

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 345 of 2019

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

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

Complainant : through Mr. Intikhab Ahmed, Advocate

Date of hearing : 23rd November, 2022

JUDGMENT

Omar Sial, J.: A 28 year old lady, Aqeela Bibi, was found dead inside her home on 14.09.2011. The news of her death was given to her brother, Amir Iqbal, by her 3 weeping small children. The children told their maternal uncle that their father, Habibullah, had been fighting with their mother for the last 3 days and had also taken away her mobile phone from her. When the children had woken up in the morning, they had found their mother dead with her head smashed by a hammer. Amir Iqbal went to Aqeela's house and saw her lying dead in a pool of blood with a hammer lying on the floor close to her body. No one else was present at home. Amir Iqbal recorded a statement under section 154 Cr.P.C. in which he expressed suspicion that Aqeela had been murdered by her husband Habibullah. F.I.R. No. 339 of 2011 was registered under section 302 P.P.C. at the Mobina Town police station at 1:00 p.m. on 14.09.2011.

2. Habibullah, who was not seen since the murder of his wife, had been on the run for nearly 7 years, when on 26.02.2018 he was arrested at 4:05 p.m. by S.I. Farooq Azam. Habibullah pleaded not guilty and claimed trial. At trial the prosecution examined four witnesses. **PW-1 Amir Iqbal** was the complainant of the case. **PW-2 Fazeela Bibi** was the daughter of the deceased lady. **PW-3 S.I. Syed Muhammad Farooq Azam** was the investigating officer of the case. **PW-4 Dr. Zakia Khursheed** was the

medico-legal officer at the Jinnah Hospital who did the post mortem. In his section 342 Cr.P.C. statement, Habibullah, denied all wrong doing and professed innocence.

3. The learned 1st Additional Sessions Judge, Karachi East on 21.05.2019 announced his judgment, in terms of which Habibullah was convicted for an offence punishable under section 302(b) P.P.C. He was sentenced to a life in prison and also directed to pay RS. 500,000 as compensation for the legal heirs of the deceased lady. It is this judgment of the learned trial court which has been challenged through this appeal.

4. Mr. Habibullah Jiskani, learned counsel for the appellant has argued that this is a case of no evidence. He says that there was no eye witness in the case; the crime weapon i.e. the blood stained hammer and a blood stained sheet seized by the police were not produced in court; Fazeela, the daughter of the couple, had seen the dead body when she had woken up and therefore did not know who had killed her mother. To the contrary, Mr. Talib Memon, learned APG, who was assisted by Mr. Intikhab Alam, learned counsel for the complainant, while agreeing with that there were no eye witnesses nor was the case property produced in court, took the view that Habibullah's conduct and actions after the death of his wife are in themselves sufficient to establish that it was indeed he himself who had killed his wife.

5. I have heard the learned counsels and with their able assistance have also gone through the evidence recorded at trial with a view of re-appraise the evidence. My observations and findings are as follows.

6. The present case appears to be a classic case of gender based violence. Fazeela Bibi, the daughter of the couple, at trial told the court that quarrels between her parents was a normal occurrence. When 11 year old Fazeela along with her brothers and sisters had informed their uncle about the death of their mother at that time too they had told their uncle that there had been a fight between their parents where the issue appeared to be a mobile phone. In fact, Habibullah himself, while denying

that he had murdered Aqeela, acknowledged in his section 342 Cr.P.C. statement that *"sometimes we used to quarrel and I used to maltreat her over some issues."* Learned counsel for the appellant is correct in his assertion that Fazeela did not herself see her father kill her mother. She had, however, along with her siblings, witnessed a quarrel between the parents earlier in that day and had also seen her father bring a hammer home. The hammer was found next to Aqeela's dead body. Dr. Zakia Khursheed testified at trial that Aqeela's head had been brutally smashed with a *"heavy and hard and blunt substance"*. All fingers point towards the same hammer which had been brought home by Habibullah as being the "weapon" with which Aqeela's head had been smashed. It is true that the record reflects that the case property was not produced in court. This lapse on the part of the investigating officer was inexcusable. Even then, I am not inclined, in the circumstances of the present case, to show any leniency to the appellant on this count. The non-production of the blood stained bed sheet does not adversely impact the prosecution case as the date, place and time of Aqeela's death is not in dispute. The hammer, even if produced, would have strengthened the prosecution case no doubt, but even if it was not, my reasoning to uphold conviction is not based on the hammer but on the circumstantial evidence, which also includes Fazeela's testimony that her father had brought a hammer home the day his wife was killed and that the doctor report also suggests that Aqeela died due to blows from a hard, heavy and blunt substance. It was only the couple and their little children home that day. The children witnessed the parents fight at night and saw their mother dead in the morning. No evidence was led at trial to show that in the intervening period, somebody else came into the house and killed Aqeela. In any case, it was not denied that Aqeela was hammered to death, what has been contested is that Habibullah was not the one who had killed her with a hammer.

7. Habibullah had a case to answer when his wife was found murdered in their bedroom - him, apart from their little children, being the only persons present in the house. In my view the prosecution discharged its

burden when it was proved that though the victim and the perpetrator had been married for a number of years, their relation was marred by conflict, maltreatment and physical and emotional abuse; that he had brought a hammer home that night; that the couple had a fight at night and then in the morning Aqeela was found dead, being hammered to death in the couple's bedroom, with no claim of anybody else being present. The manner in which she was killed completely precluded suicide.

8. Evidence recorded at trial was not stellar or as a matter of fact watertight. If we just look at the case from this aspect, while eliminating the circumstances surrounding the incident, then in all probability, Habibullah deserved to be acquitted. This is however a gender based violence case and therefore demands that it be looked at differently. It demands that the circumstances surrounding the incident, though not perfectly documented or investigated, should be taken into account. After the prosecution had discharged its initial burden of proof, it was up to Habibullah to come up with a plausible, logical and believable defence. Unfortunately, he failed to do so. Looking holistically at the case, the stance that the appellant took at trial, is not only unbelievable but outright absurd. If any doubt in the prosecution case had crept in because of the lapses mentioned in the preceding paragraphs and pointed out by the learned counsel for the appellant, it was overwhelmingly wiped out when one sees what the appellant said in his section 342 Cr.P.C. statement. He lived in that house with his young wife and 4 small children. The wife is hammered to death in the middle of the night in the bed room they shared. The man runs away immediately, leaving his 4 small children behind, in the middle of the night. The 4 children wake up to a mother who has been brutally hammered to death, and a father who ran away. The trauma he left the little children to deal with all alone is shameful and despicable, to say the least. The man does not attend the last rites of his wife, in fact, he absconds since that very day for a period of 7 years. When asked about his abscondence at trial he says that *"I had no knowledge about this case. Therefore question of abscondence did not arise"*. This was an obvious lie as

earlier in his statement he had already admitted that he knew of the instance and that the reason he did not attend the funeral was because he was afraid that the police would arrest him. While claiming that a false case had been registered against him, he went on to acknowledge that he had taken no steps to clear his name. As regards why his own daughter would testify against him, he was of the view that Fazeela was influenced by her uncle. I simply do not believe that Habibullah's defence plea was logical, plausible or believable. He could also not come up with who had or as a matter of fact would have wanted Aqeela dead. Such a man can be given no concessions. In particular, concessions that are based on sole technicalities and which do not take into account ground realities.

9. Lethal violence against women and girls in the house looks to be a more difficult problem to solve than killings of women and girls outside the home. One of the most extreme examples of gender-based violence is the murder of women and girls by intimate partners or other family members—people they would typically be expected to trust. These murders frequently result from earlier instances of gender-based violence, which can involve psychological, sexual, and physical assault. The killing of an intimate partner is the ultimate betrayal of trust within a family, and furthermore, this kind of killing has consequences far beyond the immediate victims, for example, the children in many cases are left with one parent dead and the other in prison.

10. The case was certainly not investigated well. The police and the provincial government must take all efforts to increase its capacity in investigation of such gender based crimes. It has been noticed by this court with concern in many cases that the police lack the specific investigation skills, training or the mindset to deal with such crimes. Investigators do not look at such cases from a gender lens. In most cases of violence against women, the police does not gather meaningful evidence and seems to treat such cases casually. Such conduct is even more pronounced in cases connected to honor killings where no family members of either the victim or the perpetrator are ready to testify. The *modus operandi* of such crimes

is known to all in the criminal justice system. Prosecution fails in most cases because the police fails to collect meaningful evidence. Conventional, unscientific and archaic investigation techniques, which are often tainted with a chauvinistic mindset, will not suffice for gender based crimes as most of such crimes are carried out in private. It therefore becomes even more necessary that circumstantial evidence is collected, preserved and presented diligently, comprehensively and immediately. The investigators must also be trained to adopt a gender sensitive approach in their evidence gathering. A serious note of this must necessarily be taken by all who have been entrusted with this responsibility. It is essential to bring down cases of violence against the vulnerable. It appears that our criminal justice system has not met with much success in its effort to redress the structural inequities, biases, stereotypes and discrimination that have encouraged violence against women on grounds of tradition and culture.

11. It is with regret that lack of interest by the prosecutors assigned to courts in criminal cases of a similar nature, has also been noticed. Challans are not being meaningfully reviewed. It seems that many prosecutors repeatedly quite mechanically forward it to a learned magistrate. With the workloads the learned prosecutors have, one can expect that a challan cannot be dissected at the initial stage. But that does not mean that the learned prosecutor does not, at least in serious and gender based crimes, give it a serious look. A prosecutor must realize the duty and trust put in him by the system and should not act merely as a post office without any meaningful input. Prosecution lapses then continue when the charge is framed and while witness and accused statements are being recorded. The provincial government must focus its attention to prosecutor training too. Capacity building in this avenue is also required on a war footing.

12. The above comments should ideally not be made in a judgment in appeal. Yet, I took the liberty of making them as they are intricately linked with what has happened in the present case.

13. To conclude: I have taken into account that there is no eye witness and that the crime weapon was not produced in court. I have also taken into account what the appellant said in his defence. I am of the view that when the dead body of the appellant's wife was found in their bedroom, in the circumstances in which it was, the onus of proof had shifted on the appellant to give a reasonable defence. His defence, in my opinion, was unbelievable and perhaps even absurd. I find no reason to interfere with the wisdom of the learned trial judge.

14. Appeal stands dismissed.

JUDGE