

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 226 of 2012

Appellants : 1. Naeem-ur-Rehman Niazi
2. Tanzeel-ur-Rehman
3. Ibad-ur-Rehman
4. Hamood-ur-Rehman
through Mr. Irshad Ali Jatoi, Advocate

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

Date of hearing : 28th September, 2022

JUDGMENT

Omar Sial, J: Noor Mohammad at 11:45 p.m. on 24.07.2010 lodged F.I.R. No. 435 of 2010 at the Aziz Bhatti police station under sections 395, 324, 170 and 34 P.P.C. He recorded that 5 days earlier i.e. on 19.07.2010 he met Naeem-ur-Rehman Khan Niazi who told him that he was an officer in the Pakistan Customs and that he was also the In Charge of auctions held by the Customs. A deal was set up between the 2 individuals in terms of which Noor Mohammad would buy some televisions and laptops. Niazi told Noor Mohammad that he should bring the money for the items he wanted to purchase to Niazi's house and that Niazi would hand over the purchases to him there only. On 24.07.2010 Noor Mohammad along with friend Abbas and domestic help Haroon went to Niazi's house to conclude the transaction. At Niazi's home, in addition to Niazi, his wife Samina and his 3 sons Hamood, Tanzeel and Ibad were present. Niazi declined to hand over the purchased items but kept the Rs. 900,000 which was the purchase price. Tanzeel then fired with a pistol at Noor Mohammad who remained unhurt. The guests then left the house.

2. Niazi was arrested on 31.07.2010 whereas the Samina, Tanzeel and Ibad were arrested on 18.09.2010. When Hamood was arrested is not

clearly borne out from the record. Nonetheless all 5 members pleaded not guilty and claimed trial. Noor Mohammad was the prosecution's first witness. The prosecution examined Abbas Abid Arain (the friend who had accompanied Noor Mohammad to Niazi's house) as its second witness. The third prosecution witness was Haroon Rajput who had acted as a conduit between Niazi and Noor Mohammad in the transaction for the purchase of the equipment and had also accompanied Niazi to the place of incident. S.I. M. Khalid was the fourth prosecution witness who was the first investigating officer. S.I. Munir Ahmed was the fifth prosecution witness as he was the second investigating officer of the case. The F.I.R. in the case was registered by A.S.I. Darya Khan who appeared as the sixth prosecution witness. S.I. Tasaduq Muneer who was the third investigation officer appeared as the seventh prosecution witness. Inspector Sajjad Ali, the fourth investigating officer was prosecution's eighth witness.

3. In their respective section 342 Cr.P.C. statements the appellants professed innocence. **Ibad** said that he was at the Karachi University in his classes when the incident is alleged. **Hamood** stated that he was at Bahria University in his classes when the incident is said to have occurred. **Samina** said that she had developed differences with her husband a lot earlier and that she and her 3 sons had been living in an apartment in Clifton ever since whereas Niazi lived in the house in Gulshan where the incident is said to have occurred. **Tanzeel** also recorded a statement under section 340(2) Cr.P.C. in which he basically stated that he was at work when the incident occurred. He produced the Manager Administration of the company, Mohammad Jameel Sheikh (DW-1), he worked in to support his stance. **Niazi** also recorded a statement under section 340(2) Cr.P.C, giving his version of events.

4. The learned 4th Additional Sessions Judge, Karachi East on 11.07.2012 sentenced Niazi to 5 years in prison and a fine of Rs. 50,000 (or an additional 6 months in prison) for an offence under section 419 P.P.C. All the accused, except Samina, were sentenced to 7 years in prison and a fine

of Rs. 10,000 each (or an additional 3 months in prison) for an offence under section 392 P.P.C.. Samina was acquitted.

5. Learned counsel for the appellants up front submitted that he would not press Niazi's appeal as he had already served his sentence. However he argued that his children were absolutely innocent and that the entire family, including their mother had been implicated in the case because of an enmity between their father and a very powerful police officer of that time. Learned APG, as far as the children of Niazi were concerned half-heartedly supported the impugned judgment.

6. I have heard the learned counsel for the appellants as well as the learned APG. None of the complainant's appeared in this case for the 11 years this appeal has unfortunately been pending adjudication. My observations and findings are as follows.

7. Noor Mohammad admitted that he had not known any person by face apart from Niazi when the incident occurred. No identification parade was held for him to identify whether Samina and her children were the people who were present in the home at that time. Apart from the fact that the F.I.R, for no apparent reason was lodged after 5 days of the incident, Noor Mohammad did not record his statement under section 161 Cr.P.C. till 2 months later i.e. on 18.09.2010. Once again no explanation was given for this lapse. The delay in the recording of the F.I.R. in this case appears to be as a consequence of deliberations and consultations and in order to throw the net wide. It was not explained as to how Noor Mohammad included the names of the wife and children of Niazi together with their relationships to Niazi when he himself admitted at trial that he had not known them earlier. It is also well settled now that a delay of even 2 or 3 days without a plausible justification to record eye witness section 161 Cr.P.C. statements reduce their evidentiary value to zero. In this case not 2 days but 2 months were taken for Noor Mohammad to record his statement.

8. The second ostensible eye witness, Abbas Abid, was even worse than Noor Mohammad. He admitted that the police recorded his section 161

Cr.P.C. statement on 31.10.2010 i.e. more than 3 months later. The same observation regarding late recording of statements as in the preceding paragraph is also applicable to him. Once again no reason was given. This witness too did not know the family members of Niazi till the case was lodged but no identification parade was held for him to confirm whether the individuals with Niazi were indeed his family members. A bare reading of his testimony reveals that the same is not at all convincing infact malafide appears to be floating on the surface. He was an interested witness. He said that all of the complainant party were beaten badly by the accused family, yet no medical evidence was produced by any witness to substantiate their allegation.

9. The third ostensible eye witness was Haroon Rajput. His statement was recorded on 31.07.2010 and the same was verified on 18.08.2010. He gave a different twist to the story negating what the first two witnesses had said. He stated that it was Samina who directed the others to beat and kill the complainant party. He also admitted that he could not say what type of weapons were held by the accused. A Freudian slip perhaps but at the end of his cross examination he admitted that the sons of Niazi were not present when the incident occurred.

10. The fourth witness S.I. Khalid while contradicting all the previous witnesses said that he had recorded the witness statements on 04.08.2010 and that the statements were verified by the succeeding investigation officers and it is the verification date which the witnesses have mentioned at trial as the statement recording date. Even if he was correct, the late recording of the witness statements without any reason offered would still reduce their evidentiary value to nil. While saying in his examination-in-chief that he had inspected the place of incident, in his cross examination he admitted that he was unable to enter the house where the incident is said to have occurred. It is obvious that he had manufactured the memo on record with what seems like malafide intent. The proper course would have been for the investigating officer to confirm that a bullet was fired in the

drawing room, as claimed by the complainant. This was not done for no apparent reason. No value can be attached to such a dishonest testimony.

11. Witness S.I. Tassaduq Muneer, said at trial that it was correct that he had not recorded the section 161 Cr.P.C. statements of either the complainant or the 2 other eye witnesses Haroon and Abbas as the same had already been recorded by the previous investigating officers S.I. Sajjad Hussain and S.I. Khalid. It appears that he referred to the statements ostensibly recorded by S.I. Khalid as S.I. Sajjad Hussain also denied having recorded any statement.

12. No recovery of either the money or the 4 pistols was effected. The wife and children of Niazi were arrested from their flat in Clifton, which corroborates Samina and her children's version in defence that they did not even live with their father. None of the equipment which was said to be purchased by Noor Mohammad and in the house of Niazi was ever recovered. The money apparently taken by Niazi was also not traced or recovered.

13. In view of the above observations, it is apparent that the net has been thrown wide by the complainant to bring within its ambit all the members of Niazi's family. Malafide is apparent on the record as far as the involvement of the family is concerned. Malafide is also revealed from the fact that though Tanzeel produced the head of the administration of the company he worked for, a respectable company, as well as produced documentary evidence to show that he was present at work that day, his name was not only included but he was also attributed the role of ineffective firing by the complainant. Regrettably the learned trial judge did not take into account the defence plea. Samina, Hamood and Ibad's case was more or less the same, yet, while Samina was acquitted, on the same set of evidence the other two were convicted. They too should have been given the same concession.

14. The appellants are all young men and while 1 continues to respectably work, 2 others are young lawyers now. The allegation against

them are vague and no evidence apart from dubious eye witness statements there is no other evidence against them. I am inclined to believe what they said in court that it was basically a bad relationship between their father and an infamous SSP of that time, who is now dead, that the whole family was dragged into this case. The children of Niazi should not suffer for the sins of their father.

15. I have no doubt in my mind that the prosecution failed in establishing a case beyond reasonable doubt as far as the children of Niazi were concerned. Their appeal is therefore allowed and Tanzeel, Ibad and Hamood are acquitted. They are on bail. Their bail bonds stand cancelled and sureties discharged. The surety may be returned to the depositor upon verification.

16. As far as the appeal to the extent of Naeem-ur-Reman Niazi is concerned the same is dismissed as not being pressed. The sentence however awarded to him in the cases arising out of Crl App No. 226 of 2012, Crl App No. 227 of 2012 and Crl App No. 228 of 2012 shall run concurrently.

JUDGE