

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No. 677 of 2019

Appellant : Jamshed Masih
through Mr. Habib-ur-Rehman Jiskani, Advocate

Complainant : through Mr. Sajid Rajput, Advocate

Respondent : The State
through Mr. Talib Ali Memon, A.P.G.

Date of hearing : 25th October, 2022

JUDGMENT

Omar Sial, J.: The case against Jamshed Masih is that on 07.11.2015 he killed his 28 year old wife Sumaira inside their bedroom by slitting open her neck with a knife. Jamshed was apprehended by the neighborhood people and was handed over to the police. When arrested, Jamshed's shalwar kameez had blood all over it and the crime weapon – a knife was also recovered from him. F.I.R. No. 503 of 2015 was registered against Jamshed on 07.11.2015 at 4:20 a.m. on the complaint of Sumaira's brother, a man by the name of Zubair Masih.

2. Jamshed pleaded not guilty and claimed trial. The prosecution examined 8 witnesses to prove its case. **PW-1 A.S.I. Abdul Latif** was the officer who reached the spot when informed of the murder, arrested Jamshed, effected recovery of the crime weapon from his person and registered the F.I.R. **PW-2 S.I. Mohammad Idrees** inspected the dead body and prepared the inquest report. **PW-3 Dr. Mubarak Ali** medically examined the accused Jamshed. **PW-4 Zubair Masih** was Sumaira's brother as well as the complainant in the case. **PW-5 Younus Masih** was Sumaira's uncle and who was the first person informed over the phone that Jamshed had killed Sumaira. **PW-6 Miskeen Hussain** was a neighbor of the deceased who had reached the place of incident in its immediate aftermath. **PW-7 S.I. Iftikhar Chohan** was the investigating officer of the case. **PW-8 Dr. Nasreen Qamar** was the doctor who conducted the post mortem on the deceased.

3. Jamshed recorded a section 342 Cr.P.C. statement in which he seems to have blamed Sumaira's brother Zubair for killing her as she spoke to him every night for a long time on the phone. He did not examine himself on oath nor did he summon any witness to support him.

4. The learned 1st Additional Sessions Judge, Karachi East on 26.09.2019 announced his judgment in terms of which, Jamshed was convicted under section 302(b) P.P.C. and sentenced him to a life in prison as well as directed him to compensate Sumaira's legal heirs in the amount of Rs. 500,000. If he failed to compensate Sumaira's heirs, he would have to spend another 6 months in prison. It is this judgment that has been called into question through these proceedings.

5. Learned counsel for the appellant has argued that none of the people who apprehended Jamshed after the murder were examined at trial; none of the witnesses said that Jamshed himself had been injured during the incident but when he was medically examined there were marks of injuries on his hands; there were no eye witnesses to the occurrence, the knife was foisted upon Jamshed; he did not record a confessional statement. To the contrary, the learned APG has argued that while it was true that there were no eye witnesses in the case, strong circumstantial evidence was present in the case to convict the accused for the murder of his wife. He argued that the dead body found inside the bedroom of the accused; blood stained clothes, being apprehended immediately after the occurrence; recovery of the blood stained crime weapon from the spot and the fact that Jamshed could not even get his own sister and mother to come and testify in his favor – were all such pieces of circumstantial evidence that brought home guilt to the accused.

6. I have heard the learned counsels for the appellant as well as complainant and the learned APG and with their able assistance have gone through the evidence recorded at trial. My observations and finding are as follows.

7. It is a matter of record and an admitted position that no eye witness to the occurrence was examined at trial. The record reflects that Jamshed and Sumaira were husband and wife; that the marriage, though not a happy one, was intact at the time of the incident; that both resided together in the house along with Jamshed's mother and sister; that the dead body was found inside the couple's bedroom; blood was found on the bed, wall, carpet and floor of that house; that

Jamshed was caught red handed by the neighborhood people while trying to flee from the scene; that his clothes were blood stained and the blood stained crime weapon was also recovered from his possession when apprehended. When Jamshed was confronted with these facts his explanation was that he was sleeping in his house when some people forcibly barged into the house, blindfolded him and took him away to a police station. He said he had come to know that his wife had been stabbed to death the day after her murder. That he had no enmity with any prosecution witness but that they had testified against him because of the influence the complainant had over them. Lastly, he said that his wife would speak to Zubair, her brother, for two and a half hours each night and that she would also quarrel with him (Jamshed) because of Zubair. When put in juxtaposition it is the prosecution version that sounds more convincing and truthful.

8. The learned counsel is correct in his assertion that none of the neighborhood people who had apprehended Jamshed was examined at trial. Be that as it may, the arrest of Jamshed (who had earlier been apprehended by the residents) as well as recovery of the knife from his possession and his blood stained clothes was witnessed by PW-4 Zubair Masih. Nothing came on record to show as to why Zubair would kill his own sister and then put the blame on Jamshed. To the contrary, Zubair testified that that quarrels between husband and wife had been a common feature for quite some time and that the continuing friction had seen Sumaira come back to her brother's home for a year and a half previously. Further PW-6 Miskeen Hussain who was a neighbor and who reached the crime scene in its immediate aftermath testified at trial that Jamshed had been apprehended by the residents while fleeing after killing his wife.

9. The learned APG is correct in his argument that the record reflects that Jamshed's mother was present when the incident occurred. This was confirmed by PW-1 A.S.I. Abdul Latif who was the first responder. PW-4 Zubair Masih said that apart from the mother, Jamshed's sister Komal also lived in the same house. PW-7 Iftikhar Chohan who had inspected the place of incident also testified the presence of the mother, sister and one other person in the home. Jamshed's failure to produce his own mother and sister or as a matter of fact any person from the neighborhood to vouch for him and support his story that the police had

picked him up from his house while he was sleeping, is rather surprising and leads to an adverse inference against him.

10. Jamshed could not provide any explanation to justify as to why Sumaira's brother Zubair would want to kill her and frame Jamshed for the murder. To the contrary, he categorically stated at trial that he did not have an enmity with anybody. He himself acknowledged that Sumaira and he would fight over Sumaira talking to her brother for long periods of time. This fact in itself shows that the closeness between the siblings, further undermining Jamshed's defence that Zubair was behind Sumaira's murder. If anybody at all, Zubair should have been interested in killing Jamshed, and not his own sister.

11. It is true that the onus of proof is on the prosecution to prove its case. However, in circumstances of the present case, there was sufficient circumstantial evidence to show Jamshed's nexus with the murder of his wife Sumaira. As also mentioned above, Sumaira and Jamshed were living as husband and wife, she was killed in their bedroom, he was caught by neighbors outside his house, he was in possession of a blood stained knife, his clothes were blood stained, Sumaira had no enmity with anybody; Zubair had no reason to falsely frame his brother-in-law in place of someone else who killed his sister; the neighbors had no enmity against Jamshed; the police had no enmity with him. In such a situation the burden of proof would, to an extent, shift on to Jamshed to clarify as to who killed his wife inside their bedroom. Jamshed totally failed to provide any cogent or plausible explanation in this regard. He simply said he did not know. I do not believe his plea of ignorance and an adverse inference against him is drawn. Reference may also be made to the case of **Nazeer Ahmed vs The State (2018 SCMR 787)**.

12. The murder occurred at 1:45 a.m. on 07.11.2015. PW-5 Younus Masih was informed on the telephone by Jamshed himself that he had murdered Sumaira at 2:15 a.m. on 07.11.2015. PW-1 A.S.I. Abdul Latif had responded to the information by 3:15 a.m. At 3:25 a.m. on 07.11.2015 Jamshed had been arrested and recovery effected. At 3:30 a.m. on 07.11.2015, Zubair Masih had recorded a statement under section 154 Cr.P.C. The F.I.R. was registered at 4:20 a.m. on 07.11.2015. Sumaira's dead body was at the hospital at 4:30 a.m on 07.11.2015. Her post mortem was conducted the same day at 6:00 a.m. While exact dates are not on record, it appears that all material witnesses had also recorded their

section 161 Cr.P.C. statements the same day. From the foregoing it is clear that all steps were taken with reasonable promptitude. There was no time for deliberations or manipulations.

13. The learned trial court has comprehensively evaluated each part of the material evidence and has rightly relied on the ratio of the judgments reported as **Arshad Mehmood vs The State (2005 SCMR 1524)** and **Saeed Ahmed vs The State (2015 SCMR 710)** in addition to the Nazeer Ahmed (supra). I see no reason to interfere with the judgment of the learned trial court. Accordingly, the appeal stands dismissed.

JUDGE