

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 699 of 2019

Appellant : Muhammad Imran @ Mana
through Mr. Nasrullah Malik, Advocate

Respondent : The State
through Ms. Robina Qadir, D.P.G.

Date of hearing : 18th November, 2022

JUDGMENT

Omar Sial, J.: A 15 to 20 days old, decomposed, semi-nude body of 75 year old Muhammad Muzammil Sheikh was found in his apartment on 01.12.2016. F.I.R. No. 380 of 2016 was registered under sections 302 and 34 P.P.C. at the New Karachi police station the same day against unknown persons. The driver of the deceased Muhammad Imran was arrested along with his wife Naheed Imran on a date that is not borne out from the record. The relatives of the deceased were told by the police that these were the murderers of Muzammil Shah. The couple pleaded not guilty and claimed trial.

2. At trial the prosecution examined 8 witnesses. **PW-1 Muhammad Pervaiz Shah** who was the son of the deceased was in the USA when the murder occurred. He testified that when he had come back to Pakistan, the police had recovered from the scene of the crime, used tissue paper, pieces of a bed sheet, broken bangles, human hair, cigarette butts and one letter written by a person named Maria Jatoi. He also told the court that his father had married twice and that while his first wife, and Shah's mother, lived in the USA, his father lived with his second wife in Karachi. He acknowledged that his father had a monetary dispute with his uncle named Qadeer. Shah's testimony at trial did not add much value to the prosecution case. **PW-2 Dr. Muhammad Saleem** did the post mortem. He found the decomposed and maggot ridden body clad only in an underwear

with the arms of the deceased tied behind his back, wide ligature marks on the neck caused by a bed sheet that was tied around his neck and an injury on his scalp. The body according to the doctor was 15 to 20 days old and the person had died due to asphyxia. The doctor's testimony was important to the extent of the cause of death. **PW-3 Mazhar Ali** was the learned magistrate who had recorded the confessional statement of the appellant. He recorded that the appellant was produced before him on 21.12.2016 and that he had recorded his statement after due precautions. **PW-4 Amanat Ali** was the police officer who first responded to the news that a dead body of a person had been found inside an apartment. He subsequently registered the case on the complaint of Laila-un-Nisa, the first wife of the deceased. **PW-5 Imtiaz Ali** was the hand writing expert who testified that the documents sent to him for analysis showed that the letter written purportedly by Maria Jatoi found in the apartment of the deceased matched the handwriting of Naheed Imran, the wife of the appellant. **PW-6 Rizwan Hussain** was the brother in law of the deceased and in this case, served as a witness to the inspection of the dead body, the preparation of the inquest report, inspection of the place of incident and recovery effected on the pointation of the appellant. **PW-7 Shakeel Khan** witnessed recovery of items allegedly stolen by the appellant from the apartment after the murder. **PW-8 Aziz Ahmed Ghori** was the investigating officer of the case. He was examined twice and thus the record also shows him as PW-9.

3. In their respective section 342 Cr.P.C. statement the couple denied all wrong doing and professed innocence. At the end of the trial, the learned 7th Additional Sessions Judge, Karachi Central on 17.10.2019 acquitted Naheed but convicted Imran for an offence punishable under section 302(b) P.P.C. and sentenced him to a life in prison as well as directed him to pay Rs. 50,000 compensation to the legal heirs of the deceased or spend another 6 months in prison.

4. I have heard the learned counsel for the appellant as well as the learned DPG. The complainant did not effect an appearance despite notice.

The individual arguments of the counsels are not being reproduced for the sake of brevity but are reflected in my observations and findings below.

5. The evidence against the appellant is as follows:

- (i) A judicial confession made by him.
- (ii) Recovery of letters written by a Maria Jatoi and items said to have been stolen from the house of the deceased

Judicial Confession

6. The date when the appellant was arrested is not reflected from the record. The memo dated 15.12.2016 which records the arrest in itself shows that the appellant was already in custody and being interrogated when he offered to lead the police to the place where he had hidden items stolen from the deceased. It was after recovery that the appellant was shown as arrested. Obviously he must have been arrested earlier than 15.12.2016, hence he was in police custody on that date. Be that as it may, the investigating officer moved an application before the learned 13th Judicial Magistrate, Karachi Central on 19.12.2016 requesting that the confessional statement of Imran be recorded. The statement was recorded on 21.12.2016.

7. In his section 342 Cr.P.C. statement the appellant denied that he had ever made the confession. I find this stance taken by the appellant difficult to believe. I find the argument raised in appeal, in this regard, to be more believable i.e. Imran was offered that if he confessed, his wife Naheed, who was also in custody at that point in time, would be released from the charge. The record shows that this was not done in spite of the confession. What I am not happy with is the manner in which the confession was recorded. In a number of judgments the practice of using pre-printed confession forms has been deprecated. This is exactly what was done by the learned magistrate in this case. In most cases, recording of confessions appears to be a mechanical exercise. No real precautions seem to be taken to ensure that the person making the confession is actually in the correct state of mind to do so. Very little or no precautions are taken to ensure that

the accused has not been maltreated or tortured or induced by the police. In the present case, the learned magistrate was of the view that as the accused said that he had not been tortured, there was no need for him to further ensure whether he was telling the truth. This makes it even more important that the court does not use pre-printed confession forms so that it can be ensured that the accused was actually informed that he will not be given in police custody irrespective of what he says. Similarly, it must also be ensured that an accused is aware that what he says will be used against him. No doubt, such questions and precautions are contained in the pre-printed sheet of the confession, however, a door of suspicion regarding the accuracy and genuineness of the confession is opened. The questions on the pre-printed form are all in English whereas admittedly the accused was not capable enough to understand the language. The flow of language used by the accused in response to the questions asked, to me, also appears to be unnatural.

8. Coming to what was recorded in the confession, it appears that the learned magistrate missed out on an important fact. Though the police had told the magistrate that the accused had been arrested on 15.12.2016, the accused had told the magistrate that the dead body was found 12 days after the murder and he was arrested the very next day. The dead body, according to the record, was found on 01.12.2106, which would mean that the accused had been picked up on 02.12.2016 i.e. 13 days before the police showed his arrest and 19 days after his arrest that the confession was recorded. The time line given by the accused reconciles with what I have earlier observed i.e. the date of arrest is not borne out from the record. The reason given for the murder by the accused was that the old man would try to rape his wife Naheed. There was no evidence collected by the police in this regard. Naheed did not support this stance. I also find the alleged confession that the accused took the key of the house with him and threw it in a gutter rather odd and unnatural. It eludes me as to why a person would not simply leave the house locking the door rather than take the trouble to find the key of the house and then throw it outside.

9. The prosecution case was that the accused had first thrown chillies in the eyes of the deceased and then done him to death. Imran's confession does not mention this modus operandi. Neither were chillies found from the place of incident nor did the doctor doing the post mortem notice any such signs on the body or eyes of the deceased. The doctor perhaps did not find any because the body was decomposed but why the police did not find any on the scene of the crime makes the genuineness and veracity of the alleged confession doubtful. The laboratory where the carpet and sheet were sent for analysis also did not find the presence of red chillies on those items.

10. Coupled with the observations made later in this opinion, I am not satisfied that the confession was genuine or that it can be used as the sole basis for the accused's conviction without any corroborating evidence.

11. The daily diary entry dated 01.12.2016 produced by PW-8 Aziz Ahmed Ghorri shows that on that date, the time not being recorded, he left the police station to inspect the place of incident. He made a memo at 2310 hours on the same date in the presence of Muhammad Pervez and Rizwan Hussain. One bed sheet piece, broken bangles, tissues later found to be sperm laden, cigarettes butts and human hair were found and collected from the spot. It is notable that except for a cloth piece and a carpet piece, nothing else was produced at trial, though, the memo of site inspection does not even record that a piece of carpet was seized by Ghorri when he inspected the place of incident. The memo of inspection does not mention that a hand written note was also recovered and sealed. If all the articles had been found and sealed, as the memo and witnesses claim, it is a mystery as to how the other items vanished from the sealed packet and why they were not recorded in the first place.

12. It was alleged that on 15.12.2016 the accused had taken the police to the place of incident and according to PW-6 Rizwan Hussain it was 18.12.2016, when the accused had led the police to ostensibly where he lived and then from inside the house, he had pointed to a bag in which were items that he had picked up from the deceased's house when he had

killed him. The narration given by the witness to recovery PW-6 Rizwan Hussain is in complete conflict with what is recorded in the memo of recovery prepared by Ghori on 18.12.2016. The memo records that the items were found in a plastic bag lying in a vacant place outside the house of the accused. The memo does not even record that anything but a plastic shopping bag was found. It makes it obvious that the police made up the story regarding stolen items recovered to falsely strengthen its case. I also find it absolutely unbelievable that valuables were put in a plastic shopping bag and then kept outside the house of the accused where they remained for a period of 17 days without anybody else seeing them or taking them away.

13. It was further alleged that on 25.12.2016 the accused took the police to a house once again from where a mobile phone and a SIM were recovered. According to the prosecution witness Rizwan Hussain the house was that of Imran. According to Ghori and the memo he prepared the house was also that of Imran. According to Ghori's testimony at trial, the house was not of Imran, but that of his wife Naheed.

14. On 25.12.2016 it was said that Imran once again took the police to his house from where a mobile phone belonging to Imran was recovered. Imran, on 25.12.2016 was in judicial custody. The prosecution produced no evidence to show that Imran was taken out of judicial custody after obtaining the requisite permission from the magistrate and that he had then taken the police for the recovery. I also find it unbelievable that each time the police went to the house of the accused, they could not in one go effect the entire recovery, which recovery seems to be spread out over 10 days.

15. Naheed Imran was said to be arrested on 01.12.2016. According to Ghori, her writing samples were taken by him in front of an unidentified DSP and then she was let go. The DSP was not called as a witness to confirm that it was actually Naheed who had given the samples. Ghori, in his testimony admitted that when he had taken the letter written by Maria Jatoi in possession from the flat of the deceased "*it is correct to suggest*

that neither I obtained the signatures of mashir nor I verified the writing of letter which I recovered from place of incident during inspection.” It appears that at some stage a questioned document i.e. the letter found from the crime scene was sent for analysis together with the samples taken from Naheed and the writing matched. That may very well be true however there was no evidence to suggest that Naheed herself was the person who had given the samples. The writing expert as well as Ghori admitted that no document apart from the questioned document and samples taken dubiously were sent to the examiner for analysis. The prosecution witness, at best, stated that only one letter was found from the scene of the offence, which was admittedly neither listed in any memo nor sealed on the spot. When one letter was found from the scene how were 3 sent for analysis raises further suspicion on the honesty and credibility of the investigating officer, who seems to have made up the paperwork all on his own to falsely strengthen the case. Even the details of the one letter found do not reconcile with the prosecution case or the confession made by Imran. I do not believe any such letter was found from the place of the crime nor that Naheed gave samples of writing which matched the purported letter found. Even if she did, she was acquitted by the learned trial court.

Call Data Record

16. There is a vague and convoluted prosecution story that the call data record obtained by the investigating officer also supported the prosecution case. The learned DPG was completely unable to show as to which entry on the record supported the prosecution case and how. Similarly, neither was the same explained at trial in a manner which one could even understand.

Investigation

17. The record depicts Ghori as a dishonest and inefficient investigator. Apart from the above findings it also came on record, admitted by Ghori himself, that he was told by 2 witnesses that a bearded man and a maid would often come to the deceased's house. Although Ghori claimed that he

had recorded section 161 Cr.P.C. statements of both, neither testified at trial. The bearded man was identified as Sagheer, the same man who had informed the family of the deceased about his death. Both witnesses apparently also did not disclose that Imran would come to the apartment. It appears that absolutely no investigation was done on this lead.

18. Ghori himself admitted that the apartment where the murder occurred was a “huge building” with 3 gates to it. He further acknowledged that he questioned no resident of the building or a member of the building committee or the watchmen at the gates during his investigation. This is yet another case where police investigation left a lot to be desired. Not only was it incomplete, it appears that evidence was created by the investigating officer indicating dishonesty.

19. The deceased was apparently in the quest to enter into a third marriage, having recently left his second wife. He had a monetary dispute with one Qadeer. Sagheer and an unidentified mysterious maid were said to have regularly visited the deceased. The investigating officer, if he is to be believed, had sperm laden tissues, hair, bangles and cigarette butts, yet, not an iota of forensic investigation was carried out by him to see if the DNA and fingerprints on the items matched that of the accused. None of the important leads obtained were investigated. Such investigation is simply unacceptable. Either Ghori was not capable enough to head such an investigation or he was dishonest. The Inspector General of Police Sindh is directed to look into the career record of Ghori and determine whether he is capable to be assigned such investigations and whether his investigation in the current case requires disciplinary action against him.

Opinion of the court

20. I am of the view that the prosecution failed to prove its case beyond reasonable doubt. The appeal is therefore allowed. The impugned judgment set aside. The appellant should be released if not wanted in any other custody case.

JUDGE