IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Appeal No. D-20 of 2020

[Confirmation Case No.09 of 2020]

***Before*:**
Justice Khadim Hussain Tunio
Justice Arbab Ali Hakro

Appellant	:	Teeko alias Tikam son of Gayan Bheel, through Mr. Ghulamullah Chang, advocate.
Respondent	:	The State through Mr. Imran Ali Abbasi, Assistant Prosecutor General, Sindh.
Date of hearings	:	12.07.2023 & 13.07.2023.
Date of decision	:	25.07.2023

J U D G M E N T

KHADIM HUSSAIN TUNIO, J.- The captioned criminal appeal is directed against the judgment dated 19.02.2020, passed by the learned 1st Additional Sessions Judge/MCTC Tharparka @ Mithi in Sessions Case No. 120 of 2019 (***"impugned judgment"***), emanating from Crime No. 86 of 2019, registered at police station Mithi for the offence punishable under section 302 P.P.C, whereby the appellant was convicted and sentenced to death and to pay compensation of Rs.200,000/- (two lac) in terms of section 544-A Cr.P.C to the legal heirs of deceased Parsan and in case of default whereof, he was ordered to suffer simple imprisonment for six months more.

2. The allegation against the appellant Teeko is that he demanded the hand of Parsan, daughter of the complainant Vasand, while already being married to her sister Shrimati Moolan. The complainant refused the marriage offer on behalf of his daughter which annoyed the appellant Teeko. This displeasure reportedly culminated into what occurred on 17.10.2019 while the appellant Teeko was working in the farmlands with his wife Shrimati Moolan and her sister Parsan. The appellant strangled his sister-in-law after getting on top of her and this grave act is alleged to have been witnessed by the complainant, who was drawn to the scene by the distressful cries of his daughter as well as by the appellant's nephew, Taro, and cousin, Jalu. Despite fervent pleas for the life of Parsan as they got closer the appellant had escaped and Parsan was found dead. Her dead boy was shifted by the complainant to

Civil Hospital Mithi where he left Taro and Jalo and went to the police station to get the FIR pertaining to the incident lodged.

3. The learned Trial Court, after completing all the legal formalities, framed the charge against the appellant to which, he pleaded not guilty and sought to be tried.

4. In order to prove its case, the prosecution examined the complainant Vasand Bheel at Ex: 08, P.W-02/eye-witness Taro at Ex: 11, P.W-03/eye-witness Jalu at Ex: 12, P.W-04/mashir Chehan Singh Thakur at Ex: 14, P.W-05/Tapedar Lachman Singh at Ex: 21, P.W-06/WMLO Dr. Komal Kumari at Ex: 26, P.W-07 Judicial Magistrate Nisar Ahmed Dars at Ex: 31 and P.W-08/IO ASI Bhalji at Ex: 35. All of the prosecution witnesses produced various documents and other artefacts in evidence whereafter prosecution's side was closed vide statement at Ex: 44.

5. After recording of evidence at trial, the statement of accused as required under section 342 Cr.P.C was recorded, wherein he denied the allegations leveled by the prosecution against him and professed his innocence. However, he neither opted to examine himself on oath nor did he examine any witness in his defence. The learned trial Court after hearing the parties' counsel convicted the appellant as discussed *supra*, hence the appellant filed this Criminal Appeal.

6. Mr. Ghulamullah Chang, counsel for the appellant contended that the prosecution has failed to substantiate the motive, despite it being claimed by the complainant in the FIR; that the appellant sought the deceased's hand in marriage; that as per the traditional tenets of Hindu matrimonial laws, it is proscribed for a man to seek matrimony with his wife's sister whilst his wife is still living, a fact conceded by the complainant during cross-examination; that the appellant lived with the complainant's family in a shared house; that the testimony of the complainant and the PWs is full of inconsistencies concerning the proximity between the incident's location and the complainant's village residence; that the complainant party made no attempt to apprehend the appellant at the scene; that no eye-witnesses exist to corroborate the appellant's involvement in the offense; that the deceased's body arrived for post-mortem examination at 1900 hours and the complainant's party had reached the police station at approximately 1830 hours whereas the place of incident, the police station and the hospital are separated by roughly 20 kilometers. It was further highlighted that the MLO stated that rigor mortis was fully developed and the estimated duration

between the time of death and the post-mortem was around 8 to 9 hours; that there are many inconsistencies between the location of injuries noted in the post-mortem report and the deposition of the MLO, as well as difference between the injuries recorded in the post-mortem report and the memo of injuries; that there were no observable indications of violent assault or strangulation on the deceased's neck; that the deceased's body was moved from the place of incident to the hospital by the complainant party; and lastly, that the appellant is innocent and has been wrongfully implicated in the current case. In support of his arguments, he relied upon case laws reported as Noor Ahmad vs. The State and others (2019 SCMR 1327), Asad Rehmat vs. The State and others (2019 SCMR 1156), Zafar vs. The State and others (2018 SCMR 326), Muhammad Sharifan Bibi vs. Muhammad Yasin and others (2012 SCMR 82), Muhammad Shafi alias Kuddoo vs. The State and others (2019 SCMR 1045), Pathan vs. The State (2015 SCMR 315), Azhar lqbal vs. The State (2013 SCMR 383), Liaquat Ali v. The State (2008 SCMR 95), Anil Phukan v. The State of Assam (1993 SCMR 2236), Mst. Sughra Begum and another vs. Qaiser Pervez and others (2015 SCMR1142), Sabir Hussain v. The State (2014 SCMR 794), Muhammad Shah v. The State (2010 SCMR 1009), Rohtas Khan v. The State (2010 SCMR 566), Shah Bakhsh and another vs. The State (1990 SCMR 158), Sheroo vs. The State (2001 YLR 955), Mukhtar Ahmad vs. The State (2001 YLR 1673) and an unreported judgment passed in Cr. Appeal No. D-88/2016 and Cr. Jail Appeal No. S-160/16 dated 09.04.2020.

7. Contrarily, learned Assistant Prosecutor General vehemently countered the defenses posited by the appellant's counsel while stating that the motive has indeed been adequately substantiated by the prosecution; that the MLO conceded during cross-examination that the injuries sustained by the deceased were consistent with defensive wounds, presumably incurred during a struggle with the assailant at the moment of the assault; that sufficient evidence is available on the record to maintain the conviction of the appellant who is deserving of no leniency.

8. We have heard learned counsel for the respective parties and have gone through the material available on the record.

9. Perusal of record and evidence available brings the Court to the conclusion that prosecution has undeniably proven its case against the appellant for the offence alleged against him by examining numerous witnesses whose evidence remained un-shattered on material aspects of the case even after lengthy cross-examinations. The deceased had been done to

death by the appellant by strangulating her while sitting on top of her body. The appellant had been arrested promptly by the police on the same day i.e. 17.10.2019. Upon interrogation, the appellant admitted his guilt before the police and following this, the investigating officer sent a letter dated 18.10.2019 to the concerned Magistrate for recording of confessional statement of the appellant. A perusal of the confessional statement of the appellant recorded by PW-7, the concerned Judicial Magistrate, shows that all necessary protocols were observed and the concerned JM had also satisfied himself regarding the voluntary nature of the confession. A rather accurate translation of the relevant portion of the confessional statement recorded in Sindhi is provided for ready reference as it shall play a crucial role hereafter:

> "I swear that I had solemnized my marriage with Moolan Bheel about 10/12 years ago, but had no child with her. My father-in-law had kept me as a resident son-in-law (gharjamai) in his house along with my wife Moolan, Parsan and my brother-in-law Basro. I had no child with my wife and as such demanded the hand of her sister Parsan in marriage about 6/7 years ago on which my father-in-law had agreed once she had attained maturity. But, instead, my father-in-law had arranged the proposal of marriage of Parsan with someone in the Bheel community of Hothi village the previous year. My father-in-law then denied my proposal of marriage for Parsan and I was annoyed and looking for the right moment. Yesterday (17.10.2019), I and Parsan were working in the farmland with my wife and when she left, I grabbed Parsan by her arm, threw her on the ground and strangled her to death with both my hands. After that, I ran away to Winger (another villager) and police arrested me at night time."

10. The first and obvious illegality on the bare perusal of the confessional statement, one might argue, is that the appellant while confessing his guilt swore. This raises many questions which need satisfaction to a certain degree before reliance, if any, can be placed on this confessional statement. A thorough review of the file pertaining to the confessional statement entails that the appellant was not asked to swear an oath by the Judicial Magistrate prior to recording the statement. What comes out of the appellant's mouth at the time of recording of the statement is something beyond the control of the Court. Perusal of S. 8 of the Oaths Act, 1873 entails that it is for the Court to tender these oaths to any party of the proceedings, therefore the appellant swearing by himself while confessing his guilt has no bearing on the case nor shall the victim's family suffer for such am ambiguity. Nonetheless, confessional statements, even on oath if they are found to be truthful, without inducement and where no prejudice is alleged or caused, can be used against

an accused person so long as the chalked out criterion is satisfied.[1] With certainty, we find that the confessional statement of the appellant is true, on the face of it, and there certainly was no prejudice caused to the appellant at the trial. A perusal of the above confessional statement also shows that the same is in line with the prosecution's version of events and also discloses every minute detail regarding the incident taking place. Even if this confessional statement is thrown out, the complainant's deposition alone is convincing, to a sufficient degree, to hold the appellant guilty of the offence and even his statement alone can be considered sufficient to warrant conviction.[2] The FIR of the incident was also promptly lodged by the complainant as such no assertion of deliberation or consultation can be entertained. No major contradictions have been pointed out by the defence in the evidence of the prosecution witnesses which is otherwise found consistent. The complainant, regarding the incident, deposed that *"I was coming from my house towards my land when my daughter Moolan went to fetch water. Meanwhile, my son-in-law caused a blow to my daughter Parsan who raised cries which attracted me and my nephew Taro and cousin Jalu and my daughter Moolan. We saw, from a distance of 10/15 paces that my son-in-law was riding on the chest of my daughter Parsan while strangling her."* To this effect, eye-witness Taro deposed that *"I was present on my land near the place of incident when I heard cries of Parsan on which me, the complainant, Moolan and Jalo came running towards the direction of the cries and saw that Teeko was riding on the chest of Parsan and strangling her."* The other eye-witness Jalu deposed that *"I was present at my land when I heard cries of Moolan on which me and Taro went running and when we reached there, we saw Teeko was riding Parsan and strangling her."* The only contradiction that appears on the bare perusal of the above depositions is between Jalu and Taro regarding the cries they heard. It is pertinent to note here that these contradictions on which the defense counsel placed so much reliance are very minor in nature. These variations may well be due to mere lapse of memory or confusion caused in his mind by a relentless cross-examiner. Not only that, it is often hard to differentiate a shrill scream of a woman. It is well settled principle of law that minor contradictions are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is not credible and cannot be accepted by the test of prudence,

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[1] See Nazeer alias Wazeer v The State, PLD 2007 SC 202
[2] See Niaz-ud-Din v The State, 2011 SCMR 725

then it may create a dent in the prosecution version. However, if an omission or discrepancy does not go to the root of the matter and does not usher in incongruities, the defence cannot take advantage of such inconsistencies.[3] It was also argued by the defence counsel that the memo of injuries and the post-mortem report contradict each other, however this is far from the truth. Besides one contradiction regarding the locale of a cut over the eye; post mortem report providing it to be over the right eye and the memo of injuries providing it to be over the left eye, everything else seems to be in nexus.

11. The learned counsel for the appellant's assertion concerning the prosecution witnesses' relationship is devoid of substance. Despite the familial connections linking the complainant and the PWs with the deceased, an examination of their testimonies revealed them to be credible and reliable. Mere relationship with the deceased is no ground to discard trustworthy evidence as held by Hon'ble Apex Court in numerous pronouncements. [4] Furthermore, this horrendous act was orchestrated in the presence of her father. It would be an aberration for a father to permit the actual culprit to escape justice and, instead, attribute the heinous crime of murdering his daughter to an innocent individual, without any discernible or rational motive as held by the Hon'ble Supreme Court in the seminal case off ***Allah Ditta v. The State***[5] which has been reaffirmed time and again in cases such as ***Islam Sharif v. The State***[6] and ***Shamsher Ahmed v. The State and others***[7] wherein it has been held that:-

> "Learned counsel for the petitioner/convict could not point out any reason as to why the complainant has falsely involved the petitioner/convict in the present case and let off the real culprit, who has committed murder of his real son. Substitution in such like cases is a rare phenomenon. The complainant would not prefer to spare the real culprit who murdered his son and falsely involve the petitioner without any rhyme and reason."

12. The prosecution's case is solidly founded upon ocular testimonies, rendered by the witnesses, which, from any perspective, appear natural and imbued with credibility. The motive, regarding the appellant's intense resentment following the refusal of the deceased's hand in marriage, has been substantiated and is corroborated by the appellant's own admission

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[3] See Zakir Khan and others v The State, 1995 SCMR 1793
[4] Nizamuddin v The State, 2010 SCMR 1752, Nasir Iqbal v The State, 2016 SCMR 2152 & Azhar Hussain v The State, 2022 SCMR 1907
[5] PLD 2002 SC 52
[6] 2020 SCMR 690
[7] 2022 SCMR 1931

in his confession statement. The Medico-Legal Officer's findings, which suggest evidence of a struggle between the deceased and the assailant, further challenge and undermine the defense counsel's argument of an absence of resistance on the part of the deceased. The timeline of the injury aligns precisely with the unfortunate demise of Parsan. The wounds identified on the deceased's person correlate with the method of the ghastly act as alleged to have been perpetrated by the appellant and the post-mortem report affirms the cause of death as asphyxiation via strangulation. The depositions from the witnesses harmonize seamlessly when speaking of critical facets of the incident as well as details in conjunction therewith. The cross-examinations yielded inconsequential results, given that no adverse information could be gleaned from the witnesses, except for a series of suggestions which were promptly refuted. These disparate evidentiary elements coalesce to form an indomitable case against the appellant, leaving no room for entertaining a possibility of innocence or substitution. It was also alleged by the defence counsel that the DNA report was negative and did not tie back to the appellant. A perusal of this report showed that it was to detect any semen within the victim and nothing else and when no allegation of rape was alleged, it should come with no shock to the defence that it would bear no result. A proper DNA profiling ought to have been taking samples from the nails of the deceased, her body or her clothes to find any disparity that suggested that the appellant's DNA was not present on her at all which would have destroyed the prosecution's case as an altercation of the level alleged was bound to leave the appellant's DNA, in some shape, on the deceased. Alas, that is an opportunity wasted and it is with a heavy heart to admit that such thought often does not come to the mind of most criminal investigators or that most are not qualified or trained enough to look past what appears to be the most easy escape to them, often causing many cases to get thrashed.

13. The matter to be considered by this Court now is whether the appellant is deserving of some leniency in the matter of his sentence. It was alleged by the defence counsel that motive was not proved against the appellant while referencing Hindu marital customs which do not permit one to marry his sister-in-law in the lifetime of his wife. It is important to note that such a consideration is irrelevant as despite being not allowed by his religion, the appellant admitted in his confessional statement to have asked for the hand of the deceased in marriage, as such proving the motive behind the incident. However, the appellant also admitted to another crucial detail in his

confessional statement; that he had no children from a marriage of 10 to 12 years. The state of childlessness can potentially engender profound frustrations and discontentment. While a declined proposal for matrimony does not constitute a conclusive impasse, it does offer a mitigating circumstance that might cast the appellant's actions in a somewhat more sympathetic light. The combined sense of disappointment stemming from a lack of progeny and the rejection of a potential opportunity to secure successors could conceivably have had a detrimental impact on the appellant's decision-making faculties and compromised his mental clarity. History bears witness to instances of contentious disputes and wars over succession and conflicts ignited by the desire to secure heirs such as the Mughal-Maratha wars of the 17th Century. Regrettably, the appellant's actions have still made him hopeless, leaving none but himself to hold accountable for this outcome. Therefore, while considering the state of mind of the appellant and in seeking guidance from the case of ***Subedar (Retd.) Abdul Majeed and others v. Mulazim Hussain Shah and another***,[8] diminished responsibility becomes the appellant's aide while also keeping before us the case of ***Khuda Baksh***.[9] Although this does not fully absolve the appellant of the offence, it provides good reason for consideration of some leniency to the appellant.

14. For what has been discussed above, this Court concurs in the view regarding the guilt of the appellant having been proven to the hilt. However, pursuant to the discussion above, the death sentence awarded to the appellant is converted to imprisonment for life. Resultantly, conviction awarded to the appellant through the impugned judgment is maintained with modifications to the sentence as stated above. Resultantly, instant criminal appeal is dismissed and the death reference filed by the trial Court is not confirmed.

JUDGE

JUDGE

[8] 2010 SCMR 641
[9] 2017 YLR 1804