

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No. 416 of 2019

Appellant : Faizain Ali  
through Mr. Salahuddin Chandio, Advocate

Respondent : The State  
through Mr. Talib Ali Memon, A.P.G.

Date of hearing : 8<sup>th</sup> November, 2022

### JUDGMENT

**Omar Sial, J.:** On 27.03.2015, Muhammad Asif left his house at about 8:00 p.m. to buy something for himself, but when he did not return till late at night, his family got concerned. All efforts to contact Asif on his phone were futile as it was powered off. At 11:00 p.m., Asif's brother, Mohammad Yousuf ("**Yousuf**") received a phone call informing him that Asif had been found dead in the premises of the Sunday Bazaar. F.I.R. No. 162 of 2015 was registered under sections 302 and 34 P.P.C. at 7:35 p.m. on 28.03.2015 against unknown persons.

2. According to Yousuf, about 20 days later he received a phone call from the Zaman Town police station informing him that Asif's murderer had been arrested. When he went to the police station, Yousuf saw Faizan in custody. Faizan was already known to Yousuf as being Asif's friend; a friend who was not in Yousuf's good books. According to the police, when Faizan was arrested, the phone of the deceased along with the keys of the motorcycle of the deceased were found in his possession. Faizan confessed to the murder and said that he had killed Asif in an intoxicated state. Subsequently, Faizan led the police to the place where he had murdered Asif and a knife was also recovered on his pointation from the ground of the Sunday Bazaar.

3. Faizan pleaded not guilty to the charge of murdering Faizan and claimed trial. At trial the prosecution examined 5 witnesses to prove its case. **PW-1 was Mohammad Yousuf**, the complainant. **PW-2 was Anis Ahmed**, a relative of the complainant who had accompanied him to the place where the murder was said

to have been committed and then to the police station. **PW-3 was S.I. Mohammad Safdar**, the police officer who received the information of a dead body lying in the Sunday Bazaar and was the first responder. **PW-4 Dr. Ejaz Ahmed**, was the doctor who conducted the post mortem. **PW-5 S.I. Yousuf Naimat** was the investigating officer of the case. Faizan professed innocence in his section 342 Cr.P.C. statement and denied all wrong doing.

4. The learned 5<sup>th</sup> Additional Sessions Judge, Karachi East on 03.07.2019 found Faizan guilty of an offence punishable under section 302(b) P.P.C. and sentenced him to a life in prison as well as pay a Rs. 100,000 compensation to the legal heirs of the deceased. It is this judgment which has been appealed against.

5. I have heard the learned counsel for the appellant as well as the learned APG. A number of notices were issued to the complainant, however, he did not effect an appearance. For the sake of brevity, the arguments of the counsel are not being reproduced but are reflected in my observations and findings below.

6. One observation which is glaringly made by simply reading the evidence is that the police was dishonest in this investigation. Malafide on their part was obvious. My reasons for concluding so are highlighted in this opinion.

#### F.I.R.

7. The F.I.R. makes it appear as after receiving information of the murder, Yousuf along with his relatives reached the place where the body was lying, he saw the injuries on the body of the deceased as it lay at the spot, after which the police came to the spot, did its preliminary investigation and then shifted the body to the hospital for post mortem. This was not true. Both, Yousuf and Anis, testified that when they had reached the ground after receiving the information that Asif had been killed, the body was not there as the police had already taken it away. Not only that, Anis also told the court that after going to the ground and finding out that the body had been taken away, they then went to the police station, where too, the body was not present. It was through a photograph shown to them that they recognized Asif. Yousuf had returned home after that, whereas, Anis went to the morgue where he saw the dead body. This was the first dishonesty of the police raising suspicion whether the murder of Asif had happened in the manner the police said that it had.

### Arrest

8. There was a memo prepared by the investigating officer that recorded that Faizan was arrested on 17.04.2015 after he led the police to where he had killed Asif and then where he hid the crime weapon. Once again this was not true. The very memo dated 17.04.2015 in itself records that Faizan was being interrogated in F.I.R. No. 162 of 2015 when during interrogation he confessed that he had murdered Asif and then the discoveries were made, after which he was arrested. If that was the case then what was S.I. Naimat doing with Faizan in the lock up being interrogated without having earlier been arrested? It was not explained at trial. It appears that Faizan was in illegal custody of the police when the police claim that he confessed to the murder. It also reflects that Asif had gone missing earlier and not on 27.03.2015 as stated in the F.I.R., which as mentioned above, appears to have been written by the police at its own whims. This also ties up with Yousuf's testimony, who in his examination in chief said that he did not remember the date or the month when Asif had gone missing; but, in his cross examination he did say that Asif had actually gone missing on 23.03.2015. That would be more than a month before the police claims the body was found and more than a month before, what was recorded in the F.I.R. Yousuf did acknowledge that till the dead body was ostensibly found, he had not informed the police or as a matter of fact anybody that Asif was missing. It was not natural behavior that Yousuf for one month would not inform anybody that his brother had disappeared. It also creates doubt as to whether the remaining prosecution story was even true.

### Recovery from the appellant at the time of arrest

9. Yousuf recorded at trial that when he had gone to the police station "20 or 22 days" after the police told him that the murderer of his brother had been arrested and he saw Faizan in custody, the police told him that the mobile phone of the deceased and the keys of the deceased's motorcycle had been recovered from him. While how Faizan was arrested remained shrouded in mystery, it seems that the mobile phone and the keys were the 2 items which may have been the reasons for the police to conclude that Faizan was the culprit. Be that as it may, this claim of the police is in itself extremely suspicious and doubtful. According to the papers made by the police the phone was recovered on the pointation of Faizan while he was in custody. This was made on 20.04.2015 i.e.

after the date when the police said that the knife was recovered on Faizan's pointation. The memo records that while making the recovery of the phone from Faizan's house, it was Yousuf the complainant, who had identified the phone as that of Faizan's. This was yet another lie. Yousuf, as stated above, said at trial that when he saw Faizan for the first time in the police station, the police had told him that the phone and the motorcycle keys had been found from Faizan. In fact, Yousuf at trial, quite categorically stated that *"I do not know the location of the house of the present accused. It is also correct that I have never gone to house of present accused."*; and then again, *"it is correct that the mobile phone of my deceased brother was not recovered in my presence"*. Another odd thing about the so called recovery was that Faizan, although said to have parked the motorcycle of the deceased at a place he could not remember, yet bothered to bring back the keys of the motorcycle to his house and preserve them. To give Yousuf credit, in his examination in chief he conceded that the police had taken signatures from him on papers of whose contents he had no knowledge as he was illiterate. He also conceded that he did not know what had been written in the memo which he had signed as a witness. These 2 pieces of evidence seem to have been created by the investigating officer to bolster up his case. Faizan's stance in his section 342 Cr.P.C. statement that the phone was not recovered on his pointation and that the same was foisted upon him appears to be correct.

#### Recovery of the murder weapon

10. Memo dated 17.04.2015 records that during interrogation Faizan agreed that he will not only show the place where he murdered Asif but that he would also take the police to the place where he had thrown away the knife which he had used to kill Asif. He then took the police to some steps in a stadium near the Sunday Bazaar where some blood was also found. It would be reasonable to assume that a person who had his throat slit would have excessively bled on the spot. This did not appear to be the case. He then took the police to a garbage dump nearby from where the knife was recovered. The knife was ostensibly blood stained and sealed on the spot. This appears to be doubtful too. The knife was admittedly recovered from an open place in a playground where children were even playing cricket – Yousuf testifying, *"It is correct that people use to access place of recovery of crime weapon as it is an open place."* Yousuf, at trial, said that the knife that was recovered on the pointation of Faizan was stained

with blood, however, admitted that the knife produced at trial had no blood stains on it – *“At the time of recovery of churri, it was stained with blood, but the churi present in court does not have any blood stain on it.”* The memo of recovery shows Yousuf and his uncle Munawar Khan, as witnesses to the recovery. Police dishonesty is exposed yet again when Yousuf, at trial, admitted that Munawar had not even accompanied them to the place of incident. He also acknowledged at trial that the memo of recovery was not read over to him by the investigating officer. Munawar was dropped as a witness by the prosecution on the ground that he had been won over by the defence. I also find it absolutely unbelievable that the knife lay in the place where it is said to have been recovered from for about 20 days and, though the photos taken depict hardly any garbage lying there at the time of recovery, no body took it away from there. Even the garbage collection and disposal staff seem to have taken all other garbage away but chose to leave the knife as it was.

#### Place of incident

11. Whether the incident occurred in the place as the prosecution claimed was also doubtful. It records that on 29.03.2015 the place was inspected and that this was the place where the deceased had been stabbed on his throat, chest and wrist. Blood should have been splattered everywhere on the scene; however this does not appear to be the case. This was also not the spot from where the police had allegedly collected the body initially. A sample of blood was still collected from the cemented steps of a “stadium” – investigating officer testifying at trial that “it is correct that the place of incident is a cemented place.” How then did he collect blood stained mud from cemented stairs was a question that remained unanswered. As mentioned above, Munawar and Yousuf were shown as a witness to the blood collection but Yousuf had admitted that Munawar was not with them and he denied that he had ever pointed out the place of incident to the investigating officer, as is recorded in the memo. Yousuf also testified that he had no idea on whose pointation the investigating officer had prepared the sketch of the place of incident. Police dishonesty is revealed yet again. PW-3 Muhammad Safdar lied in his testimony when he said that he had inspected the dead body at the place of incident and also prepared the memo of inspection of dead body on the spot. This was not true. The memo was witnessed by PW-2 Anis Ahmed, who had trial said that he was not on the spot and that the body had

been taken away from the place of incident when he had arrived. The sample of blood ostensibly collected from the spot was admittedly not sent for analysis till one month later, though the knife was sent after 11 days.

Conclusion

12. In view of the above highlighted dishonesty of the investigation officer, considerable doubt about the veracity of the prosecution case crept in. S.I. Yousuf Naimat has solely destroyed the prosecution case. The Inspector General of Police, Sindh is directed to look into the conduct and investigations of S.I. Yousuf Naimat, if he is still in service, and determine whether he should be given such investigations to conduct.

13. The appeal is allowed. The appellant is acquitted of the charge. He may be released forthwith if not required in any other custody case.

**JUDGE**