

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

**CRIMINAL JAIL APPEAL NO.346 OF 2022**

Appellant: Murad s/o. Jamal Khan through Mr. Moulana Bux Bhutto, Advocate.

Respondent/State: Mr. Muhammad Iqbal Awan, Addl. Prosecutor General, Sindh.

Date of hearing: 27.02.2024.

Date of Judgment: 04.03.2024

**JUDGMENT**

Mohammad Karim Khan Agha, J.- Appellant Murad S/o. Jamal Khan has preferred this appeal against the impugned judgment dated 23.04.2022 passed by the Model Criminal Trial Court/Ist Additional District & Sessions Judge Malir Karachi in Sessions Case No.1997/2020 arising out of F.I.R. No.1142/2020 U/s. 302 PPC registered at P.S. Shah Latif Town, Karachi whereby the appellant was convicted and sentenced to Life Imprisonment along with fine of Rs.100,000/- (Rupees one lac only). In case of default the appellant was ordered to suffer S.I. for 03 months. The benefit of section 382-B Cr.P.C. was also extended to the appellant.

2. The brief facts of the prosecution case are that on 16.10.2020 at about 0315 hours, inside the House No.C-152, Katchi Abadi Khuldabad Quaidabad Malir Karachi, the present accused namely Murad son of Jamal Khan being duly armed with knife and Lathi blows committed Qatl-e-Amd of his daughter namely Tooba daughter of Murad Baloch aged about 14/15 years by causing knife and lathi injuries on her neck, forehead and right arms, hence the instant FIR was registered.

3. After completion of usual investigation charge was framed against the accused person in which he pleaded not guilty and claimed to be tried.

4. The prosecution in order to prove its case examined 05 witnesses and exhibited various documents and other items. The appellant in his statement under Section 342 Cr.P.C denied the allegations against him. However, he did not give evidence on oath or called any DW in support of his defence case.

5. After hearing the learned counsel for the parties and assessment of evidence available on record, learned trial Court vide judgment dated 23.04.2022 convicted and sentenced the appellant as stated above, hence the aforesaid appeal has been filed.

6. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that appellant is innocent and has been falsely implicated in this case by the police; that there was no eye witness to the incident; that his confession before the police is inadmissible in evidence and that the appellant being the father of the deceased had no motive to murder her and as such for any or all of the above reasons the appellant be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions he placed reliance on the case of Sajid Mumtaz and others v. Basharat and others (2006 SCMR 231).

8. Learned APG Sindh on behalf of the State after going through the entire evidence of the prosecution witnesses as well as other record of the case has fully supported the impugned judgment. In particular, he has contended that there was no delay in lodging the FIR; that although it is a case of circumstantial evidence but when the evidence is read in a holistic manner coupled with the arrest of the appellant on the spot in his own rented property with the dead body of his daughter and the recovery of the murder weapon the prosecution has proved its case against the appellant beyond a reasonable doubt and as such the appeal be dismissed. In support of his contentions, he placed reliance on the cases of Athar v. The State (2020 SCMR 2020) and Saeed Ahmed v. The State (2015 SCMR 710).

9. I have heard the learned counsel for the appellant as well as learned APG and have also perused the material available on record and the case law cited at the bar.

10. Based on my reassessment of the evidence of the PW's, especially the medical evidence, recovery of blood and dead body of the deceased at the crime scene I find that the prosecution has proved beyond a reasonable doubt that Ms Tooba (the deceased) was murdered by a sharp cutting instrument on 16.10.2020



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at about 0315am inside House No.C-152, Katchi Abadi, Quaidabad Malir Karachi.

11. The only question left before me therefore is who murdered the deceased by cutting her neck with a sharp cutting instrument at the said time, date and location?

12. After my reassessment of the evidence on record, I find that the prosecution has proved beyond a reasonable doubt the charge against the appellant for which he was convicted for the following reasons;

- (a) Admittedly, it is a case of circumstantial evidence as there is no eye witness to the murder. With regard to circumstantial evidence leading to a conviction in a capital case it was held as under in Fayyaz Ahmed V State (2017 SCMR 2026);

*"To believe or rely on circumstantial evidence, the well settled and deeply entrenched principle is, that it is imperative for the Prosecution to provide all links in chain an unbroken one, where one end of the same touches the dead body and the other the neck of the accused. The present case is of such a nature where many links are missing in the chain. To carry conviction on a capital charge it is essential that courts have to deeply scrutinize the circumstantial evidence because fabricating of such evidence is not uncommon as we have noticed in some cases thus, very minute and narrow examination of the same is necessary to secure the ends of justice and that the Prosecution has to establish the case beyond all reasonable doubts, resting on circumstantial evidence. "Reasonable Doubt" does not mean any doubt but it must be accompanied by such reasons, sufficient to persuade a judicial mind for placing reliance on it. If it is short of such standard, it is better to discard the same so that an innocent person might not be sent to gallows. To draw an inference of guilt from such evidence, the Court has to apply its judicial mind with deep thought and with extra care and caution and whenever there are one or some indications, showing the design of the Prosecution of manufacturing and preparation of a case, the Courts have to show reluctance to believe it unless it is judicially satisfied about the guilt of accused person and the required chain is made out without missing link, otherwise at random reliance on such evidence would result in failure of justice".(bold added)*

- (b) Admittedly, as mentioned above the murder was an unseen one however the FIR was lodged with promptitude by the police (ASI Dino Abro) who was the first responder on the scene when he was called to the house by the appellant and where he found the dead body of the deceased.
- (c) The evidence of PW 1 Ali Dino Abro who was the first responder and who lodged the FIR is set out below in material part for ease of reference:



"Examination in Chief to Mr. Sanaullah Memon, DDPP for the State

On the intervening night of 15<sup>th</sup> & 16<sup>th</sup> October, 2020 I was duty officer from 2000 hours to 0800 hours at P.S Shah Latif Town. At about 0330 hours I received information from Jhangir Base that one father had killed his daughter in C-Aren Khuldabad. I gave such information to SHO as well as mobile officer and myself proceeded to place of incident vide entry of departure, which I produce at Ex.05. I reached on spot where there was quite mob of public. One person namely Alamghir was available on spot who pointed one house which was bolted from inside. With the help of Alamghir the said door of the house was opened. In courtyard of the house, dead body of one girl was lying which was identified as Mst. Tooba. I inspected the dead body and found that her throat was cut and it had multiple sharp weapon injuries on almost entire body. One person namely Murad was available in the room who disclosed that deceased Tooba is his daughter. He disclosed that his daughter had run away from house for which FIR was lodged but yesterday he had recovered her from Landli and he brought her in this home. He also confirmed that because of anger he had committed murder of his daughter. I on spot prepared memo of dead body and inquest report in presence of Alamghir and driver of Chlipa. I produce memo at Ex.06 and inquest report at Ex.07 which are same, correct and bear my signatures. I arrested accused Murad and handed over his custody to ASI Riaz who took him to police station while I proceeded hospital along with the dead body. I secured knife, 01 foot danda and blood stained earth and sealed them on the spot. I produce memo of arrest at Ex.08 which is same, correct and bears my signature. I brought dead body to Jinnah Hospital where I gave letter MLO for post mortem. I produce such letter at Ex.09. After post mortem, MLO handed over sealed the cloths of the deceased and vaginal swab. The death certificate was also issued which I produce at Ex.10". (bold added)

His evidence reflects that of his promptly lodged FIR which was not materially improved upon. His evidence was not dented during cross examination and he had no ill will or enmity with the appellant to involve him in a false case. Admittedly, the confession of the appellant before the police cannot as a general rule be considered in evidence however in this case I have given it some, albeit little weight, based on the particular facts and circumstances of this case where it was given by the deceased voluntarily to PW 1 Ali Dino immediately on his arrival at the spot where the appellant was present along with the deceased in the part of the house which he was renting from the Landlord PW 2 Alamghir who was living on the upper floor of the house who also heard the confession as per his evidence and such confession is even recorded in the promptly lodged FIR. In this respect reliance is placed on the case of Akhtar (Supra). He was not dented despite a lengthy cross examination and gave his evidence in a natural manner and thus I believe his evidence.

- (d) PW 2 Alamghir who was the landlord of the property, as proved by documents and admitted by the appellant in his S.342 Cr.PC statement, who was living on the upper floor of the appellant's house who was his tenant in his evidence corroborates the evidence of PW 1 Ali Dino Abro in all material respects including that of the appellant's confession before PW 1 Ali Dino Abro. He is not a chance witness as he is the landlord of the appellant who is living in the floor above the



appellant. He is also an independent witness who had no ill will or enmity with the appellant and had no reason to implicate him in a false case. He was not dented during a lengthy cross examination. He is named in the promptly lodged FIR and gave his S.161 Cr.PC statement with promptitude which was not materially improved upon during cross examination and thus I believe his evidence.

- (e) The appellant by his own admission was present at the time of the murder. According to him he was at home when he found the body of the deceased in the court yard of the house and admits calling the police. He only denies his confession before the police and the actual murder of the deceased. He also admits that he and the deceased were living together in the house. In the case of Saeed Ahmed (Supra) it was held in circumstances when the appellant was living in a house with vulnerable persons such as a young daughter, as in this case, unless the appellant was able to offer a reasonable explanation for the death of the deceased it would not take away the prosecutions burden of proof but lighten it. In this case the appellant did not cross examination as to who else might have caused the murder and offered no explanation for it apart from the fact that it was not him until the fag end of the trial when he blamed the murder on persons known as Sunera and Mian in his S.342 Cr.PC statement who he had never mentioned before throughout the case and as such based on the facts and circumstances of this case I find the prosecutions burden of proof lightened.
- (f) That the appellant was arrested on the spot in his own home where the body of the deceased was found. He admits his presence at the time of the death and even called the police. The fact that he heard no noise when his daughter was killed does not ring true as he was in the room next to the court yard where the body was found. It beggars belief that he heard no noise or scuffle if there was no one else around so I find that his story of some one else murdering the deceased whom he introduced belatedly does not ring true.
- (g) The murder weapon was recovered at the spot. Namely, the knife in the presence of the appellant.
- (h) The medical evidence fully supports the prosecution case. Namely the deceased died as a result of a sharp incised instrument which virtually severed her neck which ties in with the knife found at the crime scene.
- (i) That the appellant had a motive for murdering his daughter as only a day before she had returned home after eloping with some one else at the age of 15 which angered the deceased and would have in our society brought great shame and disgrace on him.
- (j) On his arrest the appellant had blood stained clothes which he admitted in his S.342 Cr.PC statement.
- (k) No non police witness had any ill will or enmity against the appellant and as such had no reason to implicate the appellant in a false case which in fact they did not do. They simply gave their evidence in a straight forward manner and were not damaged during cross examination. As such there is no reason to disbelieve their evidence.



- (l) That there was no ill will or enmity between the police and the appellant and as such they had no reason to falsely implicate the appellant in this case, for instance, by foisting the knife on the appellant. Under these circumstances it is settled by now that the evidence of police witnesses is as good as any other witness. In this respect reliance is placed on the case of *Mustaq Ahmed V The State* (2020 SCMR 474). Thus, I believe the evidence of the police witnesses who were not dented during cross examination whose evidence of arrest and recovery is supported by the mashir's evidence.
- (m) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence I consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on the cases of *Zakir Khan V State* (1995 SCMR 1793) and *Khadim Hussain v. The State* (PLD 2010 Supreme Court 669). The evidence of the PW's provides a believable corroborated unbroken chain of events from the appellant calling the police to his house where the dead body of the deceased was found who had been stabbed to death in a most brutal manner to the appellant being arrested on the spot to the knife (murder) weapon being recovered at the crime scene.
- (n) That through his S.342 Cr.PC statement the appellant has admitted the entire prosecution case/evidence except claiming that he did not confess to the murder and did not carry out the murder.
- (o) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but I have also considered the defence case to see if it at all can cast doubt on or dent the prosecution case. The defence case is simply one of innocence and belated blaming unknown persons called Sunera and Mian during his S.342 Cr.PC statement who no one saw at the crime scene or had ever been mentioned during the entire case. He did not even exhibit his so called FIR against kidnappers of his daughter or call any witness to prove that his daughter had been kidnapped and he had only recently recovered her. The appellant neither gave evidence under oath or called any DW in support of his defence case. Thus, in the face of the prosecution evidence on record I find the defence case to be an after thought and disbelieve the same.

13. Based on the above discussion, I find that the prosecution has proved its case against the appellant beyond a reasonable doubt and as such his appeal is dismissed.

Muhammad Arif