

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 591 of 2017

Appellant : Umair Maqbool  
through Mr. Sami Ahsan, Advocate

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

Date of hearing : 28<sup>th</sup> November, 2022

### JUDGMENT

**Omar Sial, J.**: On 22.10.2015 at 7:30 a.m., Ayaz Khan received a phone call from his sister, Sehar, informing him that her in-laws had quarreled with her over some domestic issue. Ayaz called Sehar's mother-in-law, Noor Jehan, as well as her husband Umair and requested them to calm down and that he will visit them in the evening to resolve differences between them and his sister. At 1:30 p.m. that same day, Umair called back Ayaz and told him that Sehar had died. Ayaz went to their house and saw Sehar's dead body, which had marks of torture and strangulation on it. The police also arrived on the scene, took the body to the hospital where post mortem concluded that Sehar had died of asphyxia. At 6:00 p.m. the same day, Ayaz recorded a section 154 Cr.P.C. statement in which he alleged that Sehar's husband, namely Umair, his mother Noor Jehan and sister Shumaila, had throttled his sister to death. F.I.R. No. 328 of 2015 was registered under sections 302 and 34 P.P.C. at the Korangi police station at 7:15 p.m. on 22.10.2015.

2. It was only Umair Maqbool, Sehar's husband, who was finally charged for his wife's murder. He pleaded not guilty and claimed trial. At trial the prosecution examined 8 witnesses. **PW-1 Ayaz Khan** was the complainant. **PW-2 Shaheen Kanwal** was Sehar's mother. **PW-3 Dr. Feroza Akhund** was the doctor who did the post mortem. **PW-4 Sheeraz Khan** was Sehar's brother. **PW-5 Rehan Ahmed** was Sehar's cousin. Both PW-4 and

PW-5 had accompanied PW-1 to Sehar's house upon receiving information that she had died. **PW-6 S.I. Ghulam Sarwar Khokhar** was the first responder, registered the F.I.R and arrested the mother-son duo. **PW-7 Muhammad Shafique Arain** was the first investigating officer. **PW-8 S.I. Rafiquddin Shaikh** was the second investigating officer of the case.

3. In his section 342 Cr.P.C. statement, Umair denied all allegations and stated that he had not killed Sehar but that Sehar had committed suicide. He gave further details of the events at home on the fateful day in his section 340(2) Cr.P.C. statement. **DW-1 Iqbal Khan Kohati** was a neighbor of the couple and took part in assisting Umair to recover Sehar's body. **DW-2 Kafeel Ahmed** was Umair's relative and also took part in recovering Sehar's body.

4. On 30.11.2017 the learned 4<sup>th</sup> Additional Sessions Judge, Karachi East held Umair guilty as charged and sentenced him to a life in prison for an offence punishable under section 302(b) P.P.C as well as directed him to pay a fine of Rs. 50,000 or spend a further period of 6 months in prison.

5. I have heard the learned counsel for the appellant as well as the learned APG. Their respective arguments, for the sake of brevity, are not being reproduced but are reflected in my observations and findings below.

#### Cause of death

6. The evidence produced at trial suggest that Sehar and Umair married on 17.08.2012 but that the relationship between Sehar and her in-laws had not been a pleasant one, to say the least. This is borne out from the testimony of PW-2 Shaheen Kanwal. The difference of opinion between the parties was that while Umair claimed that Sehar committed suicide, Sehar's family was sure that she had been throttled or strangled to death by Umair. In this regard the testimony of PW-3 Dr. Feroza Akhund was important. The doctor had received the body for post mortem at about 5:00 p.m. on 22.10.2015. She observed that there was a "*ligature mark 2cm x 1.5 cm dark brown in color around the front and both sides of the neck, slightly below the thyroid cartilage.*" She had observed no finger marks on the neck

of the deceased nor any other marks, apart from the ligature, on the rest of the deceased's body.

7. Strangulation is defined as asphyxia by closure of the blood vessels and/or air passages of the neck as a result of external pressure on the neck. It is subdivided into three main categories: hanging, ligature strangulation and manual strangulation. The distinction between these three entities is attributed to the cause of the external pressure on the neck — either a constricting band tightened by the gravitational weight of the body or part of the body (**hanging**); a constricting band tightened by a force other than the body weight (**ligature strangulation**); or an external pressure by hands, forearms or other limbs (**manual strangulation**). (Source: Sauvageau, A. and Boghossian, E., 2010. *Classification of asphyxia: the need for standardization. Journal of forensic sciences, 55(5), pp.1259-1267*). The medical evidence in the present case was far from stellar, yet it seems, as a ligature mark was present, that Sehar either died of ligature strangulation or hanging.

8. Distinctions between a death by hanging and a death by strangulation has been explained by Modi in the 26<sup>th</sup> Edition of *A Textbook of Medical Jurisprudence and Toxicology*, at page 524-525, as follows:

<b>Hanging</b>	<b>Strangulation</b>	<b>Present Case</b>
Mostly suicidal	Mostly homicidal	
Face-usually pale and petechiae rare.	Face-congested, lived and marked with petechiae	Was not determined, however, the photos show a pale face suggestive of hanging
Saliva-Dribbling out of the mouth down on the chin and chest.	Saliva-No such dribbling.	Was not determined
Neck-stretched and elongated in fresh bodies.	Neck-Not so.	Was not determined
External signs of asphyxia, usually not well	External signs of asphyxia, very well marked (minimal if	Was not determined

marked.	death due to vasovagal and carotid sinus effect)	
Ligature mark-Oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment-like.	Ligature mark-Horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.	Suggesting hanging
Abrasions and ecchymosis round about the edges of the ligature mark, rare.	Abrasions and ecchymosis round about the edges of the ligature mark, common.	Suggesting hanging
Subcutaneous tissues under the mark-white, hard and glistening.	Subcutaneous tissues under the mark Ecchymosed.	Suggesting hanging
Injury to the muscles of the neck-Rare.	Injury to the muscles of the neck –Common.	Was not determined
Carotid arteries, internal coats ruptured in violent cases of a long drop.	Carotid arteries, internal coats ordinarily ruptured.	Was not determined
Fracture of the larynx and trachea- Very rare and may be found that too in judicial hanging.	Fracture of the larynx trachea and hyoid bone	Suggesting hanging
Fracture-dislocation of the cervical vertebrae-common in judicial hanging.	Fracture –dislocation of the cervical vertebrae-Rare.	Was not determined
Scratches, abrasions and bruises on the face, neck and other parts of the body-usually not present.	Scratches, abrasions fingernail marks and bruises on the face, neck and other parts of the body-Usually present.	Suggesting hanging
No evidence of sexual assault	Sometimes evidence of sexual assault	Was not determined
Emphysematous bullae on the surface of the lungs-May be present	Emphysematous bullae on the surface of the lungs-Not present	Was not determined

9. The doctor opined that the cause of death was asphyxia resulting from a constriction of the neck by a ligature. The doctor however did not opine as to what form of asphyxia it was – ligature strangling or hanging.

The doctor was not asked the relevant questions and unfortunately, as far as the post mortem was concerned, as reflected above, itself was not conclusive as to the form of asphyxia that led to Sehar's death, though the limited signs which were noted seem suggestive of hanging. Medical evidence thus remained inconclusive. One thing however was certain, Sehar had not died of throttling as was alleged by the complainant nor had she been tortured as claimed by the complainant.

#### Inspection of the place of incident

10. PW-7 S.I. Mohammad Shafiq inspected the place of incident on 22.10.2015. He noted that there were no marks on the ceiling fan which would indicate that a dupatta was tied from it; there was no stool or chair on which a person could have climbed; there was a bed in the room but that the distance between the bed and the fan was 9 feet and therefore the deceased could not have reached the fan with her hand. Doubt about the accuracy of the memo prepared was however created when the witness to the inspection i.e. PW-5 Rehan Ahmed gave a different version than that of S.I. Mohammad Shafiq. According to Rehan, had Sehar stood on the bed, she could have easily reached the ceiling fan and that there was no need for her to stand on a stool or a chair to reach it.

11. Another important thing recorded in the memo of inspection of the place of incident was that the window of the room had not been removed, as was claimed by Umair and his 2 witnesses. PW-7 S.I. Mohammad Shafiq in his testimony also stated the same i.e. the window was not removed. This observation, once again, was negated by the witness to the site inspection, i.e. PW-5 Rehan Ahmed, who testified that when he reached the spot, the window of the room was lying outside the room and that the appellant and his family had said that the window had to be removed in order for Sehar to be taken out.

12. An inspection of a room in which the maker of the memo and the witness differ on material aspects reduced its evidentiary value to zero and opened up a door of doubt.

### Opinion of the Court

13. There were no eye witnesses in this case. Medical evidence was the most important form of evidence in the situation but unfortunately was not up to the mark of reasonable standards of medical professionalism. In essence, the evidence which was led at trial was inconclusive as to the cause of death. The evidence does not conclusively point towards a suicide or ligature strangulation. Nor does it indicate clearly as to who did it, even if it was strangulation. The 2014 incident which the complainant party used to show bad blood between husband and wife did not involve any allegation on Umair. In that incident, Sehar had complained that Noor Jehan and Shumaila had beaten her and tried to set her on fire. In the current case, and keeping the evidence in mind, why were Noor Jehan and Shumaila let of was also not clear. The phone messages exhibited by Umair in his defence do indeed reflect a distraught and highly anxious and angry Sehar. This exchange took place throughout the day of 21.10.2015. It was also admitted at trial that that particular day the point of friction between husband and wife was whether the *aqiqa* of their son should be an independent affair or whether Umair's sister should also be included in it. Sehar wanted the former, Umair the latter.

14. To be fair, the prosecution failed to produce evidence at trial that would show that Sehar was strangled in a pre-meditated and intentional manner or as a matter of fact whether she was strangled at all. Having said that, I am not convinced that the manner in which Sehar was treated by her husband and her in-laws for a protracted period of time, was not the reason for Sehar to commit suicide, even if one concludes that it was a suicide. Umair may have not intended that Sehar dies, but whether it was his acts and conduct and that of his family which led to Sehar taking the extreme step, is an aspect which I have also looked at. How a person deals with such mental "cruelty" would vary from person to person. Some may face it bravely, others might detach themselves from the situation while

others may see suicide as the only avenue of escape. The problem that arises is that the Pakistan Penal Code does not appear to address a situation where a person commits suicide being driven to it, due to the cruel manner in which that person is treated by another person though not intending that the recipient commits suicide. Needless to say, the quality of evidence to prove such cruelty will have to be high even if there was a provision. In the current case, apart from a 2014 incident in which Umair was not involved there was no other evidence to show that it was cruelty on his part which had led Sehar to commit suicide. Further, in the current case, the defence witnesses testimony that they had seen, and assisted Umair to remove a window of the bedroom in order to get out the hanging Sehar must also be given weight. The dislodged window was also seen by PW-5 Rehan Ahmed as soon as he had reached the spot. This would suggest that Umair reached the spot after the deed had been done.

15. In view of the above I am not satisfied that the prosecution was able to prove successfully a case punishable under section 302(b) P.P.C. The appeal is therefore allowed and the appellant acquitted of the charge against him. He is on bail. His bail bonds stand cancelled and surety discharged.

JUDGE