

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Case No: Criminal Appeal No. 186 of 2015

Malik Qamar Hussain

Vs.

The State and another

Appellant by: Jan Muhammad Khan, Advocate.
State by: Malik Awais Haider, State Counsel.
Complainant by: Syed Ishfaq Hussain Naqvi and Syed Sumera Naqvi, Advocates.

Date of Hearing: 23.04.2019

AAMER FAROOQ, J.- On the complaint of one Kashif ur Rehman, an FIR was lodged against the appellant Malik Qamar Hussain and Sohail Qureshi co-accused under Sections 337(J), 376 & 34 PPC with Police Station Kohsar, Islamabad (FIR No.125/2011). Section 302 PPC was subsequently added. In the referred FIR it was alleged that the said accused persons raped and killed the complainant's sister namely Huma Rehman. It was further alleged that the complainant and his sister came to know about it as they received phone call from the cellular phone of the deceased which was made by the appellant wherein he informed that she is in Benazir Hospital, Rawalpindi. The deceased was treated at the referred Hospital and was subsequently discharged but died on 09.07.2011. The appellant and his co-accused were tried in the said case. During the course of trial Sohail Qureshi (co-accused) was acquitted due to compromise with the complainant. The appellant

was convicted of the charges and was awarded life imprisonment. Hence, this appeal.

2. Learned counsel for the appellant *inter alia* contended that there is no proof that the death of deceased Huma Rehman was caused by the appellant; that there are material discrepancies in the evidence led by the prosecution and on the basis thereof the appellant could not have been convicted; that the star witness of the prosecution PW-1 Muhammad Masood who stated that on the date of occurrence he saw Huma Rehman (deceased) leaving with the appellant, whereas there is no proof that the referred witness was employee of NGO where the deceased was working; that the sister of the complainant who allegedly received the phone call from the appellant was not called as a witness; that the CDR of Mst. Noreen and mobile phone of the deceased were not produced in the Court; that the operator who told the complainant that the deceased left with the appellant was also not called as a witness. Learned counsel further contended that as per story of the prosecution the deceased left with the appellant at about 6/6:30 pm whereas the phone call was received allegedly at about 7:00 pm and the distance between the office situated at Sector F-6/1, Islamabad and the Benazir Hospital Rawalpindi is more than one hour, hence it is not possible that the appellant could have raped and administered poison to the deceased. It was further contended that the testimony of Dr. Nasreen Butt PW-6 cannot be relied upon inasmuch as it is a verbatim copy of the initial medical report wherein she has opined that the deceased

was raped and the semen was present. It was submitted that it is medically acknowledged that semen remains in the body for only few days whereas autopsy was conducted after almost 4/5 months of the alleged rape. It was also submitted that in the Chemical Examiner's Report Ex.P-Q traces of tranquillizer belonging to benzodiazepine group was detected; that the case of the prosecution is that the same was administered through 7up but it was pointed out that the amount of drugs required to kill a person cannot be in one drink and needs much more quantity. Learned counsel also pointed out that the Chemical Examiner has not opined about the quantity. Moreover, it was submitted that there were traces of semen but no mark of violence and it is an admitted position that the appellant was in Nikah with the deceased but the complainant did not approve of the same.

3. Learned counsel submitted that the evidence in question is unseen and is based on circumstantial evidence; that in order to procure conviction the prosecution had to prove beyond the shadow of doubt that the appellant committed the initial act which led to the death of the deceased and the chain of causation was not broken. It was further submitted that under the facts and circumstances there is no case against the appellant.

4. Learned counsel for the complainant *inter alia* contended that the story of the prosecution is unambiguous to the effect that the appellant picked the deceased Huma Rehman on 25.02.2011 at about 06:00 pm from her place of work and committed rape and then

killed her; that he dropped Huma Rehman at Benazir Hospital, Rawalpindi at about 07:00 pm. It was further contended that the cause of death is brain damage due to poison and both the appellant and the deceased were seen last together by a natural witness. It was further submitted that the conviction can be based on the testimony of even a single witness however, in the instant case there is ample circumstantial evidence to corroborate PW-1. It was further submitted that the circumstances and the evidence take the matter to the neck of the accused; that the accused has badly failed to furnish the plausible explanation; that the report of Chemical Examiner shows that the poison was detected; that there is no motive of the complainant to implicate the appellant falsely; that no discrepancy has been found in the medical evidence.

5. Learned State Counsel adopted the arguments of the learned counsel for the complainant.

6. Arguments advanced by the learned counsel for the parties heard and the evidence was appraised with their able assistance.

7. The prosecution in support of their case led *inter alia* evidence which comprises 12 witnesses and also various exhibits. In this behalf the Guard/*Chawkidar* Muhammad Masood at the place of work of the deceased appeared as PW-1; the complainant as PW-2, Doctor Nasreen Butt who conducted the autopsy as PW-6, Dr. Sherzad Farooq Medical Officer as PW-9. Dr. Fazal-e-Wahi appeared as DW-1 and the police officials appeared as other PWs. In this behalf the Investigation Officers appeared as PW-10 and 11.

Chemical Examiner Report dated 11.04.2011 was exhibited as Ex.P-Q, semen report Ex.P-R, Chemical Examiner Report dated 05.11.2012 Ex.P-X, DNA report Ex.P-E. In addition the MLR was exhibited as Ex.P-M, recovery memo of mobile phone record of the deceased Ex.P-K, Postmortem report Ex.P-D, pointation memo as Ex.P-C, FIR No.125/2011 Ex.P-O, Inquest report Ex.P-S, Pictorial diagram Ex.D-D, Casualty Department entry slip Ex.D-E, C.T. Scan Ex.D-F. As noted above, the case of the prosecution is that the appellant picked up Huma Rehman (deceased) from her place of work on 25.02.2011 at about 06:00 pm and then dropped her in unconscious condition at 07:00 pm at Benazir Hospital, Rawalpindi; that the fact that she had been admitted in the referred Hospital was intimated to the complainant and his family by the appellant using Huma's cellular phone. The FIR was lodged on 14.03.2011 whereas the death of the deceased took place on 09.07.2011 and Section 302 PPC was added. The evidence is unseen. The prosecution has relied heavily upon the statement of Guard/*Chawkidar* namely Muhammad Masood PW-1. However, the prosecution did not tender any document to show that the Guard/*Chawkidar* was employee of the said Company. Moreover, PW-1 has stated that usually the appellant picked and dropped the deceased and even on the day of occurrence he had dropped her in the morning and picked her up at about 06:00 pm. Contrarily, the complainant Kashif ur Rehman has stated that he dropped Huma Rehman in the morning on the day of occurrence. He also testified that Mst. Noreen, complainant's sister informed him

about Huma Rehman deceased being admitted in Benazir Hospital, Rawalpindi however, said Mst. Noreen never appeared as witness on behalf of the prosecution. Moreover, he also testified that the phone call was received by Mst. Noreen from the appellant but the phone was of Huma Rehman. The call data record of the cellular phone was also not exhibited in evidence. Apparently the appellant and the deceased were in *Nikah*; though the prosecution did not mention the same however, in cross-examination the question was put to the Investigation Officer PW-11 that alongwith the challan copy of *Nikahnama* is appended and the same was also confronted and turned out to be correct. In light of the above discrepancies the evidence of PW-1 and PW-2 is not confidence inspiring.

8. The medical report does suggest that there were traces of drug benzodiazepine but there is nothing regarding the quantity. Even the medical witnesses i.e. PW-6, PW-9 and DW-1 have not opined anything about the quantity which is required to cause death of a person in case of overdose of the said tranquillizer. It is also the report that there were traces of semen which is borne from the Chemical Examiner Report dated 11.03.2011 Ex.P-R; however, PW-6 and PW-9 both have testified that there were no traces of any marks of violence on the body of the deceased. The Medico Legal Officer PW-6 testified that she referred twelve samples for chemical examination but only two were remitted by the police authorities and there is no explanation for not sending the others. The subsequent reports were verbatim copies of the earlier ones. PW-6 in her

opinion in examination-in-chief has stated that there was semen present in the vaginal swabs taken which is against all the medical principles on the subject inasmuch as it is an admitted position that the semen and the traces thereof remain present only for few days (3-5 days) whereas the autopsy was conducted after almost 4/5 months of the alleged occurrence.

9. Undoubtedly, as per the autopsy report the cause of death is damage to the brain due to abovementioned tranquillizer however, there is nothing on record to establish that the said drug was administered by the appellant. Reliance by the prosecution on the testimony of Nadeem Mehmood CW-11 that he saw the appellant and the deceased together at Benazir Hospital, Rawalpindi is also not confidence inspiring inasmuch as he had not proved that he was there and admitted in cross-examination that he left without the medical examination of his children for which purpose he had gone. It is also noticeable that the report of DNA is also negative. The prosecution is relying upon various judgments to indicate that there were traces of drugs and that the deceased had been administered the poison. There is no cavil that the chemical report and even the defence has not cast doubt on the veracity of the same but the fact that it was administered by the appellant has not been established by the prosecution. The testimony of PW-3 Abdur Rehman was discarded by this Court vide order dated 05.06.2015 in Criminal Revision No.21/2015 titled "*Malik Qamar Hussain v. The State and*

others”. Hence, the admission by the appellant purportedly regarding the place of occurrence remained un-established.

10. In view of the above, the prosecution has failed to establish that it was the act of administration of poison by the appellant which led to the death of the deceased Huma Rehman and the causal link between the initial act and the death remained unbroken. As noted above it is an unseen occurrence and the evidence has to be in such a chain that from the initial act till the end, the chain should be unbroken however, in the instant case the prosecution failed to lead evidence to establish that the death of the deceased was caused by the appellant.

11. For the foregoing reasons, the instant appeal is allowed and the impugned judgment dated 11.11.2015 is set-aside; consequently, appellant is acquitted of the charges levelled against him in case FIR No.125/2011 dated 14.03.2011. The appellant be released forthwith if not required in any other case. Case property, if any, be also disposed of in accordance with law.

(AAMER FAROOQ)
JUDGE

Announced in open Court on the 19th day of July, 2019

JUDGE

M.Naveed