

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

Criminal Appeal No. 15 of 2019  
Criminal Jail Appeal No. 33 of 2019

Appellants : Zainab Bibi and Zaheer Ahmed  
through M/s. Muhammad Jawaid and Abid  
Feroze, Advocates

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

Date of hearing : 24<sup>th</sup> November, 2022

**JUDGMENT**

**Omar Sial, J:** Zainab Bibi was accused of strangling her husband Ahmed Abbas to death with the assistance of her nephew Zaheer Ahmed. Later, in order to dispose of the body, the duo cut up Ahmed Abbas into pieces and were in the process of cooking his body parts when they were caught. F.I.R. No. 415 of 2011 was registered on 24.11.2011 under section 302 P.P.C on the complaint of A.S.I. Asif Ali acting on behalf of the State.

2. After a full dress trial, the learned 4<sup>th</sup> Additional Sessions Judge, Karachi East on 20.12.2018 sentenced both Zainab and Zaheer to a life in prison and a fine of Rs. 50,000 each (or a further period of 6 months in prison) for having committed an offence under section 302(b) P.P.C.

3. At the outset of the arguments, the learned counsel for the appellants submitted that they did not wish to argue the appeals on merits but prayed that leniency in the sentence may be shown. Learned APG after going through the record was of the view that the murder was caused under *ikrah-i-tam* and that if leniency in the sentence is shown he would have no objection. I have heard the counsels.

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4. It appears that the deceased Ahmed Abbas was a man of unsavory character addicted to drugs. It was Zainab Bibi's second marriage to him.

Zainab had a 16 year old daughter from her first marriage by the name of Sonia. On 29.12.2011, Sonia recorded a section 164 Cr.P.C. statement in which, while explaining how events unfolded, she implicated Zainab, Zaheer and one other by the name of Rajab in the killing. In her cross examination, however, she revealed the reason which led to the killing. She recorded that *"It is true that the person who died was a drug addict and he had ill intentions towards me. It is true that later on my mother also got to know and my mother tried a lot to make him understand but he would say that I will kill you and your daughter. Earlier, he used to say to me that it was in black and white that you will marry me. When I refused he would beat me up with sticks and belts and I left home but was brought back and then I told my mother and my mother made him understand as to why he beat me up. When my mother used to go to work he would then say this to me and would act like that."* Sonia, at trial, however denied that she had implicated her mother and Zaheer in the murder. She did not however expressly deny the molestation and abuse part. It appears that her statement at trial, in which she was also declared hostile, was made with a view to save her mother. She however failed in that. I however tend to believe the section 164 Cr.P.C. statement, the narration of which is smooth and there is a ring of truth to it.

5. It appears that incessant and continuous physical, sexual and mental abuse of Sonia at the hands of Ahmed Abbas was the cause of her mother's actions. The cutting up of the body, was done in order to facilitate disposal. The act of the accused cannot be justified in any case. However, it appears that the murder was caused as a consequence of Ahmed Abbas putting Sonia, not only in fear of sodomy or zina- bil-jabar, but perhaps actually repeatedly and continuously subjecting her to the same. In other words the *qatl* of Ahmed Abbas was caused under ikrah-e-tam, as defined in section 299(g) P.P.C. and punishable under section 303(a) P.P.C. An offence under section 303(a) carries a sentence of up to 25 years in prison.

6. A jail roll was called for which shows that the appellant has completed 20 years of her sentence. The conduct of the appellant in prison

has been satisfactory. Keeping in mind what has been observed in the preceding paragraph, it will be appropriate in the circumstances of the case that the sentence of the appellant be converted from one punishable under section 302(b) P.P.C. to one under section 303(a) P.P.C. The learned APG has no objection if the sentence of the appellant is reduced to the one she has already remained in prison to date.

7. The appeal stands dismissed however with the modification that the appellant be convicted under section 303(a) P.P.C. and sentenced to the time she has already spent in prison, which will also include the period of imprisonment in lieu of fine. The conviction and sentence for an offence under section 201 P.P.C. is upheld, however, it is to run concurrently with the sentence awarded to Zainab under section 303(a) P.P.C.

8. The appellant may be released if she is not required in any other custody case.

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9. Zaheer was Zainab's nephew accused of helping her in Ahmed Abbas's murder. He was said to be present on the scene when the police arrived. On his part, Zaheer denied any involvement in the murder and stated at trial that he was standing outside the house when the police picked him up. **PW-1 Bahzad Mustafa**, a son of the landlord of the premises where the incident took place testified that the premises in question were let out to Ahmed Abbas. He further stated that in front of him it was only Zainab who confessed to the police that she had murdered her husband. This witness further testified that Zaheer and Zainab were both in police custody when he had arrived on the scene; however, prior to this, he had never seen Zaheer before. **PW-2 Ghulam Mustafa** was the landlord of the premises. He was informed of what had happened and who was arrested after the incident. He was not a witness to either. **PW-3 A.S.I. Asif Ali Arain** was the complainant of the case. He testified that when he reached the place of incident as a first responder, the people of the area, who remained unidentified, had told him that Zainab had killed Ahmed Abbas with the

assistance of her nephew. He however did state that Zainab had confessed to him that she had killed Ahmed Abbas and that her nephew Zaheer had aided her by giving Ahmed Abbas intoxicants. This could not be proved as no scientific analysis was done on the body parts or the other material seized from the place of incident nor were any intoxicants found at the place of incident. **PW-4 S.I. Mirza Aqeel Baig** was the police officer who reached the scene after PW-3 A.S.I. Asif Ali Arain informed him. This witness testified that it was Zainab who confessed that she had killed Ahmed Abbas and then it was her who pointed out the dead body pieces and the instruments used in the crime. **PW-5 HC Ameer Abdullah** witnessed the search and recovery as well as the making of the inquest report. **PW-6 Dr. M. Tayyab** conducted a medical analysis of the body parts. **PW-7 Jasmine Shah** was an anchor person of a local TV channel who had at some stage interviewed the 2 accused persons. She did not recognize Zaheer in court due to lapse in time; however, she did recognize Zainab. **PW-8 M. Yousuf Malik** was the learned magistrate who recorded Sonia's section 164 Cr.P.C. statement. Sonia in her statement did implicate Zaheer as helping her mother with the murder. **PW-9 Sonia Irshad** was Zainab's daughter. She resiled from her earlier statement in which she had implicated her mother and Zaheer in the murder. **PW-10 H.C. Muhammad Raza** confirmed the signatures of Inspector Ghulam Abbas on some documents, as the investigating officer had died by then. In his section 342 Cr.P.C. statement, Zaheer admitted his presence outside the place of incident when the police had come but denied any wrong doing or involvement in the murder.

10. A re-appraisal of evidence reflects that Zaheer was made an accused in this case, as Zainab had told the police that he had helped her. The police also claimed that Zaheer was inside the house when they had first come to the scene of offence. Apart from the fact that the evidence against Zaheer was basically the statement of a co-accused, there was no evidence that any intoxicating material was administered by Zaheer to the deceased. No reason for Zaheer to kill Ahmed Abbas came on record. While, there was

not enough evidence against Zaheer to prove a case of pre-meditated and intentional murder, there is sufficient evidence, in the shape of body parts and crime weapons recovered from the place of offence, coupled with his presence either inside or at least the outside the house, that indicates that Zaheer was aware of the dismemberment of the body by Zainab as an attempt to conceal evidence. It is for this reason while acquitting him of having committed an offence under section 302(b) P.P.C., his conviction and sentence under section 201 P.P.C. is upheld.

11. A jail roll was called for which shows that the appellant has completed nearly 11 years of his sentence. As he was awarded a sentence of 7 years and a fine of Rs. 10,000 (or another 3 months in jail) for the offence under section 201 P.P.C., it appears that Zaheer has completed his sentence. He may be released forthwith if not required in any other custody case.

12. The appeal to the extent of an offence under section 302(b) P.P.C. is allowed. The appeal to the extent of section 201 P.P.C. is dismissed.

JUDGE