

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No. 518 of 2020

Appellant : Ismail
through Mr. Jibran Nasir, Advocate
a/w Barrister Muhammad Rafiq.

Appellant : Zeeshan @ Shani
through Mr. Muhammad Imran Meo, Advocate

Respondent : The State
through Ms. Robina Qadir, Deputy Prosecutor
General

Date of hearing : 14th November, 2023

JUDGMENT

Omar Sial, J.: 17-year-old Farhan left his home on 18.06.2018 for a wedding function but did not return home that night. Mohammad Babul, his father, was told the following day by neighbourhood people that Mohammad Zeeshan, Mohammad Ismail and Mohammad Farhan had taken Farhan from the function and that now his dead body was lying in an under-construction shop. Babul went to the identified spot with Mohammad Ali and Mohammad Salman and saw the dead body of his son, whose body had torture marks and his hands were tied behind his back with a handkerchief. F.I.R. No. 350 of 2018 was registered under section 302 and 34 P.P.C. at the Surjani Town police station on 19.06.2018 against Zeeshan, Ismail and Farhan.

2. Mohammad Zeeshan and Mohammad Ismail, who were already in custody in another case, were identified in the police lock-up by Mohammad Babul, and they were rearrested in the present crime on 21.06.2018.

3. **Mohammad Babul (PW-1)** was Farhan's father and the complainant in the case. **Mohammad Huzaifa (PW-2)** was the bride's brother. **Dr. Azizullah Korejo (PW-3)** was the doctor who did the post-mortem. **Mohammad Khalid (PW-4)** was the bride's father. His testimony did not add much weight to the prosecution case. **Shaukat Ali (PW-5)** was the scribe of the F.I.R. **Inspector Fida Hussain Noonari (PW-6)** was the investigating officer of the case. **Shahzaib alias Shanoo (PW-7)** and **Mohammad Naeem (PW-8)** were witnesses to the last seen together.

4. In their respective section 342 Cr.P.C. statements, the appellants professed innocence; however, they neither volunteered to testify themselves nor produced any other witness. They did not explain the alleged false implication.

5. The learned 6th Additional Sessions Judge, Karachi West, on 24.09.2020, convicted the appellants to life imprisonment for having committed an offence under section 302(b) P.P.C. He also directed them to pay Rs. 500,000 as compensation to the legal heirs of the deceased.

6. I have heard the learned counsels and the learned Deputy Prosecutor General. No one made an appearance on behalf of the complainant despite notice. The police reported that the complainant could no longer be found at his last known address; the residents denied even knowing such a person as Mohammad Babul. My observations and findings are as follows.

7. The only evidence against the appellants is in the shape of "last seen together". No recovery was affected, and there were no eyewitnesses to the incident.

8. Mohammad Huzaifa (PW-2), along with Shahzaib alias Shanoo (PW-7) and Mohammad Naeem (PW-8), were the three witnesses who claimed that they had seen Farhan leaving with one of the appellants (Zeeshan). No one saw the second appellant (Ismail). Mohammad Khalid's (PW-4) testimony was based on hearsay.

9. Mohammad Huzaifa (PW-2) testified at trial that Farhan and other friends were present during dinner. He said that Zeeshan had taken Farhan with him to the rear of the tent and that it was in the early hours of 19.06.2018 that he learned that Farhan had died. The wedding function was in Zeeshan's house.

10. Shahzaib alias Shanoo (PW-7) testified that he was at the wedding function. He said there had been a break in the festivities after dinner. The festivities re-started at 3:30 a.m. on the morning of 19.06.2013. According to him, at that time, Zeeshan and his brother-in-law (who was not Ismail) arrived at the function and slapped Farhan behind a tent. They had then taken him away in a high-roof vehicle. Contrary to what Mohammad Huzaifa had told the court, this witness said that it was at 3:30 a.m. that Zeeshan and his brother-in-law had come to the wedding function for the first time.

11. Mohammad Naeem (PW-8) testified on the same lines as Shahzaib alias Shanoo (PW-7). He, however, saw Zeeshan come alone at 3:30 a.m. his brother-in-law, as asserted by Shahziab, was not with him.

12. Apart from the differences as mentioned earlier in their statements regarding the time Zeeshan came, who he was with and whether he was abducted in a high-roof vehicle or not, the primary aspect of the "last seen" witness testimonies I have taken into account is the delay in their recording. PW-2 Mohammad Huzaifa recorded a section 161 Cr.P.C. statement on 29.06.2018, 10 days after the registration of the F.I.R. PW-8 Mohammad Naeem and PW-7 Shahzaib alias Shanoo, were not even included as witnesses in the calendar of witnesses. It was 29.06.2019 one year later, when a section 540 Cr.P.C. application was moved, praying that the prosecution be allowed to summon these witnesses, amongst others, as they had been left out from the challan due to the evil intentions of the investigating officer. The application was allowed, and their version of how events unfolded was recorded for the first time at trial on 23.01.2020.

13. The complaint against the investigating officer may or may not be correct. The record shows that it was only after the submission of the challan in the case that, for the first time, the allegation of the investigating officer being dishonest was raised. No effort was made in the interim to report his dishonesty to his superiors or seek relief from the court. When examined in court, the investigating officer, P.W-6 Inspector Fida Hussain Noonari was only asked if he had deliberately not included the video footage and photographs of the wedding function. This aspect, as well as the fact that an application was also moved at trial seeking to re-summon Babul and Huzaifa as witnesses because the court had deliberately left out questions and answers in their testimonies, which had been recorded, reflect that the prosecution was only attempting to pass the blame of its inadequacies on to the police and the court.

14. The late recording of supposed eyewitness statements created doubt in the prosecution's case. This doubt, coupled with the fact that the only evidence available in the case was "last seen together", tilts the balance in favour of the appellants. In **Mohammad Abid vs The State (PLD 2018 SC 813)**, it was observed that last-seen evidence as circumstantial evidence should be accepted with great caution. In the present case, there was no recovery nor motive for the appellants to kill Farhan. On the contrary, the complainant, in his testimony, confirmed that there was no fight or enmity between the accused and the deceased. One gets an impression from the record that there was much more to the story than what has been presented by the prosecution at trial.

15. In several cases, the Honorable Supreme Court held that the evidentiary value of delayed statements without a plausible reason would reduce its evidentiary value to zero. Reference in this regard may be made to **Sajid Hussain alias Jogi vs The State (PLD 2021 SC 898)**, **Noor Mohammad vs The State and another (2020 SCMR 1049)**, **Abdul Khaliq vs The State (1996 SCMR 1049)**.

Medical Evidence

16. The dead body was brought to the hospital in the afternoon of 19.06.2018. Dr. Azizullah Korejo, who did the post-mortem, opined that death had occurred four to five hours ago. He concluded that death had occurred due to a head injury inflicted by a “hard and blunt substance”. In his cross-examination, the doctor conceded that a similar injury could be sustained in a road accident or if somebody fell from a height. An intriguing aspect of the inspection of the place of the incident was that no blood was found at the scene. The inspection memo prepared on 19.06.2018 records that *“there is nothing remarkable about the location that should be recorded”*.

17. Given the above, the prosecution did not prove its case beyond reasonable doubt. The benefit of such doubt should have gone to the appellants in pursuance of well-established principles. The appeal is allowed, and the appellants are acquitted of the charge. They may be released forthwith if not required in any other custody case.

JUDGE