

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Appeal No. 545 of 2018
[Safdar Shahv..... The State]

Date of Hearing : 26.07.2023
Appellant through : Mr. Moula Bux, Advocate.
Respondents through : Mr. Sandeep Malani, APG.

ORDER

Zulfiqar Ahmad Khan, J:- Through instant Criminal Appeal, the appellant has impugned the judgment dated 08.10.2018 (Impugned Judgment), passed by the learned Additional Sessions Judge-IX West, Karachi, in Sessions Case No. 194 of 2016, arising out of FIR No.473/2015, under section 302 PPC at Police Station Ittehad Town, Karachi, whereby appellant was convicted and sentenced for life imprisonment

2. The allegation against the appellant is that on 2/3rd October, 2015 he committed murder of his wife namely Mst. Rabia.

3. After framing of charge, the prosecution has examined as many as seven (07) witnesses. PW-01 Javed Hasan Shah at Exh. 4, PW-02, Tahir Hussain at Exh. 5, PW-03 Pervaiz Shah at Exh. 6, PW-04 Nazeer Hussain at Exh. 7, PW-05 Muhammad Tariq at Exh. 8, PW-06, Dr. Sumiya Syed (WML0) at Exh. 9, PW-7 Najam uddin Siddiqui at Exh. 10 and PW. 08 Muhammad Rafiq Tanoli at Exh. 16. Thereafter prosecution side was closed vide Ex:18 and statement of appellant under section 342, Cr.P.C. was recorded at Exh. 19, who claimed his innocence.

4. After observing all formalities and hearing the parties, the learned trial Court convicted the appellant through impugned

judgment in the manner described in the operative part of this edict.

5. The appellant being aggrieved and dissatisfied with his conviction has preferred instant appeal. Learned counsel for the appellant contended that it is an unseen incident and the same fact creates heavy doubt in the prosecution case. He next contended that the prosecution witnesses established that the appellant had given poison to the deceased, however, after medical examination, it was reported that no poison was found in the body of the deceased, therefore, the whole story of prosecution suffers from doubt and it is settled principle of law that if a single circumstance creates a doubt in the prosecution case that benefit would be extended to the accused not as a matter of grace but as a matter of right. He further contended that the deceased for a patient of hepatitis "C" and died due to this illness as well as natural death. While concluding his submissions, learned counsel contended that in murder cases, prosecution has to prove the motive behind the murder but after full-fledged trial the motive of killing the deceased had not been unearthed, therefore, the appellant be acquitted of the charge by extending benefit of doubt.

6. On the other hand learned APG argued that learned trial Court is the fact finding authority and having examined the all material available on record, the learned trial Court convicted the appellant which judgment based on the sound reasons and does not call for the interference by this Court.

7. I have heard the arguments and have gone through the relevant record. The prosecution based its case upon the following piece of evidence:

- (1) Ocular evidence.
- (2) Medical evidence.
- (3) Circumstantial evidence.
- (4) Motive.

8. PW-6 Dr. Sumiya Syed entered into witness box as Women Medico Legal Officer (Exh. 9 available at page 139 of the paper book) and introduced on record the factum of examination as well as post mortem conducted by her. During course of post mortem examination, she reported as follows:-

I. Female about 27/28 years wearing pink shalwar and printed shirt and badge chadar.

II. Condition of the dead body was fresh.

III. Cloths were old and used.

IV. Rigor Mortis was fully developed. Nails and lips were cyanosed.

V. Nail and lips were cyanosed.

VI. Dead leave around neck and loos send.

VII. Features recognizable. No signs of decomposition. Post Mortem lividity fixed on posterior surfaces of the body. Tongue within mouth. Pupils dilated and fixed. Nothing oozing from mought, nostrils and ears.

VIII. For mental status, "Hina (mehendi) applied to hands and feet. Eyebrows made and arms waxed.

SURFACE WOUNDS AND INJURIS.

a). Swelling on right temple with radish bruises. Upon exploration, extravasation of blood found in the underline issues but no facture.

b) Swelling on right eye brew. Deeper exploration reveals no fracture but extravasation of blood in the underline tissues.

c) Bruising radish on 4th and 5th metacarpal bones of left hand. No fracture but vacation positive.

d) Bruising over right alae of nose involving the entire region and extending to upper lip portion. However, no internal bruising of both upper and lower lip observed.

e) Bruising over bridge of nose but fracture.

INTERNAL EXAMINATION

I. HEAD: As already explained.

II. NECK: Hyoid intact NED.

III. THORAX: Bony cage intact, lungs normal, non edematous. All chambers of heart full of blood.

IV. ABDOMEN: Stomach contained about 15 to 200 cc of bluish color odorless fluid, which was also taken in a syringe for chemical analysis. Liver, spleen and kidneys unremarkable, uterus non-graving.

9. The appellant claimed that he was very kind towards his wife i.e. deceased and never committed her murder as alleged by the prosecution/complainant but nonetheless it is gleaned from appraisal of the foregoing that injuries were found in the body of the deceased. Injuries are quite in conformity with the opinion of the doctor regarding asphyxia death. The deceased had received injuries on right temple. Her right eye was swollen. Two metacarpal fingers of left hands were found bruised. Further bruising over right alae of nose involving entire region extending to upper lip portion. All these injuries were ante mortem which proves that the deceased was injured. Furthermore, the signs over the dead body such as her body were cyanosed including nails and lips are indication of asphyxia death, which gives due consideration and weightage to the opinion of

the WMLO PW-6 Dr. Sumaiya Syed that the deceased died due to asphyxia. The presence of injuries on the body of deceased leaves no doubt in prudent mind the existence of appellant inside the house being husband of the deceased and that the deceased breathed her last in the house of the appellant. During course of arguments, learned Addl. P.G. drew Court's attention to Exh. 9/C (available at page 163 of the paper book) which is a Final Report issued by Medico Legal Center Civil Hospital Karachi and submitted that the deceased due to asphyxia caused by pressure on external nasal passages and mouth and upon examination of the injuries introduced on record by the WMLO Dr. Sumaiya Syed (PW-6) unequivocally establishes that the appellant committed the murder of the deceased.

10. Complainant being brother of the deceased introduced on record that appellant used to maltreat the deceased and for many days the deceased was living at the house of complainant due to the maltreatment and cruelty act of the appellant towards the deceased. Commission of murder of deceased on the part of appellant cannot be ruled out reasoning that the appellant was all alone at the place of incident i.e. inside the house of appellant with the deceased. The relation between the spouses was strained. The deceased died approximately about 0200 hours but the accused took her to civil hospital at about 1000 hours meaning thereby the accused concealed the real time of death to mislead the society believing that it was a suicidal case, which was ruled out after post mortem and chemical reports. The appellant failed to inform about the critical condition of the deceased to the relatives of the deceased despite the fact that the both parties were close relatives. The appellant informed the

doctor in hospital that the deceased had taken poison. He also misled Pervez Shah and Mst. Afshan and other relatives that Mst. Rabia was not brought dead at the hospital. This was done with criminal intent to conceal the real facts, which only confirms the involvement of the appellant. The injuries reproduced supra were apparent on the dead body being ante mortem which were not self inflicted nor any explanation was furnished by the accused as to how it was caused when she took poison. Learned counsel took a plea that the deceased was a patient of Hepatitis "C" owing to the said illness, she died but learned counsel for the appellant failed to introduce on record any such evidence confirming and establishing the fact that the deceased was suffering from Hepatitis "C". Failure to produce the factum of illness with regard to Hepatitis "C" proves that the deceased was not suffering from such an illness rather died an unnatural death.

11. Learned counsel for the appellant introduced on record certain contradictions in the deposition of the witnesses which are minor in nature and does not impair the intrinsic value of the prosecution case. There are two types of contradictions (minor and major). The minor contradictions in the evidence carry no weight, whereas, the major contradictions are such under which either the story of the prosecution is changed or some material changes have been made so as to fit in the circumstances of the case or to make them consistent with other pieces of evidence such as medical evidence etc. Those contradictions carry weight and should be examined minutely before discarding the evidence of a witness. The contradictions may be in the testimony of same witness or between the evidence of some of several witnesses. It should realize that the contradictions are bound

to arise in the testimony of witnesses especially if their evidence is recorded after a long time of the incident, loss of memory and sense of observation of witness to perceive an event and give importance to different aspects of it. The Hon'ble Supreme Court have ruled that unimportant contradictions which are not material and connected with the actual incident should be ignored particularly if the evidence of witness is recorded after months or years of the incident (**1995 SCMR 1793**). In the instant case no major contradictions in the evidence of prosecution witnesses which may belied their version has been pointed out by the defence side. However, so far minor contradictions, while highlighting evidence of the witnesses, would not shake the probate value of their evidence, but these discrepancies occurred due to lapse of time.

12. The learned counsel for the appellant during course of arguments also pointed out the delay in lodging of FIR. It unfurls from the record that the offence occurred on 03.10.2015 whereas, the FIR was lodged on 13.12.2015 there is a considerable delay in the lodging of FIR but this delay would not fatal the prosecution. Apart from above, it is well-settled principle of law that the criminal Courts are supposed to take into consideration the overall effect of the prosecution case in order to ascertain as to whether crime has been committed or not and unless the discrepancies, contradictions etc. have impaired the intrinsic value of the prosecution evidence, the same is not liable to be discarded merely for technical reasons. Similarly if some delay has occasioned in lodging the F.I.R. that would also not be fatal in the circumstances. If owing to some anguish and shock some time is consumed in lodging F.I.R.; it cannot be

considered fatal for prosecution case as it has been held in the case of Mst. Shamim Akhtar v. Faiz Akhtar (PLD 1992 SC 211) and Muhammad Ashraf v. Tahir alias Billo (2005 SCMR 383) and it would be worth to reproduce the relevant excerpt from Muhammad Ashraf v. Tahir alias Billo (2005 SCMR 383) which is delineated hereunder:-

“20. It is well-settled principle of law that the criminal Courts are supposed to take into consideration the over all effect of the prosecution case in order to ascertain as to whether crime has been committed or not and unless the discrepancies, contradictions etc. have impaired the intrinsic value of the prosecution evidence, the same is not liable to be discarded merely for technical reasons. Similarly if some delay has occasioned in lodging the F.I.R. that would also not be fatal in the circumstances because a young man had been killed in brutal manner and his dead body was found lying in the house to which the complainant party had no access, therefore, if owing to some anguish and shock some time is consumed in lodging F.I.R.; it cannot be considered fatal for prosecution case as it has been held in the case of Mst. Shamim Akhtar v. Faiz Akhtar PLD 1992 SC 211”.

13. Learned counsel for the appellant took a plea that the private witnesses cited by the prosecution are relatives inter se and no independent witness available to corroborate the version of the prosecution. All the PWs remained consistent on each and every material point and successfully advanced the prosecution case so far as it relates to the homicidal death of deceased is concerned. As far as the question that the private witnesses being relatives of the deceased, therefore, his testimony cannot be believed to sustain conviction of the appellant/convict is concerned, the Hon'ble Supreme Court¹ held that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses unless previous enmity or ill will is

¹ Per Sayyed Mazahar Ali Akbar Naqvi in Sabtain Haider v. The State (2022 SCMR 2012).

established on the record to falsely implicate the accused in the case. The medical evidence available on the record corroborates the ocular account so far as the nature, time, locale and impact of the injury on the person of the deceased is concerned. It would also be pertinent to mention here that related witnesses some time, particularly in murder cases, may be found more reliable, because they, on account of their relationship with the deceased, would not let go the real culprit or substitute an innocent person for him².

14. In view of overwhelming evidence available on record, I am of the opinion that the reasons found favour with the learned trial Court for believing the prosecution evidence are tenable in the eyes of law. Since the material evidence available on record was taken into consideration with cogent reasons. The independent appreciation of evidence available on record produced by the prosecution as well as defence, persuades this Court to hold that no other conclusion can be drawn except that appellant is responsible for the commission of offence as alleged.

15. In view of the above rational and deliberation discussed above, the appeal at hand is dismissed maintaining the impugned Judgment.

Karachi
Dated: 26.07.2023.

JUDGE

Aadil Arab.

² Sheraz Tufail v. The State (2007 SCMR 518) and Khair Muhammad and another v. State (2007 SCMR 158)