

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No. 429 of 2017

Appellant : In person

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

Complainant : None present inspite notice

Date of hearing : 11th October, 2022

JUDGMENT

Omar Sial, J.: Abdul Sattar alias Gamma alias Dhobi (**Sattar**) was accused of stabbing and killing a 14 year old girl Zahida alias Samra on 05.09.2010 at about 5:00 p.m. F.I.R. No. 284 of 2010 was registered under section 302 P.P.C at 11:30 p.m. on 05.09.2010 at the Bahadurabad police station on the complaint of Zahida's mother, Nooran Bibi. Abdul Sattar pleaded not guilty and claimed trial.

2. **Nooran Bibi (PW-1)** told the court at trial that on 05.09.2010, one Salma alias Sadhori, who was her neighbor, compelled Nooran and her elder daughter Kulsoom to accompany her on a shopping trip. Salma went inside a shop but asked Nooran and Kulsoom to wait outside for her. The two ladies kept waiting but Salma never came out of the shop and when they went inside to inquire about her they discovered that she had disappeared. The 2 ladies thus returned home. When they got back they saw a number of people standing outside their home. Some people standing there told her that Zahida had been killed by Sattar. Amongst those people was also Salma, the lady who had compelled Nooran to go shopping with her. Nooran further testified that when she was at the hospital waiting for the post mortem to finish the police had gone to the place of incident and knocked on the door where Salma and her husband Wajid lived. Wajid jumped out from a window but was apprehended by the neighborhood people and the police. The police took a bribe from Wajid and released him. On 03.09.2012, Nooran wrote a letter to the SHO, Bahadurababd in which she complained to him that no arrests had been made in the murder case of her daughter. The letter was produced as evidence at trial by Nooran herself. The letter shows that Nooran told the SHO that a cable man by the name of Majid

had told her that Sattar had killed her daughter. Wajid who was Salma's husband was also apparently told by Majid that Sattar was the killer. Nooran however showed suspicion on Wajid and Salma, in addition to Sattar. Salma had forced her to go shopping and then Wajid had attempted to run away when the police had arrived at the scene of the incident.

3. **PW-2 Rana Mohammad Rafiq** was the landlord of the building where the complainant as well as Salma, Wajid and Sattar lived. He recorded at trial that on 05.09.2010, Sattar was ironing clothes in a shop situated at the lower level of the building. Later Sattar was seen climbing up the stairs and when Rana inquired from him as to why he was going upstairs, Sattar told him that he needed space to hang clothes. Rana offered that he will fix 2 nails in his shop and that he could then use those to hang clothes. Apparently, Sattar went back to the shop and Rafiq went to visit his friend Muhammad Ali whose house was close to Rafiq's. A few minutes later Rafiq got information that a girl had been murdered in his apartment building. When Rafiq reached the scene he was told by one Majid that Sattar had killed Zahida and then Wajid also told him the same thing. Rafiq recorded that when he asked Wajid as to how Wajid knew that Sattar had killed Zahida, Wajid replied that he had seen Sattar come down the stairs from Zahida's house in a hurry and in that hurry he had also knocked down Wajid by bumping into him. Rafiq along with his friend Muhammad Ali went to the police station to report the murder. The police recovered a knife, a dupatta and a mobile phone of the deceased from the place of incident and recovered a blood stained shalwar from the dry cleaners shop below. Rafiq then went to the hospital where Zahida's post mortem was being done and from there to the Edhi morgue. While he was at the morgue he was informed that one person who was trying to jump from and escape the building (the scene of the offence) and that he had been caught by the police. Rafiq was asked to come and identify the person at the police station. That person was Wajid. The police told Rafiq that they had gone back to the place of incident and knocked at Wajid's door, but Wajid instead of opening the door had jumped out of the window and tried to escape but had been caught by the neighborhood people as they were on alert after the murder.

4. **PW-3 Wajid Tunio** was Salma's husband, the man who apparently told everyone that Sattar was the killer, and the same man who had jumped out of a window in order to escape the police. It was his wife Salma who allegedly had

compelled Nooran to leave the house. He was the person who was most suspicious but the police let him go for reasons best known to the investigating officer. The record does not reflect any reason. Wajid, at trial, point blank denied that he knew anything about the incident. He denied that he ever recorded a statement in which he had said that he saw Sattar leave the scene of incident with a bloody knife. Although he was declared hostile by the prosecution, his cross examination could not save the prosecution. Wajid was the only far-fetched link between the crime and Sattar. He too did not support the prosecution case. If on oath Wajid lied, then even his statement under section 161 Cr.P.C, even if he recorded it becomes questionable.

5. **PW-4 S.I. Ghulam Ali** was the first investigating officer of the case as well as the officer who arrested Sattar after a period of 2 years. He told the court that even during investigation, Sattar had not confessed his guilt.

6. **PW-5 Dr. Summaiya Syed** conducted the post mortem of the deceased. Zahida's death by being stabbed was an admitted position. What is pertinent to mention about her testimony is that she did not find the 15 year old victim to be a virgin. The investigating officer should have placed more importance on this aspect to determine whether it was a case of murder after rape or whether there was any other person who could have been a suspect. He however chose to ignore it.

7. **PW-6 Ali Khan Sanjrani** was the second investigating officer. Just like his investigation, his testimony at trial also added no value to the prosecution case.

8. **PW-7 Salma alias Sadhori** was the wife of PW-3 Wajid. Like her husband, she also pleaded ignorance. She said that she did not know who Nooran the complainant was nor did she know who Sattar was. She denied that she had ever asked Nooran to go to the market with her that fateful day. She too was declared hostile.

9. **PW-8 S.I. Abdul Rasool Sayyal** was the third investigating officer of the case. In a bewildering statement at trial he said that as he had sufficient evidence against the accused when he took over the investigation, he therefore did not search for any other witness. The only evidence he had at that stage, in fact even till trial, was the statement made by an extremely suspicious and unreliable Wajid, who said that he had seen Sattar leave the premises with a bloody knife.

This witness did not even bother to think that how could Wajid's statement be true when S.I. Ali Khan had already recorded that the crime weapon was found lying next to the deceased. May be Sayyal thought that Sattar had brought 2 knives to kill Zahida and then had decided to leave 1 knife at the place of incident and run away with the other. It surely must be Sayyal's imagination that he had sufficient evidence to hold somebody guilty of murder. His inefficiency and dishonesty is further highlighted by the fact that the ostensible case property was sent for chemical analysis 1 month and 16 days after the incident. Even the sample taken by the doctor for DNA analysis on 05.09.2010 was sent for analysis the same day.

10. The above was the entire evidence against Sattar. Nooran was told by Wajid that Sattar had killed Zahida hence Nooran had shown suspicion on Sattar. Wajid himself back tracked at trial by saying that he knew absolutely nothing about the incident. The learned trial judge also seems to have taken a casual attitude towards evaluation of the evidence. He should have analyzed the material evidence, the important portions of the witness testimony, however, he chose to reproduce the evidence recorded and then simply hold that Sattar was guilty. It is only human that a mistake may occur while analyzing evidence or missing out on a piece of evidence if the court's mind is not directed to it by counsels, it is quite another to not analyze and give one's own findings on the evidence recorded. A higher court may disagree with the opinion of a lower court, yet the lower court's opinion should be based on some premise and not merely on reproducing the evidence. This is the least that is expected of a judge adjudicating a murder case. Learned APG, most reluctantly, after reading the evidence is also of the view that the only evidence against Sattar was what Wajid had told the police but what he totally somersaulted on at trial.

11. Sattar took the defence that he had left for his village before the incident and it was only 2 years later that he was arrested. He brought 3 witnesses to support his defence. While Sattar's defence in itself was not a strong one, I have not analyzed it further as the onus was on the prosecution to prove its case first, which I am of the opinion, based on the above analysis, and was not proved by the prosecution.

12. The appeal is allowed and the appellant Abdul Sattar acquitted of the charge. He is on bail. His bail bonds stand cancelled and surety discharged. The same may be returned to its depositor.

JUDGE