

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT HYDERABAD**

Before:

Mr. Justice Naimatullah Phulpoto  
Mr. Justice Mohammad Karim Khan Agha

Cr. Appeal No.D-10 of 2015.

Nazar Muhammad and another

Versus.

The State.

Appellants : Nazar Muhammad and another	Through Syed Muhammad Waseem Shah, Advocate
Respondent : The State	Through Syed Meeral Shah Bukhari, Deputy Prosecutor General
Date of hearing	08.05.2017.
Date of judgment	08.05.2017

**J U D G M E N T**

**MOHAMMAD KARIM KHAN AGHA, J.-** Appellants Nazar Muhammad and Ghulam Hyder were tried by learned Judge, Anti-Terrorism Court, Shaheed Benazirabad @ Nawabshah in Special Case No.06 of 2014, arising out of crime No.13/2014, registered at Police Station Jhol District Sanghar for offence under sections 302, 310-A, 201 PPC and 6/7 ATA. Appellants were found guilty by judgment dated 23.01.2015 (the impugned judgment) and were convicted and sentenced to suffer imprisonment for life as "Tazir" u/s 302(b) PPC and u/s 201 PPC on account of causing disappearance of evidence of offence of murder committed by both accused to suffer seven years imprisonment. Both sentences will run concurrently. Benefit of Section 382-B Cr.P.C. was also extended to the accused. While convicting the accused / appellants learned trial court through the impugned judgment, acquitted the remaining co-accused namely, Muhammad, Khair Muhammad, Nabi Bux, Ali Khan, Manzoor, Eidan, Noor Muhammad alias Nooro and Maqsood. The appellants have challenged the impugned judgment through the instant appeal.



2. The brief facts of the prosecution case as disclosed in the F.I.R. lodged by complainant Shafi Muhammad Brohi on 13.03.2014 at 1930 hours, are that he is cultivating the land of Zamindar Ali Khan Maree. He has two sons and two daughters; his elder daughter namely Sughran aged about 16/17 years who was unmarried, about 1½ months back, left his house with one Muhammad Ali Khaskheli and who after one day returned his daughter to his house and after two days his uncle Nazar Muhammad S/o Raza Muhammad and cousin Ghulam Hyder s/o Ali Muhammad Brohi both r/o village Muhammad Usman Nizamani near Karachi Hotel came in his house and complainant narrated them the facts to which his uncle told the complainant that he wanted to take Sughran to his house for some time and it will be better not to reside here. On 25.01.2014 his uncle Nazar Muhammad and cousin Ghulam Hyder took away his daughter Sughran to their house, thereafter he alongwith his wife 2/3 times went to meet their daughter and after consultation with each other they both decided that they shall resolve all the things and wanted to bring her back to their home. One day before the F.I.R. at 5-00 p.m. the complainant alongwith his nephew Ali Hassan Brohi and maternal cousin Khamiso Brohi went to meet his daughter at the house of his uncle Nazar Muhammad where his uncle Nazar Muhammad and cousin Ghulam Hyder Brohi met them but he did not see his daughter there. On asking for his daughter Nazar and Ghulam disclosed that she did not want to remain there and she wants to go-out of their house and they have suspicious that at any time she will leave their house and it will be another disgrace for the family and therefore they consulted with each other and on 01.03.2014 told Sughran to go to the house of her father in the evening time. Thereafter, Ghulam Hyder went to hide the spade in the Bheel graveyard. At about 08:30 p.m. at night they told Sughran to return to her father's house and when they reached on the road near graveyard at about 2100 hours they both (Nazeer and Ghulam Hyder) caught hold of her and dragged her towards graveyard and in the laee trees they throttled her by keeping cloth on her face and killed her, thereafter they took out their hidden spade, excavated the large ditch and buried her in it with her cloths. The complainant asked them (Nazar and Ghulam) to show that place to him and they then led the complainant party and showed them the grave which was built some days before lodging the F.I.R. Thereafter, complainant went to Police Station and lodged such report.



3. After completing the usual investigation, police submitted the challan against the present accused/appellants and co-accused.
4. Formal charge against the accused was framed by the trial court at Ex.4. Accused pleaded not guilty and claimed to be tried vide their pleas Ex.4/A to 04/J.
5. In order to prove its case the prosecution examined 12 witnesses (PW's) and thereafter learned DDPP closed side of the prosecution vide statement Ex.20.
6. Statements of accused were recorded under section 342 Cr.P.C. at Ex.21 to 30, in which they have denied the allegations of the prosecution. They however neither examined themselves on oath nor led any evidence in their defence.
7. The learned trial court after hearing the learned counsel for the parties and on the assessment of the entire evidence convicted and sentenced the accused/appellants and acquitted the remaining accused persons as stated above in the impugned judgment.
8. The facts of this case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment passed by the trial Court therefore the same may not be reproduced here so as to avoid duplication and unnecessary repetition.
9. Learned counsel for the appellants contended that there was absolutely no evidence against the appellants; there was no eye witness to the murder; that the key prosecution witnesses have not supported the prosecution case and there is not even any circumstantial or other corroboratory evidence against the appellants. In support of his contention, he relied upon the cases of **Muhammed Sarfraz V State** (2013 SCMR), **Aurengzeb V State** (1990 SCMR) and **Ameer Bakhsh v. State** (2012 YLR 498).
10. On the other hand learned DPG appearing for the State fully supported the impugned judgment. According to him this was a classic case of Karo Kari which was supported by the key prosecution witnesses in their S.164 statements and the fact that they had now been influenced to change their mind at trial into not supporting the prosecution case this was not fatal to the prosecution case as the fact that a witness had turned hostile would not immediately collapse the prosecution where there was other supportive, circumstantial and



corroborative evidence as in this case. In support of his contention, learned DPG relied upon **Wahid v. State** (NLR 2002 Criminal 6).

11. We have considered the arguments of learned counsel, perused the record and the case law cited by them at the bar.

12. The prosecution case in essence is that this is a case of honour killing. Namely, that the appellants who were the uncle and cousin respectively of the complainant who was the father of the murdered lady Sughran (who was about 16/17 years of age) took her into their house and thereafter murdered her near the Bheel grave yard through strangulation and thereafter buried her body in order to preserve the family honour. This was because allegedly in the past the murdered lady Sughran had run away with a Mr. Mohammed Ali Khaskheli before being returned home by him which brought disgrace on the family and there was apparently every likelihood of her doing the same again.

13. At the outset whilst condemning the barbaric practice of honour killing which in our view is cold blooded murder we cannot lose sight of the fact that this is a criminal trial and that a criminal trial can only be determined based on the legally admissible evidence which is brought before it and that such evidence must prove the guilt of the accused beyond a reasonable doubt. As judges we can only be guided by the evidence and nothing else. Mere suspicion, however strong, can never replace cogent, reliable evidence.

14. In this case it is not disputed in the evidence that the daughter of Shafi Muhammed (the complainant) named Ms Sughran had earlier left her fathers home without his permission and gone off with Muhammed Ali Khaskheli who returned her himself back to her fathers home after a few days. Thereafter the appellants who were the uncle and cousin respectively of the complainant took the complainants daughter with the permission of the complainant who was her father to live with them in order to avoid further disgrace on the family's name as they lived further way. That from time to time the complainant and his wife used to visit his daughter at the house of the appellants but on one such visit she was not present in the house and the appellants had informed the complainant who had reached the house with PW Ali Hasan and PW Khamiso (both of whom were related to him) that she had run away. In our view the complainant, PW Ali Hasan and PW Khamiso are the three key prosecution witnesses.



15. At this stage in the complainants FIR and the S.164 statements of the abovementioned key prosecution witnesses, despite not being eye witnesses, they had stated in effect that the appellants had murdered Ms Sughran and buried her near Bheel grave yard.

16. However when the aforesaid key prosecution witnesses came to give evidence at trial the complainant resiled on his FIR and all 3 resiled on their S.164 Statements and refused to support the prosecution case. In their evidence they all stated in effect that after the appellants told them that Ms Sughran had left their house (appellants) they and other relatives searched for her and came to know that one dead body was buried nearby Bheel grave yard. Whereupon the police were called and a body was exhumed from the aforesaid place which was identified by the complainant as his daughter. There after a post mortem was carried out and after observing all legal formalities the dead body of Ms Sughran was reburied after a funeral ceremony.

17. All 3 of the aforesaid key prosecution witnesses were declared hostile and all 3 denied ever stating in their FIR and S.164 statements respectively that they had ever stated that the appellants murdered Ms Sughran and that the names of the appellants had been added by the police acting on their own wishes. They also denied that they had changed their evidence due to compromise, threat, inducement or for any other reason.

18. PW Khuda Bux was a Mushir who stated that the appellants were arrested at the PS, that one ladies chapel and spade had been recovered from the ladies grave yard, that he was present at the time of the exhumation of Ms Sughran's dead body and that the police prepared all mashirnama's. PW Kaka Khan and PW Jai Ram Das only corroborate an admitted fact from the evidence namely that Ms Sughran ran off with Mr.Khashkeli and was later returned to the complainant which in our view adds nothing to the prosecution case. PW Muhammad Arif supervised the exhumation which again adds nothing new to the prosecution case as it is an admitted fact that the body of Ms Sughran was exhumed. PW Abdul Kaleem was the judicial magistrate who recorded the S.164 statements of PW Kamisio and Ali Hasan in the presence of the appellants.

19. PW Dr. Qutubuddin carried out the exhumation and post mortem of Ms Sughran who found that the probable time of death was



3 to 4 weeks ago (exhumation and postmortem were carried out on 01-4-2014) and found the cause of death to be unnatural (homicidal) and due to coma/asphyxia and suffocation. No poison was found in the body. PW 8 Muhammed Muneer is the tapedar who had drawn a sketch of the wardat whose evidence is of little, if any, assistance in this case

20. PW IO Ghazi Khan states that he recorded the FIR of the complainant verbatim on 13-03-2014 who named the appellants as the persons responsible for murdering his daughter Sughran and lead him to the grave where his daughter had been buried by the appellants after murdering her and where he recovered one chapel which the complainant said belonged to his daughter, later he arrested the appellants on the pointation of the complainant and recorded the statements of the PW's. The appellants confessed their guilt to murdering Ms Sughran by throttling her and then lead them to the spade which they had used to dig her grave and he was one of the diggers during her exhumation. PW Javed Iqbal is the second IO in this case who was appointed once it was deemed to be a case under the ATA who also confirms the extra judicial confessions of the appellants.

21. The issue before us is simply what evidence is there to prove that the appellants murdered Ms Sughran and does this evidence prove beyond a reasonable doubt that the appellants murdered Ms Sughran

22. The 3 key prosecution witnesses have all in their evidence resiled from their FIR and statements under S.164 Cr.PC respectively that the appellants murdered Ms Shughran. It is true that in **Wahid's case** (Supra) that evidence of a hostile witness can be taken into consideration so as to find out if the said witness was worthy of belief in the light of other evidence. **In this case however all 3 of the key prosecution witnesses who were all declared hostile resiled from their statements under S.164 Cr.PC that the appellants murdered Ms Sughran.** It is settled law that evidence on oath will trump S.164 statements which are later denied. Thus, there is no direct ocular evidence that the appellants murdered Ms Shughran. Even otherwise the 3 key prosecution witnesses as mentioned above were not even eye witnesses. The complainant was a hearsay witness who allegedly the appellants confessed to.



23. The only oral evidence at trial against the appellants is the hearsay evidence of the first IO Ghazi Khan and second IO Javed Iqbal.

24. Dr. Qutubuddin was not able to give a time of death and the cause of death was unnatural (homicidal) and due to coma/asphyxia and suffocation.

25. On this basis once Ms Shughran left the house anybody could have strangled and buried her. The spade was not recovered from the appellants nor was the other chapel ever found.

26. Thus, in our view there is neither any direct ocular or documentary evidence against the appellants that they murdered Ms Sughran.

27. In our view this case falls into the category of a last seen case and as was held in the case of **Ameer Bakhsh's case** (Supra) it will depend on circumstantial evidence:

"10. As already observed, hereinafter, the case of the prosecution wholly depends on circumstantial evidence i.e. last seen evidence, furnished by P.Ws. 8 and 10. The contention of the learned Additional Prosecutor-General that conviction can be made on the basis of circumstantial evidence, is devoid of force, as necessary ingredients, to establish an offence by circumstantial evidence, are missing in the instant case and those are:

- (i) The circumstances, from which the conclusions are drawn, should be fully established.
- (ii) All facts must be consistent with the hypothesis.
- (iii) The circumstances should be of a conclusive nature and tendency.
- (iv) The circumstances should, to a moral certainty actually exclude every hypothesis, but the one proposed to be proved."

28. Likewise as was held in the case of **Khuda Bukhsh V State** (2004 SCMR 331) at P.335 as under:

"Admittedly there is no ocular account of the incident and the case of the prosecution entirely depends upon the circumstantial evidence. **The requirement of proof in such cases is that every link has to be proved by good and convincing evidence.** In that context, the role of the prosecution agency collecting evidence against the accused is very important and it is to be seen that the same is above board and free from any doubt and suspicion. The motive also plays an important role in a case depended entirely on circumstantial



evidence. Above all, it is to be established on record that every piece of circumstantial evidence fits in with another piece of such evidence in the chain and corroborates each other."

29. The next question therefore which arises is whether there is any unbroken reliable chain of circumstantial evidence to link the appellants to the murder of Ms Sughran. The appellants may have had a motive in murdering Ms Shughran since she had brought shame on the family. However, the complainant and his wife had already visited her a couple of times so why had the appellants not already killed her? This fact weakens this potential motive.

30. With regard to circumstantial evidence the only piece which we find available is that the complainant according to IO Ghazi Khan took the police to the grave site which indicates that the killers pointed it out to him. However the complainant states in his evidence that in respect of the grave site, "that the police informed him that they had received information from the Bheel community person that one dead body has been buried in Bheel grave yard". Thus, keeping in view the test for circumstantial evidence, which in any event is very stringent as it must be in such cases, we find that the prosecution has come nowhere near proving a case against the appellants based on circumstantial evidence since in our view there is no unbroken chain of corroborative evidence against the appellants that they actually murdered Ms Sughran. As indicted above once Ms Sughran left the appellants house any person could have murdered her.

31. In effect, in our view, once the 3 key prosecution witnesses resiled from their statements this became a case of no evidence against the appellants when looked at from any angle.

32. In our view we also fail to understand how this case was ever classified as a case falling under the ambit of the ATA since the crucial elements required to bring an ordinary murder case within purview of the ATA seem to be completely lacking in this case.

33. Thus, for the reasons discussed above we find that the prosecution has failed to prove its case beyond a reasonable doubt against the appellants and that the said appellants in any event are entitled to the benefit of the doubt. In this respect reference is made to the case of **Tariq Pervez v. The State** (1995 SCMR 1345) and as such set aside the impugned judgment and uphold the appeal.



34. As such the appellants (Nazar Muhammad and Ghulam Hyder) are both hereby acquitted and are ordered to be immediately released by the concerned jail authorities in the aforesaid cases unless they are in custody in respect of some other case.

35. These are the reasons for our short order dated 08-05-2017 acquitting the aforesaid appellants in this case.

Hyderabad:  
Dated: 08-05-2017