IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No.433 of 2010

Ghulam Muhammad
v/s.
The State

Before: Justice Mrs. Ashraf Jahan.

For Appellant	:	Mr. Muhammad Salahuddin Abro, Advocate
For State	:	Ms. Rahat Ehsan, Additional P.G.
Date of Hearing	:	22.11.2017
Date of Order	:	07.12.2017

JUDGMENT

Mrs. Ashraf Jahan, J.:- Appellant Ghulam Muhammad has impugned the Judgment passed by learned IVth Additional Sessions Judge, Karachi (East) in Sessions Case No.182/2005, arising out of FIR No.52/2005, under sections 302/34 PPC of P.S. Zaman Town, Karachi, whereby he was convicted and sentenced to undergo Life Imprisonment; the benefit of Section 382-B Cr.P.C. was extended in his favour.

2. The case of prosecution as narrated in the FIR is that on 05.04.2005 SIP Sardar Ahmed Abbas of P.S. Zaman Town, Karachi was on patrolling in the area on motorcycle, when at about 1830 hours he reached near street of Faisal Pump house, situated in Sector 51/D, main road of Tasveer Mehal, Chowki 5½, Korangi, Karachi, found crowd of people near the wall of said pump, where a

bag stained with blood was lying. On opening the bag a dead body without head was recovered, whose hands were tied with electric wire. The deceased aged between 30 to 35 years was wearing cream colour shalwar qameez. The condition of dead body was near to decomposition and the injuries seemed to be one day old. He completed the formalities under section 174 Cr.P.C. and shifted the dead body to Jinnah Post Graduate Medical Centre (J.P.M.C), Karachi for postmortem and after postmortem kept it in Edhi Cold Storage. Accordingly, FIR was lodged against unknown culprits. The investigation of this crime was entrusted to SIP Abdul Hameed Arbab.

3. On 07.04.2005 one Abul Kalam Ashrafi came to Police Station alongwith his daughter Mst. Saima and her sister-in-law Mst. Khadija to see the dead body. The police informed them that the said dead body was kept at Edhi Centre, they went there, but Edhi officials informed them that they had already buried the dead body and showed them clothes, which were worn by the deceased. Mst. Saima identified the said clothes to be of her deceased husband Badshah Khan. The Investigating Officer (**"I.O"**) recorded the statement of P.Ws., wherein they disclosed that there were illicit relations between the deceased and wife of one Ghulam Muhammad, hence the I.O arrested Ghulam Muhammad (the present Appellant) on 08.04.2005 from his house. During interrogation he confessed his guilt before police and disclosed that with the help of one Abdul Qadir, he committed murder of deceased. He also showed his willingness to produce the head of the deceased. Thereafter, he led the police party to a dirty drain (نالہ) from where he produced the head of deceased. The place where dead body was thrown was also visited by the I.O at the pointation of accused Ghulam Muhammad.

He also led the police party to his house from where he produced one chopper (بغدہ) before the police as crime weapon. During the course of investigation, I.O got recorded statement under Section 164 Cr.P.C. of P.W. Abul Kalam Ashrafi and on completion of usual investigation submitted the challan against the present accused/Appellant and the absconding accused Abdul Qadir before the Court.

4. After receipt of challan, N.B.Ws were issued against absconding accused Abdul Qadir, but he could not be arrested and thereafter proceedings under Section 87 and 88 Cr.P.C were initiated and completed against him. On 06.03.2017, charge under Section 302, 109 / 34 P.P.C. was framed against the accused, to which he pleaded not guilty and claimed trial.

5. Prosecution in support of its case, examined in all nine witnesses. For the sake of reference, a gist of their evidence is reproduced hereunder:-

- P.W.-1, Abul Kalam Ashrafi, was examined as Ex.6, he supported the case of prosecution as per contents of FIR. He also acted as mashir of arrest, recovery of head of deceased at the pointation of accused/Appellant and crime weapon. He produced the memo of identification of clothes of deceased as Ex.6/A, memo of arrest of accused as Ex.6/B, memo of receipt of the head of deceased as Ex.6/C, memo of pointation of place by the present accused from where the dead body of the deceased without head was recovered as Ex.6/D, memo of inspection of place of incident and recovery of crime

weapon i.e. chopper (بغدہ) as Ex.6/E and his statement recorded under Section 164 Cr.P.C. as Ex.6/F.

- P.W.-2, Mst. Samina, widow of deceased Badshah Khan was examined as Ex.7. She deposed that on 03.04.2005, her husband left the house for purchasing grocery but did not return to home till evening, in the night she called him, but his cell phone was off and then she disclosed such fact to her father at about 10.00 p.m. On 07.04.2005, she got information that one dead body was recovered by the Police of Zaman Town. Whereafter, she went and identified the clothes of deceased as the dead body was already buried by the Edhi Center staff.

- P.W.-3, Judicial Magistrate, Hifzur Rehman, was examined by the prosecution as Ex.8. His evidence is to the extent that he recorded the statement of P.W. Abul Kalam Ashrafi under Section 164 Cr.P.C. in Crime No.52 of 2005. He produced application as Ex.8/A, whereby Police had requested to record such statement.

- P.W.-4, SIP Sardar Ahmed, complainant of this case was examined by the prosecution as Ex.9. He produced memo of inspection of dead body and inquest report as Ex.9/A & B. Letter of MLO, JPMC for conducting post mortem as Ex.9/C. Letter to Edhi Mortuary as Ex.9/D. He also produced copy of FIR as Ex.9/E.

- P.W.-5, Dr. H. Zeeshan Hyder, was examined as Ex.10. He had conducted the postmortem of deceased and

issued such report, which he had produced as Ex.10/A and 10/B. He also produced letter of Police as Ex.10/C.

- P.W.-6, Haji Qasim, was examined as Ex.11. He acted as mashir of arrest of accused and mashir of recovery of head of deceased.

- P.W.-7, Fayyaz, was examined as Ex.12. He was mashir of pointation of place of incident, recovery of dead body and mashir of recovery of crime weapon.

- P.W.-8, Dr. Fazal Elahi, Chemical Examiner, was examined as Ex.13. He examined the clothes of deceased, crime weapon and earth secured from the place of incident and reported that they all were stained with human blood. He produced his chemical report along with corrigendum as Ex.13/A and 13/B.

- P.W.-9, SIP Abdul Hameed Arbab, the I.O, was examined as Ex.14. He had given the details about all the recoveries and arrest of accused in the present crime. He produced the receipt of handing over the head of deceased as Ex.14/A. Letter for recording 164 Cr.P.C. statement of P.Ws as Ex.14/B and copy of notices served upon the PWs and accused regarding recording of statement under section 164 Cr.P.C.

- After completion of evidence of prosecution witnesses the learned DPP closed the prosecution side vide Ex.15.

6. The statement of accused was recorded under section 342 Cr.P.C vide Ex.16, wherein he denied the allegations leveled against

him and stated that he is innocent and has falsely been implicated in this case by the police. He also took the stance that all the PWs are interested and related to each other, therefore, deposed against him. He prayed that he may be acquitted in the instant crime. He did not examine himself on oath, but examined his wife Mst. Salima in his defence vide Ex.17. She deposed that deceased Badshah Khan had tried to keep illicit relations with her and used to tease her. Therefore, she complained the matter to her brother Abdul Qadir, who assured her that he will take revenge of it and after some time she came to know that deceased Badshah Khan has been murdered. In the end she stated that her husband has not committed murder of deceased.

7. Learned trial Court after conclusion of the trial passed the impugned judgment; convicted the Appellant and sentenced him for life imprisonment. The Appellant being aggrieved has challenged the above Judgment before this Court.

8. I have heard learned counsel appearing for the Appellant and the State Counsel. It is contended by learned counsel for the Appellant that the murder of deceased Badshah Khan is an unseen incident. All the prosecution witnesses are related to each other and have falsely implicated the present Appellant, who is innocent. In the end, he prayed that this appeal may be allowed or alternatively his sentence may be treated as already undergone.

9. On the other hand, it is contended by learned State Counsel that all the prosecution witnesses have fully supported the case of prosecution and the accused after his arrest produced the crime weapon and at his pointation the head of the deceased was also recovered, therefore, the question of false implication does not arise.

It is a case of brutal murder; therefore, trial Court has rightly convicted him with the commission of crime.

10. I have considered the arguments advanced before me and have perused the record, which reveals that admittedly the incident of murder of deceased Badshah Khan is un-witnessed occurrence. During the statement of prosecution witnesses recorded under section 161 Cr.P.C, it was adduced before the I.O that there were some illicit relations in between the deceased and wife of Appellant Ghulam Muhammad, for which there had been some dispute between them. After disclosure of above fact present Appellant was arrested from his house on 08.04.2005 in presence of mashirs Abul Kalam Ashrafi and Haji Qasim and thereafter as per evidence on record he confessed about his guilt and showed his willingness to produce the head of the deceased, which he had concealed in dirty drain (نالہ). Accordingly, he led the police party towards pointed place and on the same date at about 1300 hours he produced the head of deceased wrapped in plastic bag in presence of mashirs Abul Kalam Ashrafi and Haji Qasim. In the present case, both the mashirs of recovery of head were examined and both have fully supported the case of prosecution in this regard. The Appellant thereafter also pointed out the place where he had thrown the dead body concealed in sack. Again in presence of mashirs Abul Kalam Ashrafi and Fayyaz on the same date at about 3:00 p.m. Appellant produced the crime weapon (بغدہ) in presence of mashirs from his house.

11. No doubt, in the instant crime there is no eye witness and the evidence against the present Appellant is circumstantial evidence. It is well established legal position that circumstantial evidence is to be

considered as a chain and if each piece of evidence is linked in the chain and no link is broken, then it can be made basis for the conviction. There are four principles which are to be followed by the prosecution, in order to bring home the charge in case of circumstantial evidence.

i). All the facts must be consistent;
ii). Should be of conclusive nature;
iii). Should have moral sanctity;
iv). Chain of events interwoven with no breakage.

With this background the evidence brought by the prosecution is examined in this case.

It is the case of prosecution that a dead body without head was recovered by the complainant on 05.04.2005. Postmortem of the dead body was conducted on the same date. In support of this assertion prosecution has examined Dr. Zeeshan Hyder as Ex.10, who conducted the postmortem of the deceased and after recovery of head of the deceased also examined it on 09.04.2005, he in his statement before the Court categorically deposed that cause of death was due to acute neck injury, such evidence was not challenged in cross examination though opportunity given. Thus, it established the allegation of prosecution that the deceased died unnatural death.

12. The evidence of Abul Kalam Ashrafi, who is father-in-law of the deceased is also of important value, he has given the details of the background of the incident and disclosed that there was dispute in between his son-in-law and the present Appellant on business and illicit relations with the wife of the accused and deceased. This piece of evidence was also not challenged at all during the cross

examination. Likewise his evidence regarding recovery of head of the deceased and regarding production of chopper (بغدہ) from the house of the Appellant is also confidence inspiring and could not be shattered during cross examination. This witness also got recorded his evidence under section 164 Cr.P.C. before the Magistrate, which is also on record as Ex.6/F. It will be relevant to mention that above statement wherein he had disclosed about all the relevant facts including recovery of head and crime weapon was recorded on 16.04.2005 in presence of Appellant, but he did not cross examine him at all, though opportunity was given to him by the Magistrate. Prosecution has also examined Civil Judge and Judicial Magistrate, Hifz-ur-Rehman, who recorded the statement and endorsed that such statement was recorded in his presence. Same is the position with the evidence of mashir Haji Qasim, he categorically deposed before the Court that there were illicit relations in between the deceased and wife of present Appellant, due to which he committed murder of the deceased. He further deposed about the recovery of head of deceased wrapped in shopping bag at the pointation of the Appellant and about the production of crime weapon, again such evidence was not challenged during cross examination and gone un-rebutted in defence evidence. Mashir Fayyaz has also deposed about the fact of illicit relations and then recovery of head of the deceased on pointation of Appellant. The Appellant also showed the police, the place where he had thrown the dead body and also about the crime weapon. Again his evidence could not be shattered during the cross examination and has gone un-challenged. The evidence of I.O is also of material value; in the present case he is the person, who arrested the Appellant and made the above recoveries on his pointation, same is the position that his evidence in respect of both

these facts remained unchallenged in cross examination. The Appellant in his statement recorded under section 342 Cr.P.C. had simply denied the prosecution story, but did not opt to record his statement on oath. However, he examined his wife as his defence witness who deposed that the murder was caused by Abdul Qadir, her brother (absconding accused) and not by the present Appellant. At the same time she mentioned about the illicit relations against the deceased. Thus, it can be safely concluded that she also did not deny the incident and the cause of alleged incident, but in other words supported the case of prosecution.

13. In view of the fact that the evidence brought on record by the prosecution though not in the shape of direct evidence, but circumstantial evidence having no breakage of links, in shape of recovery of head of the deceased and crime weapon etc. at the pointation of Appellant, is confidence inspiring and unshaken. Therefore, I am of the considered view that it is sufficient to connect the Appellant with the commission of crime without any reasonable doubt.

14. Further the perusal of the impugned judgment goes to show that it covers all the legal aspects of the case and is based on logical reasoning, therefore, needs no interference. The upshot of the above discussion is that the Judgment of the trial Court is upheld. Consequently, present appeal is dismissed.

Judge