

IN THE FEDERAL SHARIAT COURT
(Appellate / Revisional Jurisdiction)

PRESENT

MR. JUSTICE HAZIQU L KHAIRI, CHIEF JUSTICE
MR. JUSTICE SALAHUDDIN MIRZA
MR. JUSTICE MUHAMMAD ZAFAR YASIN

CRIMINAL APPEAL No. 17-K of 2005 ALLONGWITH
CRIMINAL MURDER REFERENCE NO.3-K OF 2005

1. Manzoor Ahmad son of Bahadur Ali
r/o Village Villa, Tehsil Chiniot,
District Jhang.
2. Mst. Fatima wife of Bashir Ahmad,
Korangi No.4 near Govt. High School,
Karachi East.

.....Appellants

VERSUS

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The State

--- Respondent

Counsel for appellant
Manzoor Ahmad

--- Mr. Imtiaz Hussain Gondal, Advocate

Counsel for appellant
Mst. Fatima

--- Mr. Kashif Hanif, Advocate

Counsel for State

--- Syed Agha Zafir Ali, Assistant
Advocate-General, Sindh

F.I.R. No. Date & Police
Station

--- 153/95, 21.03.1995. P.S. Ferozabad,
Karachi East

Date of the Judgment of
Trial Court

--- 09.04.2005

Date of Institution

--- 02.05.2005

Date of hearing

--- 08.01.2008

Date of decision

JUDGMENT:

HAZIQUL KHAIRI, CHIEF JUSTICE:- Appellants

Manzoor Ahmad son of Bahadar Ali and Mst. Fatima

Bibi wife of Bashir Ahmad have impugned the

judgment dated 9.4.2005 passed by the learned 1st

Additional Sessions Judge, Karachi East, whereby

they were convicted under section 265-H(2) Cr.P.C.

for offence punishable under section 302(b) P.P.C.

and 392 P.P.C. read with section 34 P.P.C. and

sentenced as under:-

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- a) **For committing brutal murder of an innocent old lady Mst. Shaukat Aziz, after tying her hands and closing her mouth by putting headwear in her mouth and chocking her breath and pressing her neck with pillow, an offence punishable**

under section 302(b) P.P.C. read with section 34 P.P.C., both the appellants are awarded death sentence. They are ordered to be hanged by neck till they are dead;

Both the appellants are also directed to pay Rs.2,00,000/- (two lac) each, to the legal heirs of the deceased as compensation under section 544-A Cr.P.C., or in default thereof to undergo R.I. for six months more.

- 12/11/12
- b) For committing robbery, after committing murder of deceased Mst. Shaukat Aziz, an offence punishable under section 392 P.P.C. read with section 34 P.P.C., both the appellants are sentenced to undergo R.I. for ten years each and to pay fine of Rs.50,000/- each or in default thereof to undergo R.I. for six months more.**

All the sentences were to run concurrently and benefit of section 382-B Cr.P.C. was extended to the appellants. The amount of fine, if realized, be deposited in the Government of Treasury and the amount of compensation, if deposited, be given to the legal heirs of the deceased.

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2. **Brief facts of the prosecution case are that on 21.3.1995, at 7.30 a.m., complainant Tariq Rehman (PW.2) reported that at 4.40 a.m. Osama Sohail, son of his sister-in-law Mst. Seema Nayyar, aged 8 years, informed him on telephone that at about 3.00 a.m. he woke up and found his maternal grandmother Mst. Shaukat Aziz and complainant's mother-in-law lying dead in her bed room, her**

hands and feet tied up and a piece of cloth put inside her mouth. On receipt of this information, the complainant alongwith his neighbour Saeed Akhtar went in a car to the flat of his mother-in-law at 39-E/1, Block 2, PECHS, Karachi, where he found the hands and feet of his mother-in-law tied up with nylon rope of orange colour and a piece of cloth put in her mouth. She was dead and her dead body was covered with a quilt. Articles of almirahs (cupboards) and boxes were lying scattered all over the rooms in the house. Boxes of jewellery were lying empty. Doors of the cupboards were open. Both her daughters namely Mst. Naheed Sultana and Mst. Seema Nayyar, were Airhostesses

and had gone abroad. Osama Sohail, aged about 8 years, son of Mst. Seema Nayyar was residing with his maternal grand-mother. Mst. Seema Nayyar had employed appellant Mst. Fatima, aged about 30 years, as maid servant, about two years back and also a driver Manzoor Ahmad, aged about 25/26 years, about two months back. Both proclaimed to be husband and wife. They were also missing from the house alongwith Suzuki Margalla, a white colour car of Mst. Seema Nayyar, bearing registration No.U-6183, which was parked in the compound of the building. In his report the complainant suspected both the servants to have committed robbery and murder of his mother-in-

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law. The appellants were charged under section 17(4) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 (hereinafter referred to as "the said Ordinance") which was denied by them and accordingly they claimed trial.

3. PW.2 Tariq Rehman reiterated in his deposition what he had stated in FIR. On 21.3.1995 at 5.45 a.m. SIP Asghar Baig (not produced) had inspected the dead body and prepared inquest report in his presence and in the presence of PW.6 Saeed Akhtar. He also inspected the place of incident on 21.3.1995, at 6.00 a.m. and was a witness of recovery of stolen articles. Pw.4 Osama

Sohail, the grand-son of the deceased, deposed that in between 20/21st March 1995 he was sleeping with his maternal grand-mother Mst. Shaukat Aziz in a room. At about 3.30 a.m., he got up and found his maternal grand-mother lying on a bed and her hands were tied and cloth (Dupatta) on her mouth. He called appellant Mst. Fatima who was residing with them but could not find her. He called his neighbour (not produced) and also called chowkidar (not produced) and informed his aunt Shaista Tariq PW.5 on telephone, who reached there with his husband Tariq. In the same breath he stated that all the house-hold articles were scattered and the telephone line was

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disconnected. In cross-examination he stated that at the time of occurrence viz. 20.3.1995 he was 8/9 years old i.e. more than nine years back of the date of deposition. PW.1 Muhammad Sohail, a family friend and a visitor to the house of the deceased produced the photograph and NIC of the driver appellant Manzoor Ahmad and his driving license.

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According to him both the appellants were servants of the deceased. He got married to Mst.

Naheed Sultana, daughter of deceased Mst.

Shaukat Aziz, after her murder. He denied that the

deceased was against his marriage with Mst.

Naheed Sultana. PW.3 Saeed Akhtar had

accompanied PW.2 Tariq Rehman to the house of

the deceased and found the deceased murdered in the condition described by PWs. 2 and 4. In his presence the inquest and memos were made and his signatures were obtained by the police. PW.5 Mst. Shaista Tariq and PW.8 Mst. Hayatul-Nisa, daughters of the deceased, on receipt of the death information of their mother on telephone rushed to the deceased's house and found that she was murdered by strangulation of throat. They also found articles scattered all around in the house. PW.6 Mst. Nayyar Sultana deposed that she was living in the flat alongwith her mother, sister Mst. Naheed Sultana and son Osama. In the night of 20/21st March 1995, while she was in Nairobi she

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was informed on telephone that her mother being a heart patient was in trouble. She took first available flight to Karachi and saw the dead body of her mother while 2000 US dollars, Rs.50,000/- in cash, gold ornaments and other precious articles missing from the house. Likewise the deceased's daughter Mst. Nazia (PW.9) who was also an air hostess came back to Pakistan and deposed on the same terms. PW.7 Muhammad Babar Farooqi, a friend and neighbour of PW.2 deposed that on 28.3.2001, appellant Manzoor Ahmad was apprehended by the police. In his presence he confessed before the police of dacoity and murder at the Police Station and Video film of confession

was made while he was in police custody. Similar testimony was made by Pw.11 Shaukatullah Farooqi, a friend of PW.2. PW.10 Babar Ali Haideri, a neighbour of appellant Mst. Fatima told the police her husband's name. Prior to 4/5 days of the incident she left her husband alone and children with appellant Manzoor. In cross-examination he stated that he did not know the residential address of the appellant Manzoor Ahmad but knew the residential address of the appellant Mst. Fatima. PW.12 Matloob Hussain deposed that he was called at Police Station Ferozabad where the appellant Manzoor Ahmad had admitted his guilt in his presence and he prepared a movie of his

confession. Pw.13 Raja Amjad was the Investigating Officer and a witness of recoveries.

On 26.3.2001, at 12.45 a.m., on receipt of spy

information he arrested appellant Manzoor Ahmad,

opposite Regent Plaza Hotel, Cantt. Station,

Karachi, in presence of PW.2 Tariq-ur-Rehman and

SI Aurangzeb Khan (not produced). During the

interrogation the said appellant admitted to have

committed the crime alongwith Mst. Fatima. At the

time of his arrest, cash of Rs.180/-, Photostat copy

of his NIC and a wrist watch No.602182, water

resistant, Seiko-Japan-A, with black dial, bearing

word Seiko on its chain, were recovered from his

possession. On 28.3.2001, at 6.40 p.m. he led the

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I.O. and police party to the place where he had abandoned the car of Mst. Seema Nayyar. On 30.3.2001, at 6.10 p.m., appellant Manzoor Ahmad voluntarily got recorded his confession in Video cassette and memo was prepared by him in presence of Matloob Hussain and PW.2 Tariq-ur-Rehman. On 30.3.2001, at 7.15 p.m. appellant Manzoor Ahmad led the police party and pointed out to the place of incident. Appellant Mst. Fatima was arrested and produced by the police on 20.2.2002, on which date she was remanded to judicial custody. PW.14 Dr. Nawaz Ali Panhwar carried out the post mortem report, according to

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which the cause of death of the deceased was strangulation of neck.

4. The appellants were twice examined under section 342 Cr.P.C. once on 28.10.2004 and then on 27.3.2005. In reply to query made in their second examination as to why they were being implicated, they came out with the plea that they were arrested at the instigation of PW Sohil Ahmad. They further stated that no recovery was made from them and the Video tape was prepared forcibly during investigation.

5. The bulk of evidence adduced by the prosecution revolves around circumstantial evidence. There is no eye witness to the crime.

Whereas admittedly both the appellants were the employees of the deceased and their disappearance after the fateful night alongwith the car creates doubt as to their involvement in the crime. They have not denied anywhere that they were not the employees of the deceased and there is no explanation by them of their disappearance anywhere after the incident. Pw.13 Raja Amjad, the Investigating Officer, in the presence of PW.2 had recovered from appellant Manzoor Ahmad cash, Photostat copy of his NIC, articles etc. and also the stolen car at his pointation. He also made an extra-judicial confession at the Police Station whereby he had admitted to have committed

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**robbery and murder of Mst. Shaukat Aziz jointly
with appellant Mst. Fatima.**

**6. The contention of learned counsel for the
appellants Mr. Imtiaz Hussain Gondal was that the
extra-judicial confession of appellant Manzoor
Ahmad shall have no evidentiary value as the
confession was made by him at a Police Station.**

**No doubt, an extra-judicial confession of an
accused is a weak piece of evidence and when it is
made at Police Station it surely is inadmissible in
evidence as envisaged under sections 38 and 39 of
the Qanoon-e-Shahadat. However he also made
confession before Shaukatullah Farooqi (PW.11)
when the appellant led them to Civil Hospital.**

PW.11 is an independent witness and is a businessman. Similar confession was made by him before PW.12 Matloob Hussain, a movie maker.

Thus the extra-judicial confession of appellant Manzoor Ahmad before PWs. 11 and 12 when seen alongwith his disappearance after the incident, recovery of stolen articles from him and pointation to the place of occurrence and to the place where he abandoned the car, furnishes satisfactory evidence to his guilt.

It was next contended by Mr. Imtiaz Hussain that although the appellants were charged under section 17(4) of "the said Ordinance", they were convicted and sentenced to death under section

302(b) PPC read with section 34 thereof and fine in violation of law. Further they were convicted of robbery under section 392 PPC read with section 34 thereof and sentenced to ten years R.I. with fine and as such their conviction and sentence are of no legal effect. There is no force in this contention. The substance of the charge against the appellants was fully explained to them and there is nothing on record which goes on to show that they were misled. Since the appellants could not be convicted under section 17(4) of "the said Ordinance" as Hadd for want of requisite evidence, they could be convicted and sentenced as Tazir under section 302(b) and section 34 P.P.C. for

Tazir

murder and under sections 392 and 34 P.P.C. for robbery as contemplated under section 13 of "the said Ordinance". As against the appellant Manzoor Ahmad, case of murder and robbery stands clearly established. However, keeping in view the facts and circumstances of the case, his sentence for murder is converted from death to imprisonment for life. The sentence of fine shall, however, remain the same. As regards his sentence of robbery it shall remain intact and is hereby confirmed. He will be entitled to benefit under section 382-B Cr.P.C.

7. So far as appellant Mst. Fatima is concerned in both of her statements under Section 342 Cr.P.C.

she is shown as the wife of one Bashir Ahmad and not the wife of appellant Manzoor Ahmad as may be inferred from the statement of PW.10 Babar Ali Haideri, her neighbour. According to PW.10, 4/5 days prior to incident she escaped away leaving her husband alone whereas children were left with appellant Manzoor Ahmad. In cross-examination, he stated that he cannot give residential address of appellant Manzoor Ahmad but he knows the residential address of appellant Mst. Fatima which means that they were not living together. The "weapons" used in the murder namely 'the Dupatta' and "nylon rope" were not produced by the prosecution nor the quilt which covered the dead

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body. There is no direct evidence of her involvement in the crime. Indeed Manzoor Ahmad, co-accused, has implicated her in the commission of the crime and unless there is strong corroborative evidence it is not worth considering. No recovery has been made from her person or on her pointation. Therefore, in view of the position enumerated above, appellant Mst. Fatima is entitled to benefit of doubt. We accordingly, accept her appeal and set aside her conviction and sentence awarded by the learned Additional Sessions Judge, Karachi East with direction to the jail authorities to release her forthwith unless she is required in some other criminal case.

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8. Reference for confirmation of death of the appellants is replied in negative.

Justice H.
JUSTICE HAZIQUL KHAIRI
Chief Justice

Justice S.
JUSTICE SALAHUDDIN MIRZA

M. Z. Yasir
JUSTICE MUHAMMAD ZAFAR YASIN

Announced at *16/3/08*
17-3-2008

Appointed in reference
Justice
17/3/08