

## IN THE HIGH COURT OF SINDH AT KARACHI

### Criminal Appeal No. 217 of 2016

Appellants : Muhammad Duraiz and Asif Ali  
through M/s. Altaf Hussain Khoso and Muneeb  
Ahmed Dhamrah, Advocates.

Respondent : The State  
through Mr. Zahoor Shah, Deputy Prosecutor  
General

Date of hearing : 8<sup>th</sup> November, 2023

### JUDGMENT

Omar Sial, J. In the early evening of January 12, 2010, Tahseen Anwer received a call from Adnan asking him to meet him at a guest house in the area of Defence in Karachi. According to the prosecution, the meeting did not occur at the guest house but at a KFC restaurant on Shahrah-e-Faisal. Tahseen left on his motorcycle to meet Adnan. Sadaf, Tahseen's wife, tried contacting Tahseen briefly after his departure but could not get through. A while later, she did manage to get through and was told by Tahseen that Adnan and a companion of his had abducted Tahseen and brought him to an apartment situated in the Sohrab Goth area. Tahseen's phone was switched off after that, and he did not return home.

2. On January 13, 2010, Sadaf lodged F.I.R. No. 41 of 2010 under sections 365 and 34 P.P.C. at the Ferozabad police station. She nominated Adnan and another, Rana Sheheryar Aslam, as the accused. On January 14, 2010, Sadaf gave the police Tahseen's photograph. Tahseen's motorcycle was found parked outside the KFC restaurant.

3. On January 24, 2010, the police arrested a boy named Sanaullah, who allegedly had Tahseen's mobile phone, though using it with his own SIM. The CPLC tracked down the phone. Sanaullah told the police he had bought the phone for Rs. 1200 from a shop named Shakir Communications, whose owner was Shaukat Ali.

4. On January 25, 2010, the police visited Shaukat Ali at Shakir Communications, who confirmed that he had sold the phone to Sanaullah. He further said he had bought the phone from Duraiz (the appellant). Duraiz was called and interrogated. He made a convoluted and complex disclosure. To save time for the Honorable appellate court, I have abridged his story as follows:

- (i) Asif had sold Duraiz the phone.
- (ii) Tahseen (the deceased) and Adnan had a monetary dispute.
- (iii) Duraiz and Adnan, along with Chaudhry Rafiq, Asif and Malik Hayat, had murdered Tahseen.
- (iv) Adnan had called Tahseen to KFC, and the call was made through Chaudhry Rafiq's phone.
- (v) Adnan and Malik Hayat had abducted Tahseen from KFC in the car owned by Chaudhry Rafiq and had taken him to the Chaudhry's *dera*.
- (vi) Duraiz, Asif and Chaudhry Rafiq were at the *dera*.
- (vi) Chaudhry Rafiq pulled out a pistol and tied Tahseen's arms.
- (vii) Chaudhry Rafiq and Malik Hayat then left with Tahseen's ATM cards to withdraw cash from his account.
- (viii) When Chaudhry Rafiq and Malik Hayat came back, he told Adnan and Asif to inject Tahseen with acid. The two did as directed; however, in doing so, acid also spilt on Adnan's arm.
- (ix) Chaudhry Rafiq then told Adnan and Malik Hayat to strangle and kill Tahseen. They did so, and Tahseen died.
- (x) Adnan, Azmat, Asif, Malik Hayat, Chaudhry Rafiq and Duraiz had wrapped up the dead body in a sheet and thrown the dead body in a rainwater drain.
- (xi) Chaudhry Rafiq then told the others to throw acid on the dead body. Adnan and Azmat performed this chore.

5. Duraiz and Asif Ali were arrested. On January 25, 2010, the appellants pointed out to the police the place where Tahseen had been killed. They then pointed out the place where Tahseen's dead body was thrown. It seems that the police learned that an unidentified dead body had been found on January 14, 2010, from the rainwater drain and that it had been sent to the Edhi mortuary. Sadaf recognised from the pictures of the body that had been buried to be that of her husband.

6. The appellants pleaded not guilty and claimed trial. The prosecution examined **PW-1 Sadaf Tahseen**, the complainant. **PW-2 M. Hanif Yar Khan** is the security guard at KFC. **PW-3 A.S.I. Qurban Ali** was the first police responder to the news that a fight had occurred at KFC Nursery. **PW-4 Shaukat Ali** is the owner of Shakir Communications. **PW-5 S.I. Zafar Iqbal** was the police officer who inspected the place where the dead body was recovered. **PW-6 S.I. Zulfikar Ali** was the scribe of the F.I.R. **PW-7 S.I. Javed Ahmed** was the first investigating officer. **PW-8 Dr. Sajid Ali** was the doctor who did the post-mortem. **PW-9 Inspector Shahid Ali** was the second investigating officer of the case.

7. In their respective section 342 Cr.P.C. statements, the two appellants denied all wrongdoing and professed innocence. At the end of the trial, the learned 4<sup>th</sup> Additional Sessions Judge, Karachi East, convicted the appellants for having committed offences under section 365 (sentenced to five years imprisonment), 302(c) (sentenced to twenty-five years imprisonment) and section 201 (sentenced to five years imprisonment).

8. I have heard the learned counsel for the appellants and the learned Deputy Prosecutor General. The complainant was served several notices, but it was reported that she had moved to an undisclosed location more than a decade ago. For the sake of brevity, the individual arguments of the counsel are not being reproduced but are reflected in my observations and findings below.

### Evidence against the appellants

9. The entire case against the appellants originates from the recovery of a cell phone allegedly owned by the deceased. It is based on an extra-judicial confession of the two appellants narrated by PW-1 Sadaf Tahseen in her examination-in-chief. The prosecution argues that following the admission, the appellants led the police to the place of the crime and the place where they had disposed of the body.

### Duraiz's extra-judicial confession

10. Duraiz's supposed confession in front of PW-1 Sadaf Tahseen was not supported by the evidence gathered. A medical autopsy conducted by PW-7 Sajid Ali opined that the deceased had not died of strangulation but had died due to acid burns. The medical autopsy also negated the prosecution's claim that Tahseen had been injected with acid before his death. The doctor found no signs of such an injection.

11. Another contradiction was that Sadaf testified that Tahseen had left the house to meet with Adnan at the KFC restaurant in Nursery. Duraiz's alleged confession also records that Tahseen was abducted from KFC. The security guard deployed at the KFC on that date, PW-2 M. Hanif Yar Khan, however, in his testimony, stated that no such incident as the one reported had occurred at the KFC. This aspect could have been clarified had the investigating officer collected the CCTV footage. The security guard confirmed at trial that CCTV cameras in proper working condition were installed in the restaurant. For reasons known best to the investigating officer, he did not deem it appropriate to seize and check the footage. PW-3 A.S.I. Qurban Ali also confirmed at trial that when he responded to the news that a fight had occurred at KFC, he had reached the spot and, after making inquiries, had reported to his superiors that the information was false as no fight had occurred inside or outside the KFC. The foregoing and the contradiction between witnesses on when and how the motorcycle was recovered creates doubt on the integrity of the prosecution case.

12. I do not believe that Duraiz's supposed extra-judicial confession was true or voluntary. The prosecution has created the story to align it with the prosecution case.

#### Recovery of the motorcycle

13. I find how the motorcycle of the deceased was recovered from outside KFC suspicious. On January 12, 2010, Tahseen had left his home to go to the KFC ostensibly. On the same date, PW-3 A.S.I. Qurban Ali, who responded to the information that a quarrel had broken out at the KFC while leaving KFC, saw a bike standing outside KFC, which he found suspicious. He admitted at trial that there was no information that a motorcycle with that registration number was missing. The F.I.R. lodged by Sadaf Tahseen in the present case also did not contain the bike's registration number. For those who are well acquainted with the rush of people and vehicles in that area, this detection of the police officer, without any information that a bike with that registration was missing, zeroing in on the bike parked outside was not short of a miracle. I do not believe the witness to this extent. I also find it unusual that no record was presented at trial that the motorcycle even belonged to Tahseen. This doubt was amplified when the police recorded that they found no fingerprints on the bike—an assertion challenging to believe.

14. Another aspect of the recovery is that Sadaf said at trial that on January 14 she, along with two friends of her husband (both of whom did not testify at trial) went to the investigating officer of the case (PW-9 Shahid). Shahid then took them to KFC, where the motorcycle was recovered. This is not what PW-3 Qurban Ali told the court. He said that he had recovered the motorcycle from KFC on January 12, seized it and took it to the police station the same day. PW-9 Shahid (the investigating officer) testified that it was correct that the motorcycle had been recovered before the F.I.R. was registered. The misrepresentation by Sadaf is evident.

### Recovery of the phone

15. The recovery of the phone, as alleged by the police, is not devoid of doubt. It was claimed that CPLC had tracked the phone. Yet, none from the CPLC was examined at trial to confirm the same. According to the extra-judicial confession of Duraiz, the phone was said to have been kept as security with the owner of Shakir Communications, PW-4 Shaukat Ali. Shaukat, at trial, did not support the prosecution's case and was declared hostile. Further, PW-9 Shahid Ali (the investigating officer) testified at trial that the phone had not been sealed and, in fact, was produced at the trial in an unsealed condition. The very fact that the phone even belonged to the deceased was in doubt.

### Recovery of the dead body

16. PW-5 S.I. Zafar Iqbal testified that on January 15, 2010, he had discovered the unidentified body and that on the same date, he had issued the publication for proclamation and started searching for the legal heirs of the deceased. Even though an F.I.R. in the present crime had been registered on January 12, 2010, the investigating officer remained unaware of the discovery made by PW-5 Zafar Iqbal. It was not until another ten days had passed and the body had been buried that the investigating officer of the present case went to the police station where Zafar Iqbal was posted. It transpired that the dead body that had been found was that of the deceased. The investigating officer's justification was that it was after the appellants had identified the place where they dumped the body that he had made an effort to find out whether an unidentified body had been found.

17. The prosecution case was replete with doubt. Evidence was tinkered with to align it with the prosecution case. The appeal is allowed, and the appellants are acquitted of the charge. They may be released forthwith if not required in any other custody case.

**JUDGE**