IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Jail Appeal No.S-175 of 2015

Date of hearings:	06.04.2023
Date of decision:	06.04.2023
Appellants:	Moharram, Pir Bux and Ali Gohar, Through Mr. Muhammad Jamil Ahmed advocate for appellants.
The State:	Through Mr. Abdul Waheed Bijarani, APG.

J U D G M E N T

MUHAMMAD IQBAL KALHORO, **J.-** Appellants booked in Crime No.16 of 2014 PS Shadipali District Umerkot u/s 302, 34 PPC for causing death of Mst. Hameeda daughter of complainant on 28.06.2014 inside house of the complainant have been convicted and sentenced u/s 316 PPC to suffer rigorous imprisonment for 14 years as Ta'zir and to pay diyat amount of Rs.1923843/-each to the legal heirs of the deceased with benefit of Section 382-B CrPC vide impugned judgment dated 05.01.2015 passed by learned Sessions Judge Umerkot.

2. As per facts, complainant has three sons and three daughters, one of his daughters namely Mst. Hameeda was married with Sikander and she had a daughter from such wedlock. On the day of incident i.e. 28.06.2014 she had come to visit the house of complainant. Complainant and his son Saleh were working in the land in Deh Khuda Bux Mari Taluka Pithoro District Umerkot in which his house is also located. At about 06:00 pm their relative Ali Gul also came there and after some time they heard cries coming from their house. Complainant and witnesses rushed to the house where they saw that brother-in-law of complainant, appellant Muharram was holding hair of his daughter Mst. Hameeda whereas appellants Pir Bux and Ali Gohar were holding her hands. Within their sight appellant Muharram struck forcefully head of Mst. Hameeda against a small wall. After receiving such injury, she fell down and thereafter accused fled away. After their departure, complainant and PWs saw that she was unconscious and then succumbed to injuries within 5 to 10 minutes. They spotted the injury was on the back of her right ear. Complainant communicated such information to his relatives and next morning at about 05:00 pm went

to police and lodged FIR against the above named persons. After registration of FIR, investigation started and all the accused were arrested on 03.07.2014 under a memo of arrest and recovery. After due formalities, Challan was submitted in the court and the trial was commenced. After framing of the charge at Ex.2, in the course of trial, prosecution examined as many as 06 witnesses who have produced all the relevant documents, FIR, memos, medical certificate and sketch of the place of incident. After prosecution evidence, statements of appellants u/s 342 CrPC were recorded in which they have denied prosecution case. After a full-dressed trial, the trial court vide impugned judgment has convicted the appellants u/s 316 PPC in the terms as stated above holding that charge u/s 302 PPC was not made out as the appellants had no intention to cause murder of the deceased but had caused her an injury which in ordinary course was not likely to cause death but caused death of the deceased. The same judgment has been impugned by the appellants.

3. I have heard the parties and perused material available on record. Appellants' counsel has stated that appellants are innocent and have been falsely implicated in the case; there is no confidence inspiring evidence against them; the main witness namely Mst. Inayattan mother of deceased and PW Ali Gul were given up by the prosecution and in such situation explanation to Article 129 of Qanun-e-Shahadat Order 1984 is attracted; there is difference between medical evidence and ocular account of the incident and appellants appear to be innocent. His arguments have been rebutted by learned Assistant Prosecutor General.

4. Prosecution has examined complainant as a first witness. He in his evidence has supported the facts of FIR disclosed by him. He has identified all the three appellants with their specific role. Appellant Muharram striking head of the deceased against the wall, facilitated by appellants Pir Bux and Ali Gohar who both were holding the deceased by her hands at the time of incident. In his cross examination, nothing favourable to the defense has come on record. Next witness PW-2 is Muhammad Sahel. He is son of the complainant and brother of one of accused namely Pir Bux. He has also fully implicated the appellants in the manner stated by the complainant in his evidence. His evidence also does not suffer from any discrepancy or lacuna insofar as main features

of the case are concerned. His cross examination too is not of any help to the defense. He has been subjected to a reasonable lengthy cross examination but no material contradiction has come in favour of the defense. Both the witnesses have stood test of cross examination and have come out successfully in defending the prosecution case.

5. PW-3 is Medico Legal Officer who had conducted postmortem of the deceased. She has opined that there was a bruise with swelling measuring 8.00 cm x 3.0cm oblique on right side of neck, bluish colour. According to her, from internal examination of dead body she found 1st Atlanto cervical joint dislocated, 1st cervical bone fractured, spinal card torn, right lung, left lung and heart cynosid petechial hemorrhage. The remaining organs were healthy and as per her final opinion the cause of death of deceased was asphyxia due to cardio respiratory failure caused by spinal card injury. Her evidence is in consonance with the ocular account. The eyewitnesses have stated that deceased had suffered an internal injury on the back of her right ear and this very injury has been expertly opined by the Medico Legal Officer in the words as stated above espousing the nature and local of the injury as stated by the prosecution witnesses.

6. PW-4 is Tapedar who during investigation had prepared sketch of place of incident. His evidence has also supported prosecution case and shows that incident had happened inside the house as disclosed by the complainant and PW-2, his son. He has produced a copy of sketch of place of incident in support of his evidence. Nothing beneficial to defense in cross examination has come on record. PW-5 is the mashir of the case who has supported preparation of necessary documents i.e. all the memos and has produced the same in his evidence. His cross examination does not bear out that those mashirnamas have been manipulated in favour of prosecution or were not prepared at the spot.

7. PW-6 is the last witness, the prosecution has examined. He is Investigating Officer of the case. He has given details of investigation conducted by him which contain inspection of place of incident at the pointation of complainant, preparation of memos, inquest report, shifting the dead body to civil hospital for postmortem, arresting the accused on 03.07.2014 under the police docket and submitting the Challan on completion of formalities. He has also been subjected to lengthy cross examination, but nothing favourable to the defense has

come on record. After the evidence of prosecution witnesses the statement of accused u/s 342 CrPC was recorded in which the appellants have simply denied the prosecution case without examination however anyone in their defense.

8. Effect of a holistic view of entire evidence is that the prosecution has been able to prove its case against the appellants beyond a reasonable doubt. The role played by each of them has been highlighted in the evidence of eyewitnesses which has been further supported by medical evidence that deceased had sustained one injury on right side of neck below ear and died from asphyxia occasioned by such injury leading to cardio respiratory failure. The appellants are close relatives of the complainant party, in fact one of the appellant namely Pir Bux is son of the complainant and brother of PW Muhammad Saleh. As such there is no reason or a justification for the complainant party to falsely implicate them in the case of murder of their daughter. There was no occasion for the complainant to substitute the real culprits with the present appellants in the offence. The incident occurred inside house of the complainant, which fact is further confirmed from the relevant police papers including memo of place of incident. In defense the appellants have forwarded a theory that they have been implicated in this case on the basis of dispute over the land but no cogent material in this regard has been produced by them to substantiate this point. Nothing has been suggested by the appellants as to why the complainant and his son who are their close relatives have deposed against them and arraigned them in the murder of his daughter.

9. Notwithstanding, the observations of the trial court are relevant that motive in this case has not been proved and moreso the appellants were not armed with any weapon at the time of incident, which would mean that they had no intention to commit murder of the deceased. But, in any case, they caused a fatal injury to the deceased and their intention to cause harm to the deceased therefore is apparent, and while doing so, they caused death of the deceased. The injury appellants intended to cause to the deceased in ordinary course was not likely to cause death but in the event, it in fact caused death of the deceased. As such, it has rightly been concluded by the trial court that the appellants are guilty of offence u/s 316 PPC which provides

punishment for qatl shibh-i-amd. The definition of qatl shibh-i-amd is u/s 315 PPC as under:

> *"**315. Qatl shibh-i-amd.** Whoever, with intent to cause harm to the body or mind of any person, causes the death of that or of any other person by means of a weapon or an act which in the ordinary course of nature is not likely to cause death is said to commit qatl shibh-i-amd."*

10. The punishment is provided u/s 316 PPC which states that whoever commits Qatl Shibh-i-amd shall be liable to diyat and may also be punished with imprisonment of either description to a term which may extend to 25 years as ta'zir. In this case, the appellants besides being burdened to pay diyat have been sentenced to rigorous imprisonment for 14 years as ta'zir. Today, the jail roll of the appellants has been received which shows that they have already completed their sentence on 14.08.2022 and have been detained in jail for want of payment of diyat amount of Rs.1923843/-

11. At this juncture, as the appellants have already completed the sentence and are in jail for want of diyat amount, learned counsel for appellants has requested that while exercising the powers u/s 331(2) PPC the appellants may be released on bail and directed to pay the diyat amount in installments over a period spreading over 05 years. In the case of ***Muhammad Iqbal, etc versus The State*** reported in NLR 2001 Criminal 98, the similar issue has been decided. In this case, appellants were initially convicted for death which was confirmed by the High Court, but the Supreme Court converted their conviction from Section 302(b) PPC to Section 308 PPC and sentenced them to undergo 14 years imprisonment, in addition to pay diyat separately on two counts. The appellants being source-less to pay amount of diyat filed the petitions for release on bail u/s 331(2) PPC, which was allowed and appellants were granted bail against bail bond to the tune of diyat amount. The appellants also in the present case have already completed their sentence on 14.08.2022 and have been in jail only on account of their failure to pay Diyat amount. Learned defense counsel citing aforesaid case law has pleaded for release of the appelalnts on bail against furnishing PR Bond / Surety Bond to the tune of Diyat amount so that the appellants could pay the diyat amount in installments over a period spreading over 05 years.

12. Accordingly, the request of the defense counsel is allowed, and while exercising the powers u/s 331(2) PPC, prescribing payment of diyat, the appellants are granted bail against bail bond of equal amount of diyat. On their furnishing such bond they shall be released on bail. They are directed to pay diyat amount as determined by the trial court to the legal heirs of the deceased in easy installment over a period of five years from the date of their release by the jail authorities. In case of their failure to pay diyat amount in five years they shall be taken into custody and sent to jail till payment of Diyat.

Appeal is accordingly disposed of in above terms.

JUDGE

Ali Haider