

**IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Appeal No. 598 of 2018

Appellants : Saeed Nawaz & Lal Qadir  
through M/s. Ajab Khan Khattak and Mr. Munir  
Ahmed Gilal, Advocates

Respondent : The State  
Through Mr. Siraj Ali Khan Chandio, Addl.P.G.

**JUDGMENT**

Omar Sial, J: Saeed Nawaz and Lal Qadir, the appellants, have impugned a judgment dated 3-11-2018 passed by the learned 3<sup>rd</sup> Additional Sessions Judge, Malir, Karachi. In terms of the said judgment, the appellants were convicted for an offence punishable under section 302(b) P.P.C. and sentenced to suffer rigorous imprisonment for life and to pay Rs. 500,000 as compensation to the legal heirs of the deceased (or suffer a further period of simple imprisonment of six months in default).

2. What transpired in this case is vague and the details immensely sketchy. However, what is understood from the testimony of Raja Muhammad Abbas is that a police party led by him while on normal patrol duty on **27-10-2016** received information that a couple had been secretly murdered by the girl's father named Mehboob Ali and that their bodies were buried in the Zafar Town graveyard. He was also told that the murderer was present in Madina Town. The police party reached the identified spot and arrested the persons who were present there – they were; (i) Saeed Nawaz (ii) Sarfraz Khan (iii) Umar Nawaz (iv) Lal Qadir and (v) Hidayatullah.

3. During interrogation, Raja Muhammad Abbas was told by Saeed Nawaz that the deceased girl, Irfana, was his sister and while being married to Nizam, she had an extra marital affair and subsequently eloped with Azmat, who too was married to Ruqaya at that time. About three years later, Azmat's brother named Shoukat had told Saeed Nawaz that he could tell him where the couple was living. On getting to know the whereabouts of the couple, Saeed Nawaz along with Nizam, Arshad, Umar Nawaz and Lal Qadir went there and held jirga. It was decided that as the couple had dishonored their respective families they should

be killed. Consequently, he (i.e. Saeed Nawaz) along with Nizam and Arshad strangulated and killed Irfana. After killing Irfana they took Azmat to Hashim Gardens and also killed him. Upon the disclosure made by Saeed Nawaz, all the accused were arrested and Raja Abbas lodged F.I.R. No. 487 of 2016 under sections 302, 201, 202, 109 and 34 P.P.C. at 1215 p.m. on 27-10-2016.

4. The accused all pleaded not guilty and claimed trial. The prosecution examined nine witnesses at trial. In order to prove its case the prosecution examined **Zareen Jalal** (the father of the deceased Azmat) as its first witness. He testified that on 25-10-2016, 9 persons had come and had taken Azmat away with them by telling him that a jirga will be held to determine as to why Irfana had run away with Azmat. He could however identify only 2 of the 9 i.e. Lal Qadir and Zainullah. According to his testimony he was later told by Lal Qadir that a jirga could not be held but that they had killed the couple in any case and that Zareen could go and pick up their bodies from Hashim Gardens. Zareen Jalal's testimony was not confidence inspiring. Apart from the fact that most of his testimony is mere hearsay, it is all at odds with the contents of an application purportedly written by him to the Shah Latif Town police station on 26-10-2016, in which he had specifically named, Irfana's ex-husband Nizam, Shado, Qadir, Faraz, Dado, Umar, Shazia and Zano as the people who had taken away Azmat earlier. He also wrote to the SHO that it was he (Zareen Jalal) who had buried Azmat after he was killed.

5. The second witness who testified at trial was **Marooba Jan**. She was Irfana's mother. She categorically stated at trial that none of the accused were responsible for the murder of her daughter nor of Azmat and that they were innocent.

6. **Ruqaya**, the first wife of Azmat, was examined as the third prosecution witness. She stated that all the accused were innocent and that in actuality it was Azmat's brother Shoukat, Meer Jalal and Zareen Jalal, who had taken away the couple and who were also responsible for their murders.

7. **PC Mohammad Imran**, who was a member of the police party under Raja Abbas, was examined as the fourth prosecution witness. He was also witness to the arrest of the accused. However, the names of the persons who he said the police party had arrested were partially different from the names of those who

Raja Abbas said were arrested by the police that night. He could not identify the accused at trial by their respective names. His statement was recorded under section 161 Cr.P.C. "10 or 11" days after the incident. No reason was given as to why the delay took place. The delay however adds more doubt to the sketchy details of as to who, how and when was arrested by the police in this crime.

8. **Raja Mohammad Abbas**, the head of the police party that arrested the accused was examined as the fifth prosecution witness. He admitted at trial that he had neither produced Saeed Nawaz to record his confession before a magistrate nor had he reduced into writing what Saeed had told him. He admitted that Shoukat, who was Azmat's brother, had informed him of the murders and that Shoukat too was an accused in the case. He also testified that Saeed Nawaz had not disclosed any specific roles of the accused and that none from the family or friends of the deceased had complained about the incident for 3 years. Raja Abbas attempted to hide the fact that FIR No. 362 of 2017 had already been registered for the same incident by Mehboob Khan (father of Irfana) in which Zareen Gul, Shaukat and Mushtaque had been nominated by him. Raja's credibility is doubtful.

9. **Mushtaque Khan**, who was Azmat's brother, claimed to be an eye witness. He admitted that it was he who had buried Azmat after he had been killed but that he or his father (Zareen Jalal) had not informed anybody. He also admitted that he nor his family had made a complain ever that Azmat and Irfana had been kidnapped. Mushtaque's assertion that "we were seeing the murder of my brother from a distance. I do not know that the above fact is not mentioned in my statement under section 161 Cr.P.C." He also confirmed that though he had told the police that the accused had taken him to Hashim Garden on gunpoint, the investigating officer did not write this fact in his section 161 Cr.P.C. statement. He too admitted that he had given no specific role of any of the accused in his 161 Cr.P.C. statement. In view of the fact that Mushtaque made material improvements in his testimony compared to what he had told the police in the first instance, I do not find Mushtaque's testimony confidence inspiring.

10. **Dr. Qarar Ahmed Abbasi**, prosecution's seventh witness, conducted the post mortem on the bodies after they had been exhumed. The medical board had

declared that the Azmat and Irfana had died due to asphyxia resulting in cardio respiratory failure.

11. **Shoukat**, Azmat's brother and prosecution's eighth witness, testified on similar lines his other brother Mushtaque. He did state though that it was not he who had identified the place where Azmat and Irfana were living, as had been claimed in the F.I.R.

12. The ninth prosecution witness was the investigating officer of the case, **Inspector Irshad Ali Baloch**. Baloch negated Shoukat's assertion that it was not Shoukat who had identified to the accused the whereabouts of Azmat and Irfana. He could not explain as to how Shoukat, who was one of the accused, turned into a witness in this case. He admitted that he had not investigated the claim that the deceased couple had been brought from Banaras to the place where they were said to have been murdered nor that he made any effort to record a confessional statement of Saeed Nawaz nor did he prepare a sketch of Hashim Garden where the killing allegedly took place. He admitted that the mother of Irfana had earlier lodged an F.I.R. against Zareen Jalal and his family in the same case however he could not produce a copy of the same at trial; that no evidence of the kidnapping of Irfana had come up in his investigation; that the rope with which the strangulation occurred was not sent by him for forensics; he admitted that in the challan he filed he had stated that it was Nizam (Irfana's ex-husband) and one Irshad who were the main culprits; he also admitted that he had not recorded the statement of anybody connected with Hashim Garden nor of the places of work of Shoukat and Mushtaque; he admitted that Shoukat had not told him in his section 161 Cr.P.C. statement that he was forcibly taken to Hashim Garden; he admitted that he had not recorded the statement of Mushtaque under section 161 Cr.p.C. because Mushtaque (contrary to what he testified) was a cleaner in a bus; that he had not collected any call data record to determine where the accused were at the time of the alleged murders; he admitted that none of the accused had a criminal record.

13. The accused in their section 342 Cr.P.C. statements pleaded innocence.

14. I have heard the learned counsel for the appellants and the learned Addl.P.G. My findings are as follows:

15. I am not satisfied that the prosecution was able to prove its case beyond reasonable doubt, primarily for the following reasons:

- (i) There is no eye witness to the case.
- (ii) The circumstantial evidence is vague and sketchy.
- (iii) Two of the prosecution witnesses categorically testified that the accused were innocent, they were not declared hostile by the prosecution.
- (iv) The credibility of Zareen Jalal, Mushtaque and Shoukat is doubtful. they also have made material improvements in their statements. Mushtaque's section 161 Cr.P.C. statement was not recorded as per the investigating officer. Neither are their testimonies confidence inspiring nor do they appear to be true.
- (v) Absolutely no meaningful investigation has been conducted. Why were accused turned into witnesses without any reason being assigned or any tender of pardon remains a mystery. The couple was indeed murdered. However, the investigating officer of the case did not determine the true facts of the case and as a consequence massive doubt was created as to who were the murderers.
- (vi) The witnesses contradict each other.
- (vii) On exactly the same set of evidence, apart from Saeed Nawaz and Lal Qadir all other accused were acquitted.

16. In view of the above, the appeal is allowed and the appellants acquitted of the charge. They may be released forthwith if not required in any other case.

JUDGE