

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

Mr. Justice Abdul Maalik Gaddi
Mr. Justice Mohammad Karim Khan Agha

Cr. Appeal No.D-07 of 2015
(Confirmation Case No.01 of 2015)

Abdul Sattar

Versus

3rd Addl: Sessions Judge, Shaheed Benazirabad & another

Cr. Appeal No.D-110 of 2015

Umar Gul

Versus.

The State

Cr. Appeal No.D-111 of 2015

Shah Nawaz

Versus.

The State

Appellant : Abdul Sattar in Cr. Appeal No.D-07 of 2015	Through Mr. Sajjad Ahmed Chandio, Advocate
Appellant : Umar Gul in Cr. Appeal No.D-110 of 2015	Through Mr. Ahsan Gul Dahri, Advocate
Appellant : Shah Nawaz in Cr. Appeal No.D-111 of 2015	Through Mr. Khadim Hussain Soomro, Advocate
Respondent : The State	Through Mr. Shahzad Saleem Nahyoon, Deputy Prosecutor General alongwith ASI/complainant Abdul Qayoom
Date of hearing	08.10.2018
Date of judgment	11-10-2018

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.- Since all the aforementioned appeals have arisen out of one and same F.I.R. as well as judgment, therefore, we propose to decide the same by this common judgment.

2. Through instant appeals, appellants Abdul Sattar, Umar Gul and Shah Nawaz have assailed the judgment dated 17.01.2015, passed by the learned IIIrd Additional Sessions Judge, Shaheed Benazirabad in Sessions Case No.704/2013 (re: The State V Abdul Sattar and others), arising out of Crime No.82 of 2013, under sections 302 and 120-B PPC, registered at Police Station B-Section Nawabshah, whereby co-accused Haji Gul Ahmed was acquitted u/s 265-H(i) Cr.P.C. whereas appellants Abdul Sattar, Umar Gul and Shah Nawaz were convicted and sentenced in the terms as mentioned in Point No.3 of the impugned judgment as set out below;

"In view of my above findings, I am of the considered opinion that prosecution has successfully proved case against accused persons each namely Abdul Sattar, Umer Gul and Shah Nawaz beyond any reasonable doubt. They made criminal conspiracy to commit the murder of deceased Mst. Aisha therefore, they are liable for punishment u/s 120-B PPC and are sentenced to undergo for life imprisonment. Accused Abdul Sattar strangled the neck of deceased Mst. Aisha with dopatta and played a central role in commission of murder of deceased Mst. Aisha therefore, he is convicted u/s 265-H(ii) Cr.P.C. and sentenced to death u/s 302(b) PPC. He be hanged from his neck till his death. Co-accused Shah Nawaz and Umer Gul are sentenced to undergo life imprisonment u/s 302(b) PPC. All accused are further directed to pay compensation of Rs.100,000/- each to the legal heirs of deceased except accused Abdul Sattar as provided u/s 544-A Cr.P.C. In default, whereof they shall suffer S.I. for six months more. The benefit of section 382-B Cr.P.C. is extended to accused persons. All the sentences are to run concurrently. They copy of Judgment is supplied to accused on free of costs. Accused Abdul Sattar, Shah Nawaz and Umer Gul are present in custody and are remanded back to custody to serve out sentence awarded to them. Accused Abdul Sattar is given opportunity to file appeal within seven days. Then sentence shall be subjected to confirmation and reference u/s 374 Cr.P.C. be submitted to Honourable High Court of Sindh, Circuit Bench Hyderabad. While there is no any evidence against accused Haji Gul Ahmed therefore, he is acquitted u/s 265 H(i) Cr.P.C. He is present on bail, his bail bond stands cancelled and surety discharged. The case of absconding accused Feroze Khan s/o Abdul Ghafar Pathan be kept on dormant file till his arrest."

3. The brief facts of the prosecution case as disclosed in the F.I.R. are that;

"On 13.07.2013 at 2230 hours ASI Abdul Qayoom Brohi lodged F.I.R. on behalf of the State stating therein that he left PS vide entry No.24 at 1900 hours alongwith his sub-ordinate staff for patrolling. When they reached at 60-Mile road Naka they received spy information that few days back Mst. Aisha d/o Abdul Sattar Pathan and Muneer Hussain had contracted love marriage and her relatives had in consultation with Ex-MPA Inayat Ali Rind got the girl back through Shah Nawaz Pathan who had been previously engaged with co-accused Feroz Khan and her father Abdul Sattar with his companions due to Ghairat / honour was planning to

kill her. They proceeded to the pointed place and reached there at about 2130 hours and outside the door of Abdul Sattar they heard a woman raising cries of "save me" "save me". They tried to open the door and got inside the house where electric lights were on and Abdul Sattar had a cloth rope in his hand which was around the neck of woman and he was pulling it forcefully and strangulating the woman, while co-accused Shah Nawaz was holding the right arm of woman and retired Bank Employee accused Haji Gul Ahmed was holding the left arm of woman on their side as helpers and all were saying to the woman that she had given bad name to their family so they would not spare her and would murder her. They gave hakals and saw that the woman had expired and they managed to apprehend Abdul Sattar, Shah Nawaz and Umar Gul co-accused whereas the remaining accused ran away. Then complainant engaged PC Ameer Ali and Ghulam Qadir as mashirs prepared the mashirnama of arrest and Abdul Sattar informed them that the deceased was his daughter and she had performed love marriage with Muneer Hussain Malookani and he had in consultation with the co-accused murdered her and they then saw that there were marks of throttling on the neck of Mst. Aisha and on her left hand there were bruises and also bruises were on her right arm and wrist also he had then sent the dead body for postmortem examination to PMCH through PS Muhammad Ameen and brought the arrested accused at PS and lodged F.I.R."

4. After completing the usual investigation, police submitted the challan against above named appellants while their accomplice namely Feroze Khan was declared a proclaimed offender.
5. Formal charge against the accused was framed by trial court at Ex.06. Accused / appellants vide their respective pleas Ex.07 to Ex.11 pleaded not guilty and claimed to be tried.
6. It is also mentioned here that during trial of the case, another co-accused namely Inayat Ali S/o Allah Jurio Rind was acquitted u/s 265-K Cr.P.C. vide order dated 20-12-2014 since there was no evidence that he played any role in the murder of the deceased.
7. In order to prove its case prosecution examined as many as 06 witnesses and thereafter learned DDPP closed side of the prosecution vide his statement Ex.19.
8. Statements of the accused were recorded under section 342 Cr.P.C. at Ex.20 to 23, in which they have denied the allegations of prosecution while claiming their innocence; however, they did not examine themselves on oath nor led any defense evidence.
9. 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 co-accused Haji Gul Ahmed, as stated above.
10. The facts of this case as well as evidence produced before the trial Court find an elaborate mention in the judgment passed by the trial Court therefore the

same may not be reproduced here so as to avoid duplication and unnecessary repetition.

11. Learned counsel for the appellants have argued the case jointly and contended that no independent Mushir was associated with the case despite the receipt of spy information which supports the appellants arguments that this case was foisted on the appellants by the police; that there is unexplained delay of one hour in lodging the F.I.R; that appellant Abdul Sattar was alleged to have strangled the neck of the deceased with a dupatta, but such dupatta was not recovered by the complainant at the time of incident although he himself was present at the place of vardat and such recovery was made after a delay of two hours, which makes the prosecution case doubtful; that co-accused Haji Gul Ahmed, who was acquitted by the trial Court, as per contents of F.I.R., also caught hold the left arm of the deceased girl, but while considering the same set of evidence trial Court convicted appellant Shah Nawaz, who is attributed with same allegation, which makes the prosecution case doubtful; that out of 07 eye-witnesses prosecution has only examined two eye witnesses i.e. complainant and P.W. Aamir; whereas other eye witnesses have not been examined which non examination of 5 eye witnesses confirms that the prosecution case is false and attracts A.129 (G) of the Qanoon-e-Shahadat Ordinance 1984 ; that once co-accused Haji Gul Ahmed has been acquitted then question of convicting other accused on the basis of same set of evidence does not arise; that the incident took place at night time through the light of bulbs which were not recovered; that appellant Umer Gul was sentenced to life imprisonment despite not being present at the scene of the incident; that there was a delay sending the dead body for post mortem and thus for all the above reasons the prosecution had failed to prove its case against the appellants who should be given the benefit of the doubt and be acquitted. In support of their contention, learned counsel for the appellants relied upon the cases of **Nazeer Ahmed V The State** (2016 SCMR 1628), **Sardar Bibi and another V Munir Ahmed and others** (2017 SCMR 344) **Haq Nawaz V The State** (2018 SCMR 21) and **Khalil V State** (2017 SCMR 960).

12. Learned D.P.G. appearing for the State while supporting the judgment passed by the learned trial Court, has contended that that the impugned judgment has been passed after due appreciation of evidence on record. According to him, the grounds agitated by the learned counsel for the appellants being false implication of the appellants with due deliberation and consultation cannot be sustained. During course of arguments the learned DPG has read the evidence of the prosecution witnesses including evidence of medico-legal officer, who have supported the prosecution case and the learned trial court while

delivering the impugned judgment has attended to all the aspects involved in this case and since there are no legal infirmities in the impugned judgment the same should be upheld and the appeals against conviction dismissed and the death penalty confirmed in respect of Abdul Satter.

13. We have heard the learned counsel for the parties, perused the evidence so brought on record alongwith impugned judgment with the able assistance of learned counsel for the parties and the relevant law.

14. The Prosecution case in a nutshell is that the deceased (Mst Aisha daughter of Abdul Sattar) contracted love marriage with Muneer Hussain against the wishes of her father (Abdul Sattar) who arranged her return and killed her on account of honor with the help of the other co-accused.

Turning to the contentions of learned counsel for the appellants.

15. It is true that no independent Mushir accompanied the police when they came to Abdul Sattar's house in order to rescue the deceased. In our view since there was imminent danger of Mst Aisha being killed by her father there was insufficient time to stop and recruit independent Mushirs en route. In any event they were too late as it appears that Ms Aisha was nearly dead if not already dead when they reached the House. The evidence reveals that when a crowd gathered at the house no one agreed to act as Mushir which is not surprising in this day and age where ordinary people tend to avoid getting involved in court cases concerning murder or terrorism unnecessarily as witnesses; that one hours delay in lodging the F.I.R. based on the facts and circumstances of the case in our view does not lead to the conclusion that the F.I.R. was cooked up especially as the police did not know Abdul Sattar and the other co-accused before the incident and they had no reason to lodge any false case against them especially as no enmity has been shown between the police and the appellants. It is also true that the dopatta was not recovered at the time of the arrest of three of the accused (Abdul Sattar, Shahnawaz and Umer Gul) and was only recovered two hours later when the IO returned to the house however we do not doubt that the dopatta was used to murder Ms Aisha as **eye witnesses** PW Abdul Qayoom (Complainant) and PW Amir Ali in their evidence state that **they saw** the dopatta in the hand of Abdul Sattar which was around the deceased neck and as such in our view the dopatta was not foisted on appellant Abdul Satter by the police who as discussed above had no reason to do so. Furthermore the medical evidence as given by PW Dr. Shamin who also conducted the post mortem opines amongst other things that on the neck there were multiple patching and hemorrhages and that there were two lacerated wounds on the wrists **and that the cause of death is Asphyxia due to manual pressure on the neck.** Such finding supports the

ocular evidence that the deceased was strangled and did not commit suicide as alleged by the appellants. It is true that the F.I.R. lodged by the complainant ASI Abdul Qayoom is more detailed than his evidence in chief but never the less his evidence in chief clearly implicates Abdul Sattar in the murder of his daughter by having the dopatta in his hand and the other appellants. Importantly however the more detailed events are provided by PW PC Amir Ali who was also an eye witness who fully implicates Abdul Sattar who had the dopatta, Shahnawaz who was holding the right arm of the deceased and Gul Ahmed who was holding the left arm of the deceased. Abdul Sattar, Shahnawaz and Umer Gul (who was apparently only present and playing no active role in the strangulation) were **arrested on the spot** whilst Gul Ahmed and Feroze escaped. Feroze was declared a proclaimed offender. With regard to the 5 other police PW's being dropped we do not consider this to be of much significance based on the facts and circumstances of this particular case as it is the quality and not the quantity of the evidence which is important and in our view once the prosecution was satisfied that it had proved its case by two confidence inspiring eye witnesses there was no need to prolong the trial by calling all the other 5 police eye witnesses. In our view on the whole the evidence of PW's Abdul Qayoom and Amir Ali when read together is both reliable, trustworthy and confidence inspiring and is fully corroborated by the medical evidence. In this respect reference can be made to the case of **Muhammad Ehsan v. The State** (2006 S C M R 1857) where it was held at P.1860 at Para 6 as under:

"6. It is true that there is only ocular testimony of P.W. 4 Mst. Khatun Bibi corroborated by medical evidence, P.W. 6 Dr. Muhammad Sarfraz Sial. The fact that there is only ocular testimony of one P.W. which is unimpeachable and confidence-inspiring corroborated by medical evidence would be sufficient to base conviction. **It be noted that this Court has time and again held that the rule of corroboration is rule of abundant caution and not a mandatory rule to be applied invariably in each case rather this is settled principle that if the Court is satisfied about the truthfulness of direct evidence, the requirement of corroborative evidence would not be of much significance in that, as it may as in the present case eye-witness account which is unimpeachable and confidence-inspiring character and is corroborated by medical evidence**". (bold added)

16. Furthermore, neither PW Police eye witnesses as mentioned above have been damaged on cross examination let alone destroyed and it is established law that police officers as PW's are as good as any other PW. In this respect reliance is placed on **Zafar V State** (2008 SCMR 1254). Based on the particular facts and circumstances of this case and the other evidence on record, in particular the ocular and medical evidence, we do not consider that it is of huge significance that the post mortem was carried out around 6 hours after the body was received

by the hospital. With regard to Abdul Sattar we are therefore of the view that two reliable eye witnesses have placed him on the spot with the specific role of murdering his daughter which is fully corroborated by the medical evidence; that he had a motive to murder his daughter on account of her love marriage which had damaged his honor and that he played a role in her return to his home; that significantly it has not been denied that the murder happened in his house and in his presence (he has not raised the plea of alibi or alleged his was not home) yet he has **not been able to give any explanation whatsoever** as to the unnatural death of his daughter in his house in his presence for which he was required by law at least to give some explanation as was held in the case of **Nasrullah V State** (2017 SCMR 724) at P.727 Para 5 in the following terms

"It has been argued by the learned counsel for the complainant that in the cases of *Arshad Mehmood v. The State* (2005 SCMR 1524) and *Saeed Ahmed v. The State* (2015 SCMR 710) this Court had held that where a wife of a person or any vulnerable dependent dies an unnatural death in the house of such person then some part of the onus lies on him to establish the circumstances in which such unnatural death had occurred. The learned counsel for the complainant has maintained that the stand taken by the appellant regarding suicide having been committed by the deceased was neither established by him nor did it fit into the circumstances of the case, particularly when the medical evidence contradicted the same. **Be that as it may holding by this Court that some part of the onus lies on the accused person in such a case does not mean that the entire burden of proof shifts to the accused person in a case of this nature.**" (bold added)

17. We find no material contradictions in the prosecution evidence and it is settled law that minor contradictions can be ignored. In this respect reliance is placed on **Zakir Khan V The State** (1995 SCMR 1793)

18. As such based on the above discussion we uphold the conviction of Abdul Sattar and confirm his death sentence.

19. **With regard to appellant Shahnawaz** the main issue which arises in our view is the acquittal of Gul Ahmed who was named by PW Abdul Qayyum but who was not identified by him in court. It is argued based on **Sardar Bibi's case** (Supra) that because Abdul Qayyum was disbelieved in respect of Gul Ahmed presence he also cannot be relied upon in the case of the other co-accused. In our view **Sardar Bibi's case** (Supra) is distinguishable. This is because PW Abdul Qayyum does name Gul Ahmed as being present on the spot but he fails to identify him. In our view this does not amount to the judge disbelieving Abdul Qayyum on this point. PW Amir Ali identified Gul Ahmed in court however in our view the judge did not disbelieve PW Amir Ali in the entirety of his evidence based on the particular facts and circumstances of the case **rather it gave weight to the following factors which when combined together enabled him to receive the benefit of the doubt** namely the fact that PW Abdul Qayyum was

unable to identify him, that Gul Ahmed had produced a medical certificate to show that on the day of the incident he was in hospital in Karachi, that he had taken this plea in his S.342 statement; that he was not arrested on the spot and thus for **all the above reasons** he was given the benefit of the doubt and acquitted as his presence at the scene of the incident could not be proved beyond a reasonable doubt. None of the other co-accused had taken the plea of mistaken identity, alibi or produced any document or any witness to show they were not present at the time of the incident, nor had they mentioned any alibi in their S.342 statements, **all were arrested on the spot and none claimed that there was insufficient light to prevent their identification which was never in issue. In any event even if PW Amir Ali is disbelieved** in our view there is still sufficient material on record to prove beyond a reasonable doubt that Shahnawaz was present and played an active role in the murder of Mst Aisha especially as it also appears in the F.I.R. that he played a role in arranging the return of Mst Aisha to her fathers house where she was murdered in his presence on account of honor. Thus we find the case of Shahnawaz to be on a different footing to the acquitted Gul Ahmed and find that the prosecution has produced sufficient evidence to prove his guilt beyond a reasonable doubt and as such his appeal against conviction is dismissed and his conviction and sentence is upheld.

20. **With regard to appellant Umer Gul** we note from the evidence that only his presence has been established at the house when Mst Aisha was murdered; that he appears to have played no active role in her murder and that it appears that he was not involved in arranging her return to her fathers house where she was murdered on account of honor and as such Umer Gul is entitled to the benefit of the doubt and stands acquitted from the charge, his sentence and any fine is set aside and he shall be released from custody forthwith unless he is wanted in any other custody case.

21. As noted above we have already upheld the conviction of Abdul Sattar for murder. We find no mitigating circumstances in his case for the pre meditated cold blooded murder of his young daughter on account of honor and thus his death penalty is confirmed.

22. In this regard we fully endorse the findings of the impugned judgment in respect of honor killings which found as under:

"It has been held in PLD 2002 Lahore, 444 that "these killings are carried out with an evangelistic spirit. Little do these zealots, know that there is nothing religious about it and nothing honourable either. It is male chauvinism and gender bias at their worst. These prejudices are not country specific, region specific or a people specific. The roots are not country specific, a region specific or a people specific. The roots are rather

old and violence against women has been a recurrent phenomenon in human history. The pre-Islamic society was no exception. Many cruel and inhuman practices were in vogue which were sought to be curbed by the advent of Islam. It is well known that, in those times, daughters used to be buried alive. It was wrongly deprecated and a note of warning was conveyed in Holy Quran.

In Sura No;81 (Al-Taqwir) vrese-8, the day of Judgment is portrayed in graphic details when inter alia these innocent girls, who were buried alive or killed, would be asked to speak out against those who wronged them and the latter would have to account for that. The translation of above verse given in the "Holy Quran" by Abdullah Yousuf Ali volume-II published by Muhammad Ashraf reads as under:-

6. when the oceans boil over with a swell
7. when the souls are sorted out (being Joinedlike with like)
8. when the female (infants) buried alive, is questioned
9. For what crime she was killed?

The murder in name of honour is great curse in our society and is in vogue. Innocent females are being subjected to violence and are murdered for no fault of them. It is high time to check this issue with iron hands so that this type of heinous offence is get discouraged because innocent females are being butchered like animals"

Summary.

23. The appeal of Abdul Sattar is dismissed, his sentence is upheld and the reference for the confirmation of the death sentence is answered in the affirmative as there are no mitigating circumstances in his case to justify a reduction in sentence, rather there are aggravating circumstances as discussed above through his pre meditated cold bloodied murder of his young daughter.

24. The appeal of Shahnawaz is dismissed and his sentence is upheld

25. The appeal of Umer Gul is allowed as he is entitled to the benefit of the doubt, he stands acquitted of the charge and his sentence and any fine is set aside and he shall be released from jail forthwith unless he is wanted in any other custody case.