IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Appeal No.D-14 of 2020
[Confirmation Case No.08 of 2020]

Criminal Appeal No.S-57 of 2020

Before:
Justice Muhammad Karim Khan Agha,
Justice Khadim Hussain Tunio.

Appellants	:	Mansab Ali and Mst. Rukhsana through Mr. Shakir Nawaz Shar, Advocate.
Respondent	:	The State through Mr. Imran Ahmed Abbasi, Assistant Prosecutor General.
Date of hearing	:	17.10.2023
Date of decision	:	25.10.2023

J U D G M E N T

KHADIM HUSSAIN TUNIO, J.-The captioned criminal appealshave been instituted by the appellantsMansab Ali and Mst. Rukhsana, two spouses, against the judgment dated 14.02.2020, passed by the learned 1st Additional Sessions (MCTC)Hyderabad in Sessions Case No.335/2018 ('**impugned judgment**'), which had culminated from FIR No. 23/2018 registered at Police StationBaldia, Hyderabad, whereby Mansab Ali and Mst. Rukhsana('**the appellants**') were convicted for offence punishable u/s 302(b) of the PPC. Mansab Ali was given a death sentence with the order to pay Rs. 200,000/- as compensation to the legal heirs of the deceased and Mst. Rukhsana was given life imprisonment also with an order to pay Rs. 200,000/- to the legal heirs of the deceased. If they failed, it was ordered that they suffer an additional six months of imprisonment.Both of them were also convicted for the offence punishable u/s 201 of the PPC read with S. 34 PPC and sentenced to seven years of rigorous imprisonment with fine of Rs. 50,000/- in default whereof they were to suffer an additional three months of imprisonment. Lastly, Mansab Ali was convicted for the offence punishable u/s 404 PPC and sentenced to suffer rigorous imprisonment for three years. It is important to note that Mst. Rukhsana was not awarded benefit of S. 382-B Cr.PC.

2. The prosecution's case, at trial, was that the complainant Muhammad Siddique had a daughter Hina, married off to one Adnan son of

Nasrullah. They had frequent visiting terms and on 08.05.2018, both of them came to the complainant's house to stay for two days and left on 10.05.2018, reaching home and intimating the complainant's sister Mst. Sheela of their arrival. Two days later, Adnan told the complainant that his daughter was missing. Then, the search of Mst. Hina ensued from the complainant's son-in-law Adnan's house. The complainant pleaded with the Adnan and the inmates of his house amongst whom were the present appellants, Mst. Rukhsana and Mansab, but he got no reply. A search of Mst. Hina's room showed her two cellphones lying on the bed.The complainant informed the police and the search continued for his daughter Hina. Three days from the disappearance, on 15.05.2018, he was informed that a human head was recovered from a canal and was asked to come identify the same by SIP Syed Imam Dino Shah. The complainant obliged and went to the mortuary only to find out that the head so recovered was of his daughter Hina. He appeared at the police station and raised suspicion against the house inmates of Mst. Hina, including her husband Adnan and Mst. Rukhsana, the appellant, amongst others. The FIR was lodged by SIP Syed Imam Dino, who proceeded to interrogate each person named in the FIR. Mst. Rukhsana and Mansab were arrested and during interrogation, Mansab admitted his guilt and his wife confirmed the occurrence during her own admission. During this investigative period, the appellant Mansab produced, among other things, the thigh of deceased Hina from within a kilt which too was taken for examination. The remaining accused were released after the complainant and appeared to be satisfied that they were not involved. Mansab and Mst. Rukhsana were also presented before the Magistrate where they got their judicial confessions recorded.

3. Once the thorough investigation concluded, SIP Syed Imam Dino Shah submitted the challan before the concerned Court where a formal charge was framed against Mansab Ali and Mst. Rukhsana to which both of them pleaded not guilty and claimed trial. At the stage of evidence, the prosecution examined as many as eight witnesses including Dr. Waheed Ali who conducted the post-mortem of the recovered head and thigh, Dr. Syed Muhammad Khalid who had kept within his custody the body parts for some period, the complainant and grieving father Muhammad Siddique, complainant's sister Mst. Sheela, private mashir Ghulam Mustafa, PC Muhammad Islam who had accompanied the investigation officer throughout most of the process, Magistrate ShafiaMemon who had recorded confessional statements of the appellants and lastly the investigation officer SIP Syed Imam Dino Shah. Each

one of them was put through rigorous cross-examination and had also produced various documents, pictures and artifacts all of which were duly exhibited and then the prosecution's evidence concluded.

4. Statement of the accused Mansab and Mst. Rukhsana were recorded u/s 342 Cr.P.C wherein both of them denied their involvement, denied having confessed to any crime and claimed that they were falsely implicated and the evidence was all fabricated. However, neither of them chose to examine themselves on oath as their own witnesses u/s 340(2) Cr.P.C nor did they examine anyone else or produce any other evidence to prove their innocence.

5. Learned trial Court then heard the parties and rendered the impugned judgment and sentenced the appellants as stated supra.

6. It was argued by Mr. Shakir Nawaz Shar, counsel for appellants that only the name of Mst. Rukhsana had transpired in the FIR which was also delayed whereas Mansab was not accused of anything in the same; that the co-accused were let off by the police even though they were the real culprits and colluded with the complainant; that the confessional statement of the appellants was coerced from them by the police; that the confession of the appellants was recorded with the delay of three days; that the woman medico-legal officer was not examined; that the incident is unwitnessed; that the conviction recorded by the trial Court was only on the basis of circumstantial evidence coupled with confessional statement which, he argued, cannot sustain. In support of his contentions, he cited cases reported as 2018 SCMR 1001 *(Muhammad Saleem vs. The State)*, 2018 MLD 761 *(Muhammad Aslam vs. The State)*, PLD 2006 SC 796 *(Muhammad Din vs. The State)*, 2008 SCMR 1064 *(Ghulam Akbar and another vs. The State)*, 2012 SCMR 419 *(Muhammad Ashraf vs. The State)*, 2016 PCr.LJ 240 *(Abdul Hameed vs. The State)*, 2011 MLD 967 *(Muhammad Ismail vs. The State)*, 2019 YLR 2157 *(Naseebzada vs. The State and another)*, 2007 SCMR 670 *(Muhammad Pervaiz and others vs. The State and others)*, 2019 SCMR 631 *(Muhammad Arif vs. The State)* and 2011 SCMR 1473 *(Nazeer Ahmed vs. Gehni Khan and others)*.

7. Learned Assistant Prosecutor General, on the contrary, fully supported the impugned judgment while arguing that both the appellants were in fact nominated in the FIR being husband and wife and house inmates of the deceased; that the recovery of the gold ornaments, Rs. 19,000 in cash and the crime weapon viz. the knife were all recovered having been pointed out by the

appellant Mansab; that the learned Magistrate followed all safeguards while recording the confessional statements of the appellants and ensured that no marks of violence were present on their body to suggest coercion; that the delay in the recording of confessional statements was not on the part of the police; that all the prosecution witnesses have fully supported the charge against the appellants.

8. We have heard the learned counsel for the appellants and the learned Assistant Prosecutor General at length. We have also perused the material placed before us.

9. This barbaric act was undeniably unwitnessed and as such prosecution had to rely on circumstantial evidence. However, this in and of itself does not mean that the prosecution witnesses such as the complainant and his sister are invalidated or provide no value. They too can help form a chain of circumstances or make an already established chain even stronger. No piece of evidence can ever be read in isolation of its surrounding factors. It is a well-entrenched legal principle that circumstantial evidence, in and of itself even, can be made the basis of conviction and was seen as early as in the case titled **AbdusSamad v. The State [PLD 1964 SC 167]** wherein A.R. Cornelius, C.J *(as his lordship then was)* observed with respect to the accused pointing out the remains of the dead body that:-

> "… but accepting the fact that the remains were found from a very lonely place where no person would ordinarily go to search for clues to the child missing from the town four miles away, a reason has to be found why the Police went to the place at all, and no other reason is offered than that the accused himself led them to that place."

Much like the present case, the appellant Mansab led the police first to the recovery of the crime weapon from an electric board in his rented room where he had hidden the crime weapon viz. the knife with which he, showing little affection for human life, cut into many pieces an innocent woman, the money he stole from her room and the gold ornaments. Then, he led the police to a fuel station and got the thigh of the deceased recovered which was found covered in kilt. Such a discovery, now based on fact in view of the DNA report and the evidence of the two medical officers, Dr. Waheed Ali and Dr. Syed Muhammad Khalid, was proven to be belonging to Mst. Hina could only have been discovered if specifically pointed out. This alone would have been sufficient to uphold the conviction of the appellants as was held in the case of **Muhammad Fayyaz alias Shakoh v. The State [PLD 1984 SC 445]**. Overtime, the law on

admissibility of circumstantial evidence has developed to be that akin to a chain, unbroken one, of events where one end of that chain leads to the body of the crime and the other to the neck of the assailant. Such observations were ratified by the august Supreme Court in the case of **HashimQasim and another v. The State [2017 SCMR 986]**. The first link in this case was, as established above, the recovery of the body part of the victim having been pointed out by the appellant Mansab and the second link was him pointing out the crime weapon, the money and the gold ornaments.

10. The next crucial piece of evidence, as a matter of record, is the confessional statements recorded before the Judicial Magistrate. While confessing his guilt, Mansab carefully ran the Judicial Magistrate through his plan on how he had first apprehended Mst. Hina while she was busy hanging clothes to dry, covered her mouth and got bit in the pursuit, then proceeded to strangle her until she fell unconscious and dragged her into the bathroom. He then, admittedly, brought the knife from the kitchen, started by cutting her at the feet and eventually left Mst. Hina in several pieces, with her head separated and the first one to be found. He then told the Judicial Magistrate how he placed the body parts in plastic shopping bags, took them down one by one before cleaning the bathroom and then at night disposed of the remains in the canal. The wife, Mst. Rukhsana, in her confessional statement admitted to having knowledge of the incident and supplying the appellant Mansab with shopping bags to dispose of the body parts. Such an elaborate scheme was one that an ordinary person can only imagine to see in the movies, a masterful plan to dispose of the dead body in pieces in a canal so as to never be found. But we are reminded by the Almighty in the Holy Quran in that "**they plot, but Allah (also) plotteth; and Allah is the best of plotters.**" - Al-Anfal (8:30). To take the confessional statements in their true perspective, it is crucial to establish the voluntariness of these confessions. It was argued by the counsel for the appellants that the confession was forced and the police employed coercive measures to get the same. To this extent, Mst. Rukhsana has deposed that police had forced her to confess on threats to her family and their son and appellant Mansab stated similarly in his statement. An attempt was made to suggest that the confession was retracted, however nothing is available on the record that the same was in fact retracted. However, even if the same was retracted, proving that the same was voluntary and that the same is deemed truthful would easily allow for it to be used as a corroborative piece of evidence as held

by the Supreme Court in the case of **Manjeet Singh v. The State [PLD 2006 SC 30]**wherein it was observed that: -

> "***There is no rule of criminal administration of justice that the Court having found the retracted confession voluntary and true, must also look for the corroboration and in absence of corroborative evidence conviction cannot be maintained.*** *The retraction of a judicial or extra-judicial confession itself is not an infirmity to be considered sufficient to withhold the conviction because the evidentiary value of a confession is not diminished by mere fact that it was retracted by the maker at the trial and thus the independent corroboration from other source direct or circumstantial, cannot be insisted in every case as a mandatory rule rather the rule of corroboration is applied as abundant caution and in a case depending entirely on the confessional statement of a person or only of the circumstantial evidence, this rule is applied more cautiously."*
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> ***(underlining for emphasis)***

The above observations were reiterated in the case of **Shaukat Ali v. The State [2019 SCMR 577]**.

11. Firstly, while dealing with the delay in the recording of confessional statements of the appellants is concerned, it is observed that this delay cannot be attributed to the investigating agency, rather the same was ordered to be recorded on a specific date, provided by the Judicial Magistrate concerned, making this delay inconsequential as it proves that the investigation agency, the police, had produced the appellants for recording of their confessional statements very early on. The Judicial Magistrate (PW-7), at the time of recording the confessional statements asked the appellants whether they were confessing due to coercion or maltreatment at the hands of the police or whether any third party was involved, at all. Both of them replied that they were doing so on their own accord and were not coerced or threatened into doing so. The learned Judicial Magistrate also deposed that she observed no marks of violence on the appellants to suggest that they had been subjected to any maltreatment during their custody. As such, their confessions appear to be voluntary. From pointing out even the minute detail to disposing of the body, appellant Mansab barbarically perpetrated this heinous act and provided the motive for the act as well, such that they had been asked by Adnan, the husband of Mst. Hina to vacate the upper portion of the house where they were residing after the marriage of Mst. Hina with Adnan. Whereas, appellant Mst. Rukhsana helped him by supplying a mode of disposing the body or what was left of it. These confessions corroborate the version of the investigation officer (PW-8) before whom both the appellants had initially confessed during interrogation. Each material fact in the confessional statements is as it was

deposed by SIP Syed Imam Dino Shah in his examination-in-chief. The deposition not only supports the version furnished the appellants with respect to the commission of the offence, but also suggests that all other depositions coming from SIP Syed Imam Dino Shah can be attributed high levels of credibility who otherwise had no reason to falsely implicate the appellants. It is also a matter of record that he had noted the injury on the hand of appellant Mansab, which as Mansab admitted, came from the deceased Mst. Hina biting him as he was covering her mouth. DNA report and blood sampling to that extent is also available on the record. He was cross-examined on all these aspects, but nothing fruitful was obtained from the said cross-examination and he remained firm on his stance regarding his depositions and the culpability of the appellants. The investigation carried out by SIP Syed Imam Dino is commendable as he observed the occurrence from every angle possible and ensured that he did his due diligence as a neutral investigating authority with the sole aim to uncover the truth. Medical evidence fully supports the prosecution case, from the crime weapon to the mode of death to the barbaric nature of the event.

12. An attempt was made to seek benefit from the delay in the lodging of FIR as well, however this contention is of no assistance to the appellants. The delay has been explained, not only by the complainant, but also by SIP Syed Imam Dino. It is also an admitted fact that the complainant had intimated the police of the disappearance of his daughter on the very same day she disappeared, but in the absence of any suspicion at the time, did not choose to lodge the FIR. The august Supreme Court, with respect to delay in the lodging of an FIR has observed in the case of **Muhammad Nadeem alias Deemi v. The State [2011 SCMR 872]** that: -

> "It is an established principle of law and practice that in criminal cases the delay, by itself, in lodging the F.I.R is not material. The factors to be considered by the Courts are firstly, that such delay stands reasonably explained and secondly, that the prosecution has not derived any undue advantage through the delay involved."

13. Having considered the case on merits, we must now turn to a crucial aspect of the case of appellant Mst. Rukhsana. It is an admitted fact, as per the admissions of both, the appellant Mansab who is her husband and her own confession, her role in the commission of the offence was limited to facilitating the disposal of the body parties by providing plastic shopping bags and cleaning the aftermath. She did not play any active part in the actual

murder and as such, in our opinion, cannot be saddled with the responsibility of the same as a whole especially when she is not shown to be a part of the commission from the start. She was the appellant Mansab's wife and bound unto him. As such, her conviction and sentence for the offence punishable u/s 302(b) PPC cannot sustain and she can only be held guilty for the destruction of evidence punishable u/s 201 of the Penal Code. Now coming to the sentence awarded to the appellant Mansab, he is deserving of no leniency. The barbaric nature in which he committed the murder, the lack of remorse at trial, the fact that no one from his family came forward to testify not for his innocence but to depose as to his state of mind shows even their disapproval of his acts. He gruesomely cut an innocent woman into pieces over being told to shift from one floor of the house of that same woman's husband to another floor. Such act can only be punished with death and it would not be the first time that circumstantial evidence coupled with confession leads to the death penalty as it was also seen more recently in the case of **Imran Ali v. The State [2018 SCMR 1372]** and before that in the case of **Muhammad Latif v. The State [PLD 2008 SC 503]** where, in both cases, the august Supreme Court declined to interfere with the death penalty awarded to the accused on the basis of confessions and circumstantial evidence viewing their acts as barbaric and inhumane, similar to those of appellant Mansab in this case.

14. The prosecution has, beyond reasonable doubt, proven the allegations raised against both the appellants; of murdering Mst. Hina and disposing of her body against appellant Mansab and of aiding by destroying evidence against the appellant Mst. Rukhsana. Following the above discussion, all three convictions and sentences awarded to the appellant Mansab are upheld whereas the conviction for the offence punishable u/s 302(b) PPC against the appellant Mst. Rukhsana is set aside, maintaining her conviction for the offence punishable u/s 201 PPC. She is also awarded the benefit of S. 382-B Cr.PC. which the trial Court had omitted to do so. As far as the death reference for confirmation of death sentence awarded to the appellant Mansab is concerned, the same is hereby confirmed.

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