

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

Criminal Jail Appeal No.D- 98 of 2019
[Confirmation Case No.16/2019]

PRESENT:

Mr. Justice Naimatullah Phulpoto
Justice Mrs. Rashida Asad

Date of Hearing : 02.09.2020
Date of Judgment : 10.09.2020

Appellant: Nazeer Ahmed son of Lutif Butt
Through Mr. Aijaz Shaikh, Advocate.

The State: through Mr. Shahzado Saleem Nahiyoon, D.P.G.

J U D G M E N T

NAIMATULLAH PHULPOTO, J:- Appellant Nazeer Ahmed was tried by learned Sessions Judge, Dadu for offences u/s 302, 34 PPC. On conclusion of the trial vide judgment dated 15.06.2019, appellant was convicted u/s 302(b) PPC as Tazir and sentenced to death. Appellant was also directed to pay the compensation of Rs.5,00,000/- to the legal of the deceased in terms of Section 544-A Cr.P.C. Trial Court made reference to this court for confirmation of the death sentence as required u/s 374 Cr.P.C.

2. Brief facts of the prosecution case as reflected in the impugned judgment are as under:-

“On 02.06.2018 complainant Khadim Hussain Satti lodged FIR at Police Station A-Section, Dadu stating therein that he is Tailor Master. About 20 years back he got married his daughter Mst. Yasmeen aged about 29/30 years with Nazir Ahmed son of Lutif Butt resident of Majeed Colony Butt Mohalla, Dadu and out of that

wedlock she gave birth to three daughters. His daughter Mst. Yasmeen always made complaints to him and others that her husband always maltreated her, he asked Nazir Ahmed not to maltreat Mst. Yasmee but he did not listen to him. On 01.06.2018, complainant arrived at Dadu to see his daughter Mst. Yasmeen from Jamshoro and stayed in her house, where Mst. Yasmeen again complained him on which her husband became annoyed. His brother Mehboob Ali also came there and after taking night meal stayed there night. The bulbs were glowing. On 02.06.2018 at about 04-00 a.m (night) they heard the cries of Mst. Yasmeen coming from the room of the house, on which he and his brother Mehboob Ali woke up and run towards the room where they saw that accused Nazir Ahmed Butt who was having big knife (Kati) in his hand was slaughtering his daughter, committed her murder and accused took his daughter Mst. Yasmeen on his shoulder and was going outside from the house. Then they saw one unidentified person who face was opened and will be identified if seen again who was armed with pistol was standing at the door of the house. On their arrival at the room, the unidentified accused who was having pistol challenged, aimed his pistol and issued threats, due to fear of weapon they remained silent. Accused Nazir took the dead body of Mst. Yasmeen and brought the dead body outside the house, they raised cries, the accused fallen the dead body of Mst. Yasmeen in the street and then ran away. They chased the accused but the accused disappeared in the street and they made search of the accused and in their absence, the neighbourers took the dead body from the street and brought the same in the house and also informed such incident to the police. The police arrived and after conducting all the formalities, the dead body was handed over to him and after funeral and burial ceremony he appeared at police station and lodged FIR against the accused. It was recorded on 02.06.2018 at 2300 hours vide Crime No.130/2018 for offence u/s 302, 34 PPC at Police Station A-Section, Dadu.”

3. After usual investigation challan was submitted against the accused u/s 302 PPC.

4. Trial Court framed charge against the appellant at Ex.3 to which he pleaded not guilty and claimed to be tried.
5. At the trial prosecution examined in as much as seven (07) witnesses who produced the relevant record. Thereafter, prosecution side was closed.
6. Trial court recorded the statement of accused u/s 342 Cr.P.C at Ex.15 in which he claimed false implication in this case and denied the prosecution allegations. He raised plea that murder of his wife has been committed by some unknown persons. Appellant did not examine himself on Oath nor led any evidence in his defence in disproof of the prosecution allegations.
7. Learned trial court after hearing the learned counsel for the parties, assessment of the evidence available on record, found the appellant guilty and convicted him and sentenced to death accordingly and made Reference to this court for confirmation of the death sentence. It is in these circumstances, the present appeal has been filed.
8. We have heard Mr. Aijaz Shaikh, learned counsel for the appellant and Mr. Shahzad Saleem Nahiyoan, learned D.P.G. for State. Time and again notice was issued to the complainant but he did not appear.
9. The facts of this case as well evidence produced before the trial Court find an elaborate mention in the judgment passed by the trial Court and therefore, the same may not be reproduced here so as to avoid duplication and un-necessary repetition.
10. In order to prove the un-natural death of deceased Yasmeen, the prosecution has examined Women Medical Officer at Ex.7, who deposed that she started postmortem examination at 9-00 a.m and finished at 11-00 a.m and found following injuries on the person of deceased:-

“EXTERNAL EXAMINATION

(A) Clothes: The deceased worn Black coloured shirt with Blue print and Blue coloured Trouser & Black dots. Blood stained clothes.

(B) Condition of the Body: Dead Body of an Adult female of Average built and height lying supine on Mortuary Table.

Rigor Mortis: Fully developed.

Postmortem Lividity: Present on Back

(C) Injuries: An incised wound in front of neck extending from (L) lateral side of neck to (R) lateral side of Neck, the **traubea** the blood vessels and muscles all were cut off completely, the wound extending upto cervical vertebrae.

INTERNAL EXAMINATION

1. Head: Intact
2. Neck: The Neck Muscles and great vessels of Neck were cut **traubea**, esophagus were also cut. The cervical vertebrae were palpable, from the bed of the wound.
3. Chest: All structures were Intact.
4. Abdomen: All Structures were Intact.
Stomach contains some liquid material.
5. Genitals: Structures Intact.
Uterus: Small sized & Non-graved.”

W.M.O was of the opinion that death of Yasmeen daughter of Khadim Hussain occurred due to cardio-pulmonary failure, hemorrhage and shock as a result of injury No.1. Injury was ante-mortem and caused by sharp cutting object, it was sufficient to cause death of a person in ordinary course of life. Probably duration between injury and death was instantaneously and duration between death and postmortem was about 05 hours. W.M.O issued such postmortem report. Un-natural death of Mst. Yasmeen has not been disputed by the defence counsel and trial court has rightly held that deceased died her un-natural death as described by W.M.O.

In order to prove its` case, prosecution has examined the complainant at Ex.8. He has deposed that his daughter Mst. Yasmeen was married with accused about 10/11years back and she was residing in Buth Mohalla Dadu. On 01.06.2018, he proceeded from Jamshoro to visit his daughter and

reached at her house at about 08-00 p.m. He further deposed that his daughter had complained him against her husband's maltreatment. After arrival of the complainant in the house of her daughter, PW Mehboob Ali came over there after about 30 minutes. Both tried to convince/counsel the accused not to maltreat his wife without any reason. After taking the night meal, all of them were sleeping, when at about 4-00 a.m, complainant and P.W Mehboob Ali heard the cries of Mst. Yasmeen from the room of her husband (appellant). Both reached to the room of the deceased where they saw that appellant had already slaughtered / murdered his wife Yasmeen by means of knife and one unknown person who was armed with pistol issued threats to the complainant and PW Mehboob, in case they went to rescue Mst. Yasmeen they would not be spared and they remained silent. Thereafter, accused Nazeer took the dead body of his wife and threw it in the street and ran away. Police arrived at the place of incident and shifted the dead body to hospital for the postmortem examination and report. Complainant has further deposed that after funeral ceremony, on 02.06.2018 at about 11-00 a.m, he went to the police station and lodged FIR against the accused. Complainant was cross examined at length. He denied the suggestion for deposing falsely against the accused.

PW Mehboob Ali has also deposed that appellant committed the murder of his wife, on the relevant night at about 04-00 a.m, he was present with complainant in house and heard cries, went to the room of accused where bulb was burning, accused committed the murder of his wife by means of knife.

ASI Piyar Ali has conducted the investigation of the case and deposed that on 02.06.2018 he was posted as ASI at P.S A-Section Dadu. One Haji Bachal informed on mobile phone that Mst. Yasmeen has been murdered by her husband then he went to the place of incident and found dead body lying

on a cot. He collected blood stained earth and sealed it and prepared mashirnama of recovery of dead body at place of incident in presence of the mashirs, prepared inquest report and referred dead body to the hospital for conducting postmortem examination. On 02.06.2018 at 2300 hours complainant Khadim Hussain appeared at Police Station and he recorded FIR regarding the incident bearing Crime No.130/2018 u/s 302, 34 PPC. Investigation Officer recorded 161 Cr.P.C statement of P.W Mehboob Ali on 03.06.2018, arrested accused on the same date at 1830 hours and prepared such mashirnama in presence of the mashirs. During investigation, accused prepared to produce the crime weapon and it was produced by him from the bathroom of his house and it was blood stained knife. I.O. sent the blood stained earth, knife to the chemical examiner for report and received the positive reports. On the conclusion of investigation submitted challan against the accused.

11. Mr. Aijaz Shaikh, learned counsel for the appellant argued that there was delay in lodging of the FIR for which no plausible explanation has been furnished; that source of light was bulb and it was not secured during investigation; that motive set up by the prosecution remained far from being proved. Learned counsel for the appellant after lengthy arguments did not press the appeal on merits and prayed that the sentence of death awarded to the appellant may be converted into imprisonment for life. In support of his contentions, learned counsel has placed reliance upon the cases of Muhammad Akram alias Akrai v. The State (2019 SCMR 610), Naveed alias Needu and others v. The State and others (2014 SCMR 1464), Mst. Nazia Anwar v. The State and others (2018 SCMR 911) and Ghulam Mohy-ud-Din alias Haji Babu and others v. The State (2014 SCMR 1034).

12. Mr. Shahzado Saleem Nahiyoon, D.P.G. conceded to the contentions raised by learned counsel for the appellant for reduction of the sentence on

the ground that prosecution has failed to prove the motive and recorded no objection for conversion of the death sentence to the imprisonment for life.

13. Occurrence in this case has taken place in the house of the appellant. Incident was witnessed by complainant Khadim Hussain (father of the deceased) and PW Mehboob Ali. FIR regarding the incident was lodged on 02.06.2018 at 2300 hours. Delay in lodging the FIR has been fully explained. Appellant had specifically been nominated as sole accused of the alleged offence. Ocular account of the occurrence furnished by the complainant Khadim Hussain and P.W Mehboob Ali was confidence inspiring. Complainant had no reason to falsely implicate the appellant in this case. The ocular account furnished by eye witnesses had received ample support from the medical evidence and other evidence available on record. Appellant had also failed to explain in his statement recorded u/s 342 Cr.P.C regarding the murder of his wife in his house. After assessing and evaluating the entire evidence, learned trial court came to the conclusion that prosecution had succeeded in establishing the appellant guilty beyond any reasonable doubt and after apprising the evidence we too concur with the said conclusion. We have found that learned counsel for the appellant to be quite justified in not pressing this appeal as regards to the merits of the case.

The question of sentence of appellant has engaged our serious consideration and we have looked at this aspect of the case from the divert angles. We have noticed that motive set up in the FIR was often quarrel between husband and wife but it has come on record that deceased was mother of three children. It means relationship of husband and wife continued for a long period of 10/11 years. Prosecution failed to examine inmates of the house i.e. children of the deceased to prove the motive. Investigation Officer had also failed to examine the persons of neighbouring area for proving the motive. Evidence of complainant on motive was generalized in nature.

Evidence of the Investigation Officer reflects that no serious efforts were made by him to collect any evidence regarding the motive asserted by the complainant party. Upon our assessment of the evidence available on record, we felt no hesitation in concluding that specific motive set up by prosecution had indeed remained far from being established on the record. Reliance in this regard can be placed upon the case of Naveed alias Needu and others v. The State and others (2014 SCMR 1464), Mst. Nazia Anwar v. The State and others (2018 SCMR 911) and Ghulam Mohy-ud-Din alias Haji Babu and others v. The State (2014 SCMR 1034) in which it is held that the settled and long standing principle is that the failure of the prosecution to prove the motive set up by it may have a bearing upon the question of sentence and in an appropriate case such failure may result in reduction of a sentence of death to that of imprisonment for life for safe administration of justice. For all these reasons and circumstances of the case, we have decided to exercise caution in the matter of the appellant's sentence.

14. For the above stated reasons, this Criminal Jail Appeal No.D-98 of 2019 is dismissed to the extent to appellant's conviction for offence u/s 302(b) PPC but the same is partly allowed to the extent of death sentence which is reduced to imprisonment for life. Appellant is ordered to pay compensation of Rs.5,00,000/- to the legal heirs of deceased as directed by the trial court. In case of default thereof, appellant is directed to suffer SI for six months more. The benefit of Section 382-B Cr.P.C shall be extended to the appellant. Confirmation Reference No.16 of 2019 made by the trial court for confirmation of the death sentence is answered in **NEGATIVE** and death sentence is **NOT CONFIRMED**.

JUDGE

JUDGE

