

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No. 40 of 2020

Appellants: Ansar, Muhammad Saleem and Mst. Hina through M/s. Islamuddin Ayubi, Nadeem Ahmed Azar and Ms. Shama Parveen Mughal, advocates

The State: through Mr. Muhammad Anwar Mahar, DDPP for the State

Complainant: Shahroz through Syed Imtiaz Ahmed Shah, advocate

Date of hearing: 02.10.2023

Date of judgment: 02.10.2023

J U D G M E N T

IRSHAD ALI SHAH, J- The appellants are alleged to have committed murder of Mst. Shabana by strangulating her throat, for that they were booked and reported upon by the police. On conclusion of trial, they were convicted and sentenced to undergo life imprisonment with fine of Rupees three millions payable to the legal heirs of the deceased as compensation with benefit of section 382(b) Cr.P.C without specifying the actual penal section for which they were convicted and sentenced by learned 1st Additional Sessions Judge/MCTC, Malir, Karachi vide judgment dated 04.01.2020, which they have impugned before this Court by preferring the instant Criminal Appeal.

2. It is contended by learned counsel for the appellants that the appellants being innocent have been involved in this case falsely by the complainant party only to settle its dispute with them over custody of kids and dowry articles of the deceased and the evidence of the PWs being doubtful in its character has

been believed by the learned trial Court without lawful justification, therefore, the appellants are entitled to be acquitted of the offence for which they have charged by extending them benefit of doubt, which is opposed by learned DDPP for the State and learned counsel for the complainant by supporting the impugned judgment by contending that the prosecution has been able to prove its case against the appellants beyond shadow of doubt.

3. Heard arguments and perused the record.

4. It is stated by the complainant that Mst. Shabana was his sister and was married with appellant Muhammad Saleem; on 15.04.2019 it was intimated to his sister Mst. Sana by appellant Mst. Hina that Mst. Shabana has become unconscious, therefore, they should reach at Korangi Hospital; on such information he, his mother, his sister Mst. Sana and cousin Muhammad Rizwan went at Korangi Hospital, her sister Mst. Shabana was found lying dead there; she then was referred to the Jinnah Hospital for postmortem, the dead body of Mst. Shabana was given to them for burial; on ablution some injuries were found on her person, therefore, he lodged report of the incident with PS Ibrahim Hyderi on 24.04.2019 suspecting the appellants to have killed his sister Mst. Shabana by strangulating her throat; it was recorded by ASI Asif Ali, it was recorded with delay of about 09 days to the actual incident. Mst. Sana who actually was intimated about the incident has not been examined by the prosecution; her examination was essential to prove the manner whereby the deceased allegedly was intimated to have been done to death. Mst. Zeenat who as per the complainant noticed the injuries on the neck of the deceased too has not been examined by the

prosecution; her non-examination could not be lost sight of. It was stated by Mst. Farzana that she found injuries on the dead body of the deceased during ablution. On asking, it was stated by her that her 161 Cr.PC statement was recorded on 26.04.2019. It was stated by Muhammad Sharif who happened to be father of the deceased that death of the deceased was not natural. On asking it was stated by him that his 161 Cr.PC statement was recorded on 26.04.2019. It was stated by Muhammad Rizwan that deceased was his cousin and ligature mark on her neck was found. On asking it was stated by him that his 161 Cr.PC statement was recorded on 26.04.2019. No explanation is offered by any of the witnesses for recording their 161 Cr.PC statements with delay of about two days even to FIR. On asking, the complainant and his witnesses have suggested the dispute with the appellants over custody of the kids of the deceased and her dowry articles. In that context, the evidence of the complainant and his witnesses could hardly be relied upon. Even otherwise, there are conflicting opinions with regard to the death of the deceased. As per Medical Officer, Dr. Muhammad Tariq Mehmood of Korangi Hospital, he has not seen any mark of injury on the face specially nose or neck of the deceased. His evidence takes support from evidence of Dr. Ihsan Jameel of Indus Hospital. Contrary to them, on exhumation as per Dr. Qarar Ahmed Abbasi death of the deceased was found to have occurred due to constriction of neck, leading to asphyxia, which caused cardio respiratory arrest and subsequent her death. If for the sake of arguments, it is believed that the deceased has died of unnatural death even then it would be unsafe to hold the appellants guilty for such death only for the reason that the deceased was their family member, when none actually has seen

them doing such act. Evidence of I.O/SIP Abdul Rasool is not enough to improve the case of prosecution. The appellants have pleaded innocence by stating that they themselves took the deceased to the hospital and their presence at the hospital at the relevant time is not denied even by the complainant. In order to prove their innocence, they have also examined Abdul Aziz in their defence, as per him he took the deceased in his rickshaw to Korangi Hospital together with one male and female attendant. Such plea of the innocence on the part of the appellants could not be overlooked in the circumstances of the case.

5. The discussion involved a conclusion that the prosecution has not been able to prove its case against the appellants beyond shadow of reasonable doubt and to such benefit they are found entitled.

6. In case of *Imran Ashraf and others vs. The State* (2001 SCMR-424), it was observed by the Apex Court that;

“Section 154, Cr.P.C. lays down procedure for registration of an information in cognizable cases and it also indeed gives mandatory direction for registration of the case as per the procedure. Therefore, police enjoys no jurisdiction to cause delay in registration of the case and under the law is bound to act accordingly enabling the machinery of law to come into play as soon as it is possible and if first information report is registered without any delay it can help the investigating agency in completing the process of investigation expeditiously”.

7. In case of *Abdul Khaliq vs. the State* (1996 SCMR 1553), it was observed by Apex Court that;

“---S.161---Late recording of statements of the prosecution witnesses under section 161 Cr.P.C. Reduces its value to nil unless delay is plausibly explained.”

8. In the case of *Muhammad Mansha vs. The State* (2018 SCMR 772), it has been held by the Apex court that;

“4....Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".

9. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellants under impugned judgment are set aside, consequently, they are acquitted of the offence for which they were charged; tried, convicted and sentenced by learned trial Court and shall be released forthwith, if not required to be detained in any other custody case.

10. Above are the reasons of short order of even date, whereby the instant Criminal Appeal was allowed.

JUDGE

Nadir*