went to the Police Station to report the incident, and from there to Shabana's house with the Police; and that it was Shabana who informed the Police that Latif's body was on the roof. PW Jan Muhammad further stated that the site inspection by I.O. on 05-10-2014 was not conducted in his presence as he had left for Punjab with Latif's dead body; that the Police had secured the blood-stained rope with which Latif's body was tied; that the rope taken out of the parcel was not the same rope, as the one that had been secured was stained with blood.

9. PW-8 P.C. Shoukat Iqbal (Exhibit 19) and PW-9 SIP Ali Asghar (I.O. - Exhibit 23) gave evidence as to the recovery of the knives that were alleged to be the murder weapon. They deposed that that around 22:00 hours on 25-02-2016, the Appellant lead the Police to his house; the door was opened by his mother; the Appellant lead the Police to the place of occurrence, the washroom on the roof, and confessed to the murder; and that the Appellant then lead the Police to a storeroom on the ground floor to point to three knives wrapped in a shopper behind an iron box to disclose that after murdering Latif, he and his brothers cleaned the knives and hid them in the storeroom. On cross-examination PW SIP Ali Asghar acknowledged that the sketch of the murder weapon was not drawn on the back of the recovery memo. The memo of pointation of place of occurrence and seizure of the alleged murder weapon was produced as Exhibit 19-A. It is dated 25-02-2016 at 22:10 hours.

10. The Appellant was examined under section 342 Cr.P.C. (Exhibit 24). He denied the allegation against him. He stated that he was not present at the place and time of occurrence; that the knives, the alleged murder weapon, had been foisted on him by the Police; and he prayed to examine in his defense one Mst. Kausar w/o Ibrahim.

11. DW Kausar (Exhibit 25) claimed to be the Appellant's neighbor. She deposed that that her husband used to accompany the Appellant and his brothers for repairing air-conditioners; that on the day of the incident i.e., on 04-10-2014 at about 09:30/10:00 hours her husband had gone with the Appellant and his brothers for repairing air-conditioners; that she saw that about 22:00/22:30 hours Shabana had come to her (Shabana's) house with the Police; that Shabana took the Police to the upper floor of the house and pointed to the place where the dead body of Latif was found. Further, DW Kausar stated that her husband and the Appellant and his brothers came back from work around 23:00/23:30 hours and that is when she informed them of what she saw; that Latif had been residing with the Appellant and his brothers for two months and they were training him to repair air-conditioners. On cross-examination by the DDPP, DW Kausar admitted that on the day of the incident between 11:30 to 12:00 hours she did not know what happened at Shabana's house. On the question as to why her husband was not a witness for the defense, she stated that she had obtained *khula* from her husband.

12. Mr. Muhammad Farooq, learned counsel for the Appellant submitted that the murder was an unseen incident; that not even PW Shabana was an eye-witness; that all evidence against the Appellant was hearsay; that the Complainant's testimony was contradicted by Shabana's testimony; that there is no evidence that Latif was residing at Shabana's house or that he had come there on the day of the incident; that the knives alleged to be the murder weapon which were allegedly recovered after two years of the incident, had never been sent for forensic examination; that no

private witness was associated with the recovery of the knives; that the extra-judicial confession of the Appellant is of no evidentiary value; that both the Complainant and PW Jan Muhammad had deposed that the rope produced in Court was not the same rope with which the deceased had been tied; that no question had been put to the Appellant under section 342 Cr.P.C with regards to the said rope or with regards to the recovery of the alleged murder weapon, the knives; and that the prosecution's case is based on weak circumstantial evidence which does not meet the test laid down in *Hashim Qasim v. The State* (2017 SCMR 986).

13. Learned Deputy Prosecutor General submitted that the deposition of PW Shabana manifests that she is not a witness of the truth and that she had been won over by the Appellant who was her real brother; that all PWs except PW Shabana support the case of the prosecution; that even DW Kausar had deposed that she saw PW Shabana pointing out the place of the dead body to the Police; that the Appellant himself had pointed to the place of occurrence and to the place where the murder weapon was hidden; and that the motive of the murder was that the brothers of PW Shabana, including the Appellant, had murdered the victim for marrying their sister without their will.

14. Heard the learned counsel and appraised the evidence.

The murder of Latif was an unseen incident. Even PW Shabana was not an eye-witness. The case of the prosecution was built on circumstantial evidence and therefore the point for determination in this appeal is whether that circumstantial evidence had established the guilt of the Appellant beyond any doubt.

15. As discussed above, the star witness of the prosecution, PW Shabana was termed a hostile witness. She denied that the Appellant was present at the time and place of the incident. She denied having said to the Complainant that her brothers had committed the murder. Her testimony in fact goes to exonerate the Appellant. However, her evidence is clearly unreliable. On the one hand she

deposed that she went to see the Complainant for help when she could not find Latif in the house, and on the other hand when cross-examined by the Appellant's counsel she stated that it was the Complainant and his accomplices who had murdered Latif. As regards the testimony of PW Noor Muhammad (Complainant) and PW Jan Muhammad as to the incident, that is at best evidence of what was said to them by PW Shabana, and not evidence of the incident itself or the truth thereof.

16. Per the FIR, PW Noor Muhammad (Complainant) was informed of Latif's murder by PW Shabana over the phone around 14:00 hours. But in his deposition PW Noor Muhammad stated that he spoke to PW Shabana over the phone around 09:30 hours - even before the alleged time of the murder. On cross-examination, PW Noor Muhammad stated that he and his companions, including Shabana, reached the Police Station by 11:45 hours to report the incident, and then accompanied by the Police they reached Shabana's house by 13:00 hours to discover the dead body. PW Jan Muhammad, who accompanied the Complainant to the Police Station and then to Shabana's house, he deposed that they reached Shabana's house around 14:00 hours to discover the dead body. On the other hand, per the police diary at entry No.30 (Exhibit 13/D), and the deposition of PW SIP Munir Ahmed, the Complainant Noor Muhammad and Shabana had arrived at the Police Station between 21:45 and at 22:00 hours on 04-10-2014 to report the murder. Thus, if the version of the Police witnesses is correct, then there is no explanation as to the whereabouts and the activity of the private witnesses on the day of the incident between 11:45 and 22:00 hours i.e., a period of 10 hours from the time they purport to have known of Latif's murder till the time they went to the Police Station to report the matter.

17. Per the report of un-natural death (Exhibit 12/C), the dead body of Latif was discovered by the Police at 22:30 hours and blood was still oozing from the body. Per the deposition of the MLO (Exhibit 18) and the post mortem report (Exhibit 18/A), the dead

body was brought to the hospital around 23:45 hours. It was examined around 23:50 hours. Per the medical evidence, “the body was fresh and was not older than 7 to 8 hours”; “there was no sign of decomposition”; “blood was oozing out from neck”; “time between injury and death was 1 to 2 hours”; and “time between death and postmortem was approximately 2 to 3 hours”. Thus, as per the medical evidence, the death occurred between 20:50 and 21:50 hours and the injury causing the death was inflicted around 18:50 hours. Therefore, the case of the prosecution that Latif’s throat was slit around 11:30 hours is not supported by the medical evidence. Rather, the medical evidence suggests that the incident took place some-time in the evening of 04-10-2014 which would then explain the arrival of the reporting party at the Police Station around 22:00 hours. In other words, the events leading to Latif’s murder did not transpire in the manner the prosecution would like the Court to believe.

18. As regards the alleged murder weapon viz. the three knives alleged to have been recovered on the pointation of the Appellant, no private witness was associated with the recovery, nor was the Appellant confronted with such recovery/evidence while examining him under section 342 Cr.P.C. In any case, none of the knives were stained with blood, nor were those ever sent for forensic examination to prove that any of those were the murder weapon. The learned DPG had cited *Muhammad Nadeem v. The State* (2017 SCMR 872) to submit that the non-association of private witnesses to the recovery of the murder weapon was immaterial when such weapon was recovered on the pointation of the Appellant/accused. However, the *ratio decidendi* of *Muhammad Nadeem’s* case is that “The recovery of a crime weapon in a criminal case is not at all material. It can only be of supporting evidence. If other evidence goes to prove the case independently, recovery is not essential at all”. In that case, though the dagger recovered on the pointation of the accused was not stained with blood, but the accused had admitted in his statement under section 342 Cr.P.C that he had stabbed the deceased with the dagger, and in those circumstances the Supreme Court held that the fact that the dagger was not stained with blood had become

immaterial. In the instant case, the Appellant had never made any admission on examination under section 342 Cr.P.C. In fact, he had categorically stated that the knives had been foisted on him. Thus, the case of *Muhammad Nadeem* is of no help to the prosecution, rather the *ratio* of the case noted above supports the case of the Appellant.

19. The manner in which the investigation was carried out raises further questions as follows:

- (a) Per the memo of examination of the dead body (Exhibit 12/B), PW SIP Munir Ahmed Siyal had sealed the rope by which the deceased's body was tied. That seizure was witnessed by PW Noor Muhammad (Complainant) and PW Jan Muhammad. But that rope was never sent for forensic examination. When the parcel of the rope was opened in Court and the rope was shown to the said witness, both of them stated that it was not the same rope as the rope that had been seized was blood-stained, whereas the rope produced in Court was not. The missing blood-stained rope remained a mystery.
- (b) The place of occurrence was inspected by PW SIP Syed Zahid Hussain (Exhibit 14) the next day on 05-10-2014. Per the memo of inspection (Exhibit 12/F), blood-stained sand was taken from the spot and sealed. But strangely, the blood-stained sand along with the clothes of the deceased were not sent for chemical examination until 26-11-2014 (Exhibit 14/A and 14/B) i.e, after a delay of 50 days which delay remained unexplained.
- (c) Though the memo of site inspection (dated 05-10-2014) shows PW Jan Muhammad as a witness, but he denied that he was present at such inspection and stated that by that time he had already left for Punjab with the dead body of Latif. Thus the evidence of the Police witnesses was unreliable.

20. In *Hashim Qasim v. The State* (2017 SCMR 986), it has been reiterated that to place reliance on circumstantial evidence in cases

involving capital punishment, such evidence must be of the nature where all circumstances must be so inter-linked so as to make a single unbroken chain of which one end touches the dead body and the other the neck of the accused; and that a missing link in the chain would destroy the whole evidence and would render the same unreliable for recording a conviction on a capital charge. It was also held that even a single doubt, if found reasonable, would entitle the accused person to acquittal and it need not be a combination of several doubts.

In the instant case, there is no direct evidence that links the Appellant to the alleged crime, and as discussed in paras 16 to 19 above, the circumstantial evidence brought by the prosecution were scattered pieces of evidence which then raised further questions that remained unanswered and unexplained. Thus, the chain of circumstantial evidence between the crime and the Appellant had never formed. In the doubt that arises, it is unsafe to hold the Appellant guilty. Therefore, Criminal Appeal No. 506/2018 is allowed, the conviction and sentence passed in Sessions Case No. 2254/2015 arising from FIR No. 212/2014 is set-aside and the Appellant is acquitted of the charge. He shall be released from prison unless required in any other case.

JUDGE

KARACHI
DATED: 24-02-2020