

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No. 742 of 2022
Confirmation Case No. 01 of 2023

Before:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio

Appellant: Muhammad Sadiq son of Muhammad Umar
through Mr. Hussain Bux Saryo, advocate.

Respondent: The State through Mr. Muhammad Iqbal
Awan, Additional Prosecutor General, Sindh

Date of hearing: **19.05.2023**

Date of decision: **22.05.2023**

J U D G M E N T

KHADIM HUSSAIN TUNIO, J- The appellant Muhammad Sadiq son of Muhammad Umar has challenged the vires of judgment dated 28.11.2022, passed by the learned IX-Additional Sessions Judge, Karachi-South in Sessions Case No. 820 of 2019 (*The State v. Muhammad Sadiq*) emanating from FIR No. 33 of 2019 of P.S. Napier, Karachi registered under section 302 PPC. Through the impugned judgment, appellant was convicted, for committing murder of deceased Abdul Wajid, under **section 265-H(ii) Cr.P.C.** and sentenced to death in pursuance of section 302(b) PPC. He was also directed under section 544-A Cr.P.C, to pay compensation of Rs.500,000/- (Rupees five lacs) to the legal heirs of the deceased Abdul Wajid, in default whereof to undergo S.I. for four months more.

2. According to the narrative offered by the prosecution, on the date of 11.03.2019, Abdul Wajid, the 25-year-old son of the complainant Abdul Wahid, went for his regular job but failed to return home. On the following day, 12.03.2019, the complainant sought information from the shoe store where his son was employed, only to learn that on 12.02.2019 around 10:00 hours, his son had exited the shop after its closure and hadn't been seen since. In the course of the search for his son, the complainant received a distressing message from someone at the Civil Hospital. The message, sent via WhatsApp, contained an image of his son's lifeless body, claiming that unknown individuals had murdered him and abandoned his corpse in a rickshaw bearing the registration

number D-09812 before making their escape. In response to this devastating revelation, the complainant got an FIR lodged against the unidentified perpetrator. Subsequently, based on the testimony of Asim, a co-worker from the same shoe store, the police apprehended the present appellant.

3. Following the investigative procedure, the appellant was indicted, and a formal charge was framed against him to which he pleaded not guilty and requested a trial.

To substantiate its charges, the prosecution summoned twelve prosecution witnesses namely PW-1 Abdul Wahid, PW-2 Muhammad Mustafa, PW-3 Muhammad Asim, PW-4 Tariq Mehmood, PW-5 Zulfiqar Maqbool, PW-6 Abdul Majeed, PW-7 Najeef Khan, PW-8 Muhammad Ishaq, PW-9 Muhammad Shakeel, PW-10 Umar Farooq, PW-11 Dr. Noor Muhammad and PW-12 Taj Nabi Khan. These witnesses presented various documents and artefacts into evidence. Subsequent to this, under S. 342 Cr.PC, the appellant's statement was recorded, in which he proclaimed his innocence and alleged false implication. However, he refrained from taking an oath to testify on his own behalf, nor did he present any supportive evidence in his defense. Finally, upon hearing the arguments of the parties, the trial court issued a conviction and determined the appellant's sentence as supra.

4. Learned counsel for the appellant has primarily contended that there is no direct evidence available against the appellant; that the incident is unwitnessed; that nothing has been recovered from the appellant; that the recovery of the prescription strip was from a public place accessible to everyone; that the learned trial Court has solely relied on the extra-judicial confession of the appellant before the police to convict him, as such he prays for the acquittal of the appellant.

5. On the contrary, learned APG Sindh argued that the prosecution has examined as many as twelve witnesses and has successfully established the guilt of the appellant.

6. We have heard the learned counsel for the respective parties and perused the record available before us.

7. Upon reviewing the prosecution evidence, it is evident that the case of the prosecution primarily hinges upon circumstantial

evidence. This evidence includes the extra-judicial confession made by the appellant to the police as well as the discovery of an empty prescription strip in the vicinity of his residence. In murder cases that rely heavily on circumstantial evidence, the expected standard is that of a seamlessly linked chain; one end of this chain needs to be connected to the dead body while the other end implicates the accused; the basic principle behind *corpus delicti*. This chain of circumstances should be unbroken and the implicated events must be such that they cannot be reasonably interpreted in any way that excludes the guilt of the accused. To establish the accused's guilt beyond a reasonable doubt and contradict the claim of innocence, this chain of facts and circumstances needs to be complete. If any link in this chain is missing, it compromises the entire chain, making it unreliable. In such a situation, the accused cannot be safely convicted, especially in cases involving capital punishment. Therefore, if the circumstantial evidence does not meet these rigorous standards, it would be perilous to rely on it for conviction. In fact, disregarding such evidence would be a more prudent and safer approach. This argument is supported by the precedent set in the case of *Naveed Asghar and 2 others V. The State (PLD 2021 SC 600)*. *Naveed Asghar's* case echoed the findings of the Hon'ble Apex Court in the case of *Azeem Khan & another v. Mujahid Khan & others (2016 SCMR 274)* wherein it was observed that:-

"31. As discussed earlier, the entire case of the prosecution is based on circumstantial evidence. The principle of law, consistently laid down by this Court is , that different pieces of such evidence has to make on chain, an unbroken one where one end of it touches the dead body and the other the neck of the accused. In case of any missing link in the chain, the whole chain is broken and no conviction can be recorded in crimes entailing capital punishment."

8. Prosecution firstly examined the complainant Abdul Wahid who was not an eye-witness to the incident, rather had heard of the death of his son from someone else over his phone and then got the FIR lodged against an unknown culprit. The appellant Muhammad Sadiq was implicated on the basis of a disclosure by PW-3 Muhammad Asim, a shop keeper, who at 11:05 p.m was alongside the deceased at the same shop they worked. He disclosed to the complainant and in his depositions that the deceased Abdul Wajid disclosed to him that his friend Muhammad Sadiq is coming to pick him up. However, in his cross-examination, he admitted that he had not seen the deceased go

with the appellant. As such, this deposition is of no major help to the prosecution, however was treated as last seen evidence by the learned trial Court which is an incorrect determination.

9. The next piece of evidence considered by the learned trial Court was the extra-judicial confession of the appellant before the police. Allegedly, the appellant had admitted his guilt before the police however a perusal of the record shows that despite presenting the appellant for remand before the concerned magistrate, the investigation officer failed to get the appellant's judicial confession recorded as per law. The Hon'ble Supreme Court in case of *Mohammad Aslam v. Sabir Hussain* (2009 SCMR 985) has held that evidence of extra-judicial confession is always treated as a weak type of evidence. Confessions obtained outside a judicial proceeding, particularly those made to the police, are viewed with suspicion due to the possibility of coercion, undue influence, or torture, which could make such a confession involuntary or unreliable. Such confessions can also often reflect human rights violations, rather than genuine admissions of guilt. The Courts are required to always adjudge the quality of the evidence. Extra-judicial confessions lack the judicial oversight that ensures the fairness, voluntariness, and truthfulness of the confession. The absence of such oversight makes such confessions weaker in comparison to those made in a court setting under oath, which bear more legal weight and credibility. In the case of *Abdul Mateen v. Sahib Khan* (PLD 2006 S.C 538), the Hon'ble Apex Court held that the evidence of extra judicial confession must be proved by evidence of a very high unimpeachable character, as such prosecution was required to prove that this confession was not obtained through undue duress and should have also presented corroborating pieces of evidence to establish the guilt of the appellant.

10. The last piece of evidence is the recovery of a medical prescription strip which was allegedly what contained pills that the appellant had mixed in the juice he provided to the deceased before suffocating him to death. It is a matter of record that the prosecution had gotten conducted a chemical examiner's report for the presence of the given medication in the stomach of the deceased. The same report, available at Ex. 16/W, found no presence of any substance in the

stomach, liver, lungs, spleen, kidney and small intestine of the deceased, making the relevance of the recovery of the prescription strip worthless. Even otherwise, the same was recovered from an open area accessible to everyone.

11. The onus of proving the case lies heavily on the prosecution and they are obliged to do so beyond reasonable doubt. If even a single element introduces uncertainty in the prosecution's case, this doubt pivots in favour of the accused, extending the benefit of doubt to the accused not as a favour, but as an intrinsic right. This principle has been affirmed by the Hon'ble Apex Court in the cases of *Tariq Pervaiz v. The State* (1995 SCMR 1345), *Muhammad Akram v. The State* (2009 SCMR 230) and *Muhammad Zafar and another v. Rustam and others* (2017 SCMR 1639).

12. For what has been discussed above, prosecution has miserably failed to prove its case against the appellant. Resultantly, the instant criminal appeal is allowed, the impugned judgment is set aside and the conviction and sentences awarded to the appellant Muhammad Sadiq are also set aside. The appellant is ordered to be released forthwith if not required in any other custody case.

13. Consequently, Confirmation Case No. 01 of 2023 is answered in the negative.

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