

IN THE HIGH COURT OF SINDH AT KARACHI*Present : Omar Sial, J*

Criminal Appeal No. 215 of 2018

Criminal Appeal No. 225 of 2018

- Appellants : Tazien @ Jasmine and Rehan Khan Niazi
through M/s. Nadeem Ahmed Azar and
Muhammad Khalid Khan, Advocates
- Complainant : through M/s. Abdul Karim and Javed Haleem,
Advocates
- Respondent : The State
through Mr. Talib Ali Memon, A.P.G.
- Date of hearing : 22nd March, 2023**
- Date of judgment : 4th May, 2023**

JUDGMENT

Omar Sial, J.: A young lawyer by the name of Faheem-ul-Kareem and his friend Wajid Mughal went missing in the night of 5th September, 2011. Their respective families, in a state of panic, launched a hectic search and were able to locate Faheem's car parked in the locality of Wajid Mughal's office. Upon entering the office, the family members of the 2 missing men were confronted with a horrific sight. Faheem was lying dead on the floor with his hands tied behind his back and his face masked with a red tape. He had been shot once through his head. A body of a dead girl, later identified as Qurat-ul-Ain, was lying on a sofa nearby. It was later opined that she had died due to manual suffocation. Wajid Mughal's dead body was lying in the bathroom of an adjacent room. He had been shot in his stomach. F.I.R. No.340 of 2011 was registered under sections 302 and 34 P.P.C. at the Defence police station in Karachi on 06.09.2011 at 2020 hours on the complaint of Javed Haleem, a cousin of the deceased Faheem.

2. PW-12 Zameer Ahmed Abbasi explained at trial that he had initiated his investigation by examining the mobile phone of the deceased Wajid that was recovered from the crime scene. An analysis of the call data record revealed to the investigator substantial contact between Wajid and Tazien. Tazien's call record led the police to Rehan Niazi on 10.09.2011. This is how these two persons were introduced in the case as suspects. Upon interrogation, Rehan confessed his and Tazien's involvement in the crime. Tazien was arrested on 11.09.2011.

3. Both the accused pleaded not guilty to the crime and claimed trial. At trial the prosecution examined 13 witnesses. **PW-1 Javed Haleem** was the complainant; **PW-2 Muhammad Asif** was the dealer in phones to whom the accused sold the mobile phones which they stole from the scene of the crime; **PW-3 Abdul Karim Khan** was the father of the deceased Faheem; **PW-4 Abdul Hafeez** was a cousin of the complainant and had accompanied him to the hospital after hearing of the murders; **PW-5 A.S.I. Mohammad Maroof** was the scribe of the F.I.R.; **PW-6 Dr. Nasreen Qamar** was the doctor who conducted the post mortem of the lady deceased; **PW-7 Roomana Shaikh** was the mother of the deceased lady; **PW-8 Shahid Farooq** was the brother of the deceased Wajid Mughal; **PW-9 A.S.I. Tajuddin Bhabbar** was the first responder to the information that 3 persons had been murdered; **PW-10 Dr. Syed Farhat Abbas** conducted the post mortem of the Wajid Mughal and confirmed the signatures of his colleague Dr. Ayaz Ali Memon on the post mortem report of Faheem; **PW-11 D.S.P. Mohammad Aslam Khakrani** who was the first investigating officer; **PW-12 D.S.P. Zameer Ahmed Abbasi** was the 2nd investigating officer; **PW-13 Mukesh Kumar Khatri** was the Branch Manager of MCB Bank's Pakistan Chowk Branch, the branch whose ATM was used by the deceased.

4. In their respective section 342 Cr.P.C. statements the 2 accused professed innocence and gave blanket denials to the entire evidence with which they were confronted. Rehan further stated that he was arrested from home and asked for a bribe but upon his failure to pay the same, he

was falsely booked in the case. Both accused did not examine themselves on oath or produce any witnesses in their defence.

5. At the end of the trial the learned 11th Additional Sessions Judge, Karachi South on 24-03-2018 convicted and sentenced the 2 accused to a life in prison for an offence under section 302(b) P.P.C. and for a period of 3 years for an offence under section 404 P.P.C. They were also directed to pay a fine of Rs. 50,000 each to each of the deceased's legal heirs and if they did not pay, they would have to spend a further period of 6 months in prison. It is against this judgment that Criminal Appeal No. 215 of 2018 has been filed by Tazien alias Jasmine whereas Rehan Khan Niazi has filed Criminal Appeal No. 225 of 2018.

6. I have heard the learned counsel for the appellants as well as the learned APG, who was assisted by the learned counsel for the complainant. The individual arguments of counsel are not being reproduced for the sake of brevity but are reflected in my observations and findings below. It is pertinent to mention though that out of the two appeals, it was only Rehan Niazi's counsel who argued on merits whereas, the learned counsel for Tazien only prayed that the time which Tazien has spent in jail till now be considered her punishment.

7. There were no eye witnesses in this case. The evidence against the appellants is extra-judicial confessions by both appellants which was followed by a series of recoveries made upon their lead. The place of the incident was not in dispute, the cause of death of each individual was not disputed and the time of the incident was in the early hours of 06.09.2011. It is also clear from the evidence that the deceased all knew each other and that something went wrong in a night of reckless partying. The investigation had revealed that the crime scene was actually a "modeling" office being run by Wajid Mughal and that Qurat-ul-Ain worked for him whereas Faheem was a friend of Wajid's who was visiting. The motive, although not proved, which was argued during the hearing was that Wajid had recently fired Tazien from her job and hired Qurat-ul-Ain instead. This

had upset Tazien, who colluded with her friend Rehan to kill both Wajid and Qurat-ul-Ain. Faheem was collateral damage; eliminated to avoid identification. Going through the evidence one gets a sense that there was much more to the relationships than what was revealed.

8. At the time the bodies were discovered first, the police had found a blood stained carpet, the mobile phones of Wajid and Qurat-ul-Ain, blue colored nylon rope, one red bag, one cigarette packet and cigarette butts, one wallet belonging to Wajid Mughal, one alcohol bottle and one fired shell of a 0.32 revolver. After arrest of the 2 appellants and their having made extra-judicial confessions, they had led the police to the place of the incident subsequent to which a series of recoveries was also effected upon their pointation.

9. On 11.09.2011 on the pointation of Rehan and Tazien, one blanket which Tazien had disclosed was wrapped around the crime weapon while shooting, to kill the sound of the fire, and one brown colored pillow used to muffle Qurat-ul-Ain were recovered.

10. On 12.09.2011 once again on the information disclosed by Rehan and Tazien and on their pointation, Faheem-ul-Kareem's 2 mobile phones (Blackberry and Samsung) were recovered from the shop where they had sold it. Tazien's national identity card copy given to the shopkeeper at the time of selling the phones was also recovered from the buyer. The recovery of the phones was corroborated by PW-2 Mohammad Asif who was the owner of Moez Electronics at the Gemini Electronic Market situated at the Abdullah Haroon Road in Saddar. He told the Court that on 07.09.2011 a couple had come to his shop to sell the 2 phones. The girl had her face covered but the witness was able to see her face when she asked him for water to drink. They were asked for their national identity cards, and only the girl gave him a copy of her identity card whereas the boy said that he did not have his card on him. Asif called up the CPLC to confirm that the 2 mobile sets were not stolen property and CPLC confirmed that there was no report of these 2 phones being reported stolen. He had then purchased

the 2 phones for a total price of Rs. 9,800. Asif identified both Tazien and Rehan, as being the couple that had come to sell the 2 phones on 12.09.2011 when the police had brought the 2 to his shop. The police had then seized the 2 phones sold to Asif as well as the copy of the national identity card given to him. On 20.09.2011 Asif recorded a section 164 Cr.P.C. statement in which he recorded his version of events as well as recognized the 2 phones as being the phones he had purchased.

11. On 13.09.2011 upon information provided by Rehan and Tazien Wajid Mughal's motorcycle and one red and one purple colored bags were recovered from Tazien's house. The purple color bag and the items it contained were identified as those of the deceased Qurat-ul-Ain by her mother PW-7 Roomana on 15.09.2011. Faheem-ul-Kareem's wallet with his driving license, visiting cards, ATM card, one kameez with one of its edges cut identified as that of the deceased Qurat-ul-Ain by her mother PW-7 Roomana. Medicines and lipsticks were also found.

12. On 14.09.2011 Rehan and Tazien led the police to the ATM machines installed at the Habib Metropolitan Bank's Saddar branch and at the MCB Bank's Pak Chowk Branch in which Faheem-ul-Mughal's ATM Card was used by the accused to withdraw money and purchase medicines. The bank statements produced at trial showed that money had been drawn from the ATMs approximately at the same time as that which the appellants had disclosed. Learned counsel for the appellants argued that the CCTV footage from the ATMs was not obtained. He is correct. I however notice that the investigators did try to obtain the footage but it seems that they were denied access as there was no court order.

13. On 15.09.2011 upon information provided by Rehan and Tazien and on their pointation, the crime weapon, a revolver numbered 583282 with 2 empties and 2 live rounds was recovered from Tazien's house. The Forensics Laboratory vide their report dated 08.10.2011 opined that the empty found at the crime scene had been fired from the same revolver that was recovered from Tazien's house.

14. The recoveries, mentioned in the preceding paragraphs, made at the pointation of the appellants, without any doubt leads to the inescapable conclusion of both the appellants being involved in the crime. Learned counsel for the appellant could not provide any cogent reason as to why all the prosecution witnesses would misrepresent to the court and falsely involve the 2 appellants. The appellants were not even known to them prior to this incident. Learned counsel pointed out minor lapses and contradictions in the memo of seizures but was not able to create a dent in the testimonies of the witnesses although unnecessarily extended cross examinations were conducted at trial. The recoveries effected at the pointation of the appellants makes their extra-judicial confession fall within the ambit of Article 40 of the Qanun-e-Shahadat and thus relevant.

15. Once the prosecution had reasonably proved its case, it was upon the accused to provide a cogent defence. Unfortunately, apart from denying all allegations, they could offer no other explanation. It is also surprising that they could not produce even one person who would come and vouch for their innocence, or at least show some evidence that they were not present at the crime scene. Recoveries were also effected from the house of the accused Tazien where her father was also present but even her own father did not come at trial to testify that the police claim of making recoveries from the house was false. When put in juxtaposition, the prosecution case sounds more believable.

16. The evidence recorded at trial reflects that the mastermind of this crime was Tazien herself. Rehan appears to have aided and abetted her throughout the process until the 2 were arrested. If anybody was perhaps hopeful of a reduced sentence, it should have been Rehan; however, I find no ground to reduce his sentence. In the foregoing circumstances, the prayer of Tazien's learned counsel that her sentence be treated as undergone, with much respect, does not find favour with me.

17. For the reasons given above, I am of the view that the prosecution was able to prove its case beyond reasonable doubt. The appeals are therefore dismissed.

JUDGE