

**IN THE HIGH COURT OF SINDH AT KARACHI****Criminal Jail Appeal No. 563 of 2017**

Appellant : Muhammad Hussain  
through Ms. Sadia Khatoon, Advocate

Respondent : The State  
through Mr. Zahoor Shah, DPG

**JUDGMENT**

**Omar Sial, J.:** On 17-6-2012, S.I. Mohammad Anwar was the duty officer at the Khokhrapar police station when he received information from the residents of Madina Colony that House No. 327 was locked from the outside and that a foul smell was coming from inside the house. The S.I. reached the spot, broke open the lock of the house and discovered that there was a hole in the courtyard of the house in which a dead body of a woman wrapped in a white sheet was lying. The dead body was identified by the residents of the area as being that of Rubina wife of Mohammad Hussain. F.I.R. No. 82 of 2012 was registered the same day on the complaint of Malik Mohammad Riaz, who was the father of the deceased Rubina, and who nominated his son-in-law Mohammad Hussain (the appellant) as having strangulated Rubina to death. The appellant was arrested the next day i.e. 18-6-2012 from the same neighborhood on the information received by the police from the complainant. On 21-6-2012, the appellant while in custody confessed his guilt and further led the police to a graveyard from where some belongings of the deceased were recovered upon the identification of the appellant.

2. The appellant pleaded not guilty to the charge of murder of his wife and claimed trial.
3. In order to prove its case the prosecution examined S.I. Mohammad Hussain as its first witness. He basically narrated the contents of the F.I.R. and some other preliminary steps which he took prior to the registration of F.I.R.
4. The complainant Malik Mohammad Riaz died before he could be examined. Tanweer Ahmed, another son-in-law of the complainant, and a witness to the various memos made by the investigating officer, was examined as the second prosecution witness. Tanweer could not clearly establish his actual residential address. He admitted

that he had given different residential addresses in the two statements he had given to the police. While he was a witness to the memo of inspection of the place of incident prepared by S.I. Mohammad Hussain, he could not remember the house number from where the body was found. Tanweer was also a witness to the memo of arrest of the appellant prepared on the spot on 18-6-2012 at 12:15 p.m. by S.I. Manzoor Hussain Solangi. At trial, Tanweer testified, in contradiction to the memo, that the appellant was arrested at 1:30 p.m. or 2:00 p.m (while the memo records the time of arrest as 12:15 p.m.) and that he was not aware whether the investigating officer prepared any document at the time of the arrest of the appellant. Tanweer was also a witness to the supposed recovery of articles on the pointation of the appellant from a graveyard. He however categorically admitted at trial that the documentation in connection with the recovery was made by the investigating officer at the police station. He retracted then and stated that partially the documentation was made on the spot and partially in the police station. While Tanweer testified that he alone had gone with the police at the time of recovery, when confronted with the sealed parcel of the recovered property at trial, he stated that perhaps the other signature on the parcel (apart from his own) were that of the complainant.

5. Mohammad Zahid, examined as the third prosecution witness, was a witness to the memo of inspection of the dead body prepared by S.I. Mohammad Hussain when the body was discovered. Zahid testified that he was the next door neighbor of the deceased and that on 16-6-2012, the appellant came to him to ask for an instrument to dig earth and returned the same to him after some time. Quite surprisingly, Zahid could not remember the address of his own house at trial.

6. S.I. Manzoor Hussain was examined as the fourth prosecution witness. He was the investigating officer of the case. At trial he testified that he had gone to inspect the place of incident on 22-6-2012, although the official record shows that the date of inspection as 17-6-2012. Perhaps he meant the date when he had gone for the purpose of recovery, although that too was on 21-6-2012. He could not remember the time he had gone for the inspection and also failed to produce a departure entry for the same. He testified that he had left his police station along with the accused at 1315 hours, however the memo he prepared showing recovery records that he left the police station at 1645 hours. He could not remember which part of the graveyard the recovery was made from. While in his examination in chief, this witness ostensibly gave specific details of the items recovered from the graveyard, in his cross examination he expressed his inability to repeat details of even the amount of cash which was recovered. It

appears that the learned trial court on its own has listed the details of the recovered property in the examination in chief of this witness without the witness having narrated the details. Manzoor was unable to recall even the address of the house from where the body was discovered and which he had subsequently inspected. He admitted though that one of the witnesses to the inquest report, a man called Zahid (who was also examined as a prosecution witness) was shown to have the same address as the house from where the body was recovered. He admitted that the address of prosecution witness Tanweer, as given by Tanweer himself was that of Malir and not of the area where he claimed he lived i.e. Madina Colony.

7. Dr. Fareeda, the woman medical legal officer at the Jinnah Hospital, was examined as the fifth prosecution witness. She conducted the post mortem of the dead body. She admitted that she had given the cause of death as "airway obstruction" but that it was a preliminary view and that it had been reserved for chemical analysis. The final report was not exhibited at trial.

8. The appellant in his section 342 Cr.P.C statement denied that he killed Rubina. He stated that he had married her with his own choice and that it was her own relatives who were unhappy with her for having married him.

9. The learned 6<sup>th</sup> Additional Sessions Judge, Karachi East on 28-9-2017 announced his judgment in terms of which he convicted the appellant under section 302(b) P.P.C. and sentenced him to life imprisonment and payment of compensation amounting to Rs. 100,000 or to undergo another period of six months imprisonment in default. It is this judgment that has been impugned by the appellant in these proceedings.

10. I have heard the learned counsel for the appellant as well as the learned D.P.G and have examined the record with their able assistance. None appeared on behalf of the complainant party despite notice. My observations are as follows.

- (i) The fact that the address from where the dead body was found, belonged or was occupied by the appellant was not established at trial. To the contrary, the record reveals that the address was given as the residential address of prosecution witness Zahid. He was the one person who claimed that the appellant lived in that house but he himself could not recall the address of his own house. The investigating officer S.I. Manzoor could not remember the address of the house as well. S.I. Ameen who had first reached the place of incident testified that it was one room with a courtyard and an iron gate.

To the contrary the investigating officer of the case testified that the house consisted of two rooms on the ground floor and a room on the first floor.

- (ii) The evidence led by the prosecution suggests that at least the memo of arrest and the memo of recovery, if not all the memos, were not prepared on the spot but at a later time at the police station. Whether the persons who are shown as witnesses to the memo were actually present when the memos were being made is also doubtful. The memo of recovery is signed by prosecution witness Tanweer and Malik Mohammad Riaz, however, Tanweer testified that he had gone alone for the recovery with the police. While Tanweer in one breath testified that the appellant confessed in front of himself and the complainant and also agreed to point out where he had hid the items belonging to Rubina and had then led the complainant, himself and the police to the place of recovery, in the other breath he stated that he had gone alone with the police to the place of recovery. Tanweer further could not also specifically state that complainant was present with him in the graveyard, although the complainant's signatures are found on the parcel containing the recovered items. Tanweer admitted that the memo of recovery was made at the police station. Tanweer testified that the recovery was made after digging the earth in the graveyard whereas the memo of recovery records that it was made from behind a stone in the wall. The memo of inspection of the place of incident prepared by the investigating officer Manzoor, shows the same as being prepared at 1300 hours on 17.6.2012. This is rather unusual as the F.I.R was registered at 1410 hours on 17-6-2012 and Manzoor had not been assigned the investigation when he is said to have conducted the inspection.
- (iii) It was alleged by the prosecution that Rubina died due to strangulation. Prosecution witness Tanweer testified that the appellant had confessed at the police station before him and the complainant that he had strangled Rubina. This assertion does not find support in the medical evidence which was produced at trial, in which Dr. Fareeda testified that there were no injury marks on the neck of the deceased and that it was in normal anatomical alignment.

- (iv) There was no motive given for the appellant to kill a woman who he had married after falling in love with. This was the second marriage for the deceased. The only evidence led at trial was that the couple used to quarrel. Only one witness Zahid, who claimed to be their neighbor, testified to the sounds of quarrel. Zahid's own testimony is far from convincing. When put in juxtaposition with the statement of the appellant in his section 342 Cr.P.C. statement, it is the latter that inspires more confidence and reflects the truth.
  
- (v) I find it unnatural conduct that the appellant would kill his wife and leave her dead body in his own house whereas he would take her valuables and bury them intact in a graveyard without destroying them. It simply does not appeal to logic that he would bury cash in the graveyard when he could have easily used up that cash. It appears that the deceased Rubina was a lady of limited means, how she could conjure up the property that has been attributed to her is also rather confusing. Seven different identity cards and a mobile phone with its SIM intact were also found from the stash. The investigating officer however did not even know at trial that a SIM had been found let alone make any effort to investigate the leads which had been discovered from the recovered stash. I also find it unnatural conduct that the appellant after having committed the murder of his wife and leaving the dead body in his own house, instead of trying to go underground would be standing on the roundabout next to his house the very next day. It appears that the entire story about the recovery and circumstances of arrest has been conjured up by the prosecution witnesses.
  
- (vi) Rubina's body was said to have been sent to the hospital on an ambulance. From the hospital the body was sent to the Edhi cold storage. The memo produced by S.I. Ameen very visibly shows that the name of the person taking the body from the hospital to the morgue, as well as the number of the ambulance, have been changed on it. The entire prosecution case is silent why the body was sent to the cold storage. There is no record of the burial of the body.
  
- (vii) The learned trial court has not been careful enough in recording evidence as far as the items of recovery are concerned. It appears that a list of the items

has been made and the same list has been pasted for both witnesses Tanweer and Manzoor Hussain, the only two testifying to what was recovered. Such a practice has the potential to adversely impact the case of one side. In the current case, it is remarkable that though in the examination in chief, Manzoor has listed the recovered items with great detail in his cross examination, he draws a complete blank as to what was recovered. The learned trial court should be careful in future in this regard and ensure that evidence is led in strictly in accordance with law, in particular the Qanun-e-Shahadat Order 1984 and the Criminal Procedure Code.

- (viii) An unseen murder; the only evidence being available against the appellant was his extra judicial confession followed by recovery of the belongings of Rubina, however, the recovery is doubtful; dishonest witnesses; disparity between witness testimonies on the most basic facts; memos being made by the police at the station; disparity in the description of the house between the witnesses; lack of evidence that the house belonged to the appellant; strangulation being given as a cause of death but the medical report not supporting it; motive not being proved; unnatural conduct on the part of the appellant in connection with leaving the body at home but storing the valuables of the deceased as well as roaming around in the same area the very next day after having killed his wife; different versions as to where the recovery was effected from; disparity in time as recorded on documents and as testified at trial; no recovery of the crime weapon; non-production of the utensil that the appellant borrowed from Zahid and used to dig a hole in his house; a defence version that sounds more plausible; incompetent, incomplete and weak investigation – are all factors which make me form the view that there was sufficient doubt in the prosecution case. The prosecution was unable to prove its case beyond reasonable doubt. The benefit of such doubt should have gone to the appellant in accordance with well established principles of law.
- (ix) In view of the above, the appeal is allowed and the appellant is acquitted of the charge. He may be released forthwith if not required in any other custody case.

JUDGE

