

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 392 of 2017

Appellant : Asees Ahmed  
through Syed Amir Ali Shah, Advocate

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

Date of hearing : 14<sup>th</sup> November, 2022

### JUDGMENT

**Omar Sial, J:** A 21 year old pregnant girl by the name of Mehak Ali was found dead inside her home on 11.07.2016. According to her husband, Asees, and her father Nadeem, (Mehak was living at the time with the two of them) Mehak had committed suicide by hanging herself. To the contrary, Mehak's mother, a lady by the name of **Zaibunissa (PW-1)**, claimed that Asees had strangled Mehak to death. F.I.R. No. 156 of 2016 was registered under section 302 P.P.C. at the Malir City police station on 12.07.2016.

2. **Dr. Nasreen Qamar (PW-5)** conducted the post mortem of the deceased at the Jinnah Hospital on 12.07.2016. The dead body was also examined by **A.S.I. Moinullah Hashmi (PW-6)** on 12.07.2016 in the presence of 2 witnesses named Laiq Ahmed and Rameez Ahmed. The policeman observed slight strangulation marks on the deceased's neck. The scene of the crime was examined by **S.I. Shahid Mehmood (PW-7)** on 12.07.2016 in the presence of the complainant Zaibunissa and one **Sajjad Ahmed (PW-4)**. Asees was arrested on 13.07.2016 by S.I. Shahid Mehmood on the pointation of Zaibunissa as well as in her presence and in the presence of **Zakir Hussain (PW-3)**.

3. In his section 342 Cr.P.C. statement the appellant denied all wrong doing and further stated that the reason for the false implication was that

Mehak had married him against the wishes of Zaibunissa. He acknowledged that Mehak was 2 month pregnant when she died.

4. At the end of the trial, the learned 3<sup>rd</sup> Additional Sessions Judge, Malir found the accused guilty and sentenced him to a life in prison and also pay Rs. 200,000 as fine. If he did not pay the fine he would have to spend a further 6 months in prison. The error that has crept into the impugned judgment is that the learned judge did not specify as to under what sub-section of section 302 P.P.C. was the appellant convicted and sentenced. It however appears from the language used by the learned trial judge in the sentencing portion of the judgment that he intended to convict and sentence under section 302(b) P.P.C.

5. Learned counsel for the appellant has argued that this was a case of no evidence. He submitted that though it was alleged that the appellant mistreated Mehak and tortured her, it was confirmed at trial that no violence or torture marks were seen on the dead body and that the medical evidence also did not support the ocular version. He finally argued that he would be satisfied if the sentence of the appellant was reduced to the one already undergone by him. Learned APG, to the contrary, has argued that Mehak was the appellant's wife and that she was 24 weeks pregnant when she died. He submitted that even if Mehak had committed suicide by hanging herself, the appellant cannot be absolved of his liability as the only conclusion one can reach is that appellant's behavior was what drove Mehak to commit suicide. He did however record that he would not have an objection if the sentence is treated as undergone. None effected an appearance on behalf of the complainant in spite of notice. I have heard the counsels and reviewed the record. My observations and findings are as follows.

6. Zaibunissa was **Nadeem Muhammad's (PW-2)** ex-wife and Mehak was their daughter. Mehak at the time of her death was living with her husband Asees. She claimed at trial that she had seen torture marks on the body of the deceased and that the deceased was 24 weeks pregnant at the

time of her death. Her testimony revealed that Mehak was earlier married to one Imran and that she had divorced Imran and married Asees subsequently. Zaibunissa's permission for the divorce and subsequent remarriage was not obtained by Mehak and that both these steps taken by Mehak were against the wishes of Zaibunissa. Zaibunissa acknowledged at trial that she had not met Mehak since as the two were not on talking terms. She said at trial that there were marks of violence on Mehak's hands, legs and other parts of her body. Her allegation was negated by Dr. Nasreen Qamar, who testified at trial that apart from the neck, there were no other external injuries on the dead body. The doctor further confirmed that apart from dupatta marks on the neck, no signs of a struggle or injury marks from such a struggle were found on the neck. She also opined in her cross examination that *"it is a fact that as per medical science it is a case of hanging."* The hypothesis of hanging was also supported by Nadeem Muhammad, when he stated at trial that he had taken down the dead body hanging from the ceiling fan by a dupatta when he had reached Asees's house. Nadeem was not sure that Mehak had been killed by Asees, however said, that may be he had come to inform him (Nadeem) after he had done the deed. PW-7 S.I. Shahid Mehmood also confirmed in his testimony that when he had recorded Muhammad Nadeem's statement, he was told that Nadeem had found the body hanging from the ceiling fan. The police officer who first saw the dead body in the morgue i.e. A.S.I. Moinullah Hashmi, also noted "slight strangulation marks on the neck of the deceased." Neither of the 2 witnesses to the inspection of the dead body i.e. Laiq Ahmed or Ramiz Ahmed were examined as witnesses by the prosecution. The reason given for their absence was that Laiq did not support the prosecution case and Ramiz had been won over by the prosecution. For all purposes, no evidence was produced at trial to show that Mehak had violence or torture marks on her body as claimed by Zaibunissa. The medical evidence does not reconcile with Zaibunissa's ocular version.

7. The scene of offence which was a small house was examined on 12.07.2016. I find it odd that the dupatta allegedly used by Mehak to hang herself was not recovered by the police that same day and that the recovery was made on 17.07.2016. A dupatta used by a person to either hang herself or be strangled by it, would necessarily be wrinkled and worn out from the stress. Nadeem Muhammad however admitted that the dupatta that was exhibited at trial was fresh, without any dust or knots. S.I. Shahid Mehmood and witness to the recovery Muhammad Nadeem both admitted that the memo of recovery made, ostensibly on the spot, does not indicate that the dupatta was sealed when recovered. The dupatta was also not put to the appellant during his section 342 Cr.P.C. statement and hence in any case cannot be used as evidence against him, if it indeed was such evidence.

8. A review of the evidence shows that Mehak hung herself to death in her own bedroom. The claim that Mehak was tortured or beaten physically was not proved at trial. To the contrary, there were findings that apart from the marks on her neck there were no other marks on the deceased's body. There were no signs of struggle from Mehak if she had been strangled. It would be a natural response of a person being strangled to attempt and loosen the bind around the neck as well as struggle. The police found no signs of struggle in the room where the body was found hanging from the ceiling fan nor did the doctor find any finger marks or signs of struggle. Mehak's father had found her hanging in the room when he had come to the house.

9. The question that arises however is whether there was a possibility of Mehak being killed first and then suspended from the ceiling fan. What raises one suspicion in this regard is that the record reflects that it was Muhammad Nadeem who had seen the body hanging from the fan and it was he who had taken the body down from the fan. The appellant did not at any stage explain as to why he went to Muhammad Nadeem first and informed him and then waited for him to come before the suspended body was taken down. The appellant did not offer any explanation as to where

he was when Mehak hung herself nor any explanation as to why Mehak would commit such an extreme act. He could not produce any witness in his support. Although very little or perhaps no direct evidence was produced against the appellant that could conclusively show that he was involved in the murder of his wife, the observations made in this paragraph make me conclude that the appellant was involved in some capacity in the death of his wife. Even, if for the sake of argument, one would say that Mehak indeed did hang herself along with her still unborn baby, it was certainly the appellant who drove her to the point where she ended her own life and that of the unborn child. Police investigation and the post mortem conducted left a lot to be desired. I am not inclined to absolve the appellant of all blame in the death of his wife.

10. In view of the above observations and keeping in view the quality of evidence produced at trial, I am of the view that in the circumstances of the case, the appellant deserved a punishment under section 302(c) and not section 302(b) P.P.C. The jail roll of the appellant shows that he has served out nearly 15 years of his sentence which also includes remissions. In view of the extremely weak evidence produced at trial, I am of the view that the appellant, though not entitled to a clean chit in this episode, has made out a case for a reduction in his sentence. The sentence of the appellant is therefore reduced to 15 years. The fine levied upon him by the learned trial court as well as the imprisonment in lieu of the fine will continue to subsist. Subject to this modification in the convicting provision as well as the sentence, the appeal stands dismissed. The appellant may be released from jail in this case once his modified sentence is complete.

**JUDGE**