

THE HIGH COURT OF SINDH KARACHI

Criminal Appeal No. 245 of 2018

[Karamat Hussain versus The State]

Appellant : Karamat Hussain through Mr. Mirza Muhammad Salman, Advocate.

The State : Through Ms. Amna Ansari, Additional Prosecutor General, Sindh.

Complainant : Savio Bennet Thomas through Mr. Naeem Shahid Ghauri, Advocate.

Date of hearing : 11-12-2019; 12-12-2019; 16-12-2019; 18-12-2019 and 19-12-2019

Date of decision : 31-03-2020

JUDGMENT

Adnan Iqbal Chaudhry J. - This is an appeal from judgment dated 15-03-2018 passed by the learned IX-Additional Sessions Judge, Karachi South, in Sessions Case No. 2057/2014, whereby the Appellant (Karamat Hussain) was convicted for the *qatl-i-amd* of Amina Yousuf Patel (the deceased) and theft of her property and sentenced as follows:

- (i) under section 302(b) PPC, for rigorous imprisonment for life and fine of Rs.100,000/-
- (ii) under section 382 PPC, for rigorous imprisonment for 5 years and fine of Rs. 25,000/-
- (iii) in case of default in payment of fine, further simple imprisonment for 1 year; both convictions to run concurrently with the benefit of section 382(b) Cr.P.C.

2. Per FIR No. 220/2014, the Complainant, Savio Bennet Thomas, who was the son of the deceased, reported that the deceased resided separately in a rented apartment where the Complainant or his son Kyle used to visit her every evening; that on 05-06-2014 at 12:00 p.m., when Kyle visited the deceased, she asked him to purchase juice for her and told him that since she was expecting a guest in the evening, Kyle need not attend to her that evening; that the Complainant went to visit his mother (deceased) the next day on 06-06-2014 at 20:00 hours, but found the door locked;

that the Complainant possessed a spare key to the apartment and he opened the door to find the deceased dead in her bed with a cloth ligature around her neck. Per the FIR, two mobile phones that were in the use of the deceased were missing from the apartment. The Complainant nominated Karamat (Appellant) as a suspect stating that Karamat used to visit the deceased quite often. The above statement of the Complainant under section 154 Cr.P.C. was recorded at 05:00 hours on 07-06-2014 at the hospital while the Complainant was waiting for the post mortem of the deceased. The FIR was registered at 06:00 hours on 07-06-2014 at P.S. Mehmoodabad.

3. The memo of examination of the crime scene is dated 06-06-2014 at 21:00 hours (Exhibit 3-A). The dead body was in a nighty with a cloth ligature tied around her neck. Twelve finger-prints were collected from the scene of the crime (Exhibit 3-B). Per SIP Istikhar Hussain (PW-9), he had lifted the finger-prints from the sides and stand of the bed in which the dead body was found. The I.O. Muhammad Aslam (PW-10) inspected the crime scene on 07-06-2014 at 09:00 hours (Exhibit 3-F) and seized a wallet from under the deceased's bed which contained the original CNIC of Kaneez Fatima wife of Karamat Hussain, and business cards of certain caterers which bore the name of Karamat Hussain and his mobile number.

4. The dead body was brought to the hospital at 03:00 a.m. on 07-06-2014. Post mortem was delayed due to non-availability of glass jars. The post-mortem eventually commenced at 05:15 a.m. Per the post mortem report and the certificate of cause of death (Exhibit 9-B and Exhibit 9-C), the deceased was aged about 65 years; the body was decomposing; there was a ligature mark around the neck caused by the crepe bandage tied around the neck; the cause of death was Asphyxia from constriction of the neck (strangulation) by using a crepe bandage; and the time between death and postmortem was approximately 32 to 36 hours. The post mortem report was produced by the MLO, Dr. Nasreen Qamar (PW-7).

5. Karamat Hussain (Appellant) was arrested near his residence on 13-06-2014 (Exhibit 3-H) when he was identified by the deceased's grandson, Kyle, who was accompanying the Police who lay in wait for Karamat to arrive at a location provided by an informant. On a search of his person, Karamat's mobile phone was also taken into custody (Exhibit 3-H).

6. During interrogation, Karamat is said to have confessed to the murder citing mental provocation, and also to the theft of the deceased's valuables. He pointed the police to the scene of the crime (Exhibit 3-I). He also lead the Police to his residence to produce the following items: a Dell laptop; two mobile phones; NIC, passport and cheque book of the deceased; some artificial jewelry; four bracelets; two pearl bracelets; eleven bangles; one packet of earrings; and one packet containing three necklaces (Exhibit 3-J); all of which were identified by the son (Complainant) and grandson (Kyle) of the deceased as the property of the deceased.

7. The 12 finger-prints collected from the crime scene were sent for forensic examination for cross-reference with the finger-prints of Karamat (Exhibit 11-A and 11-B). Per the report of the Forensic Division (Exhibit 11-D), one finger-print matched with Karamat's right middle finger, while the other finger-prints were incapable of a definite opinion. Charge was framed against Karamat on 22-09-2014 for murdering the deceased by strangulation and for the theft of her valuables to which Karamat pleaded not guilty.

8. The deposition of the Complainant and PW Kyle, who were the son and grandson of the deceased, was that the deceased had converted to Islam from Christianity; that she resided on her own in a rented apartment not far from the Complainant's residence; that the deceased did not keep well; that Karamat was attending the deceased for the past one month to give her physiotherapy, and at times he also cooked for the deceased; that apart from Karamat, one Nasreen and one Abdul also used to frequent the deceased's apartment; that Nasreen was employed by the deceased as a house-

maid and came for work from 10:00 a.m. to 12:00 noon; that Abdul was a friend of the Complainant who used to supply day-to-day items needed by the deceased; that when the deceased was ill, she used to call Abdul to stay with her; that on 06-06-2014 the Complainant and Kyle became concerned as the cell phone of the deceased was off; that at around 21:00 hours the Complainant, Kyle and Abdul went to the deceased's apartment but found the door locked; that since the deceased was usually sick, they first went looking for her at nearby hospitals; thereafter they asked a key-maker to open the door of the deceased's apartment but the key-maker refused; thereafter they went to P.S. Mehmoodabad and then the police and a key-maker accompanied them to the apartment to open the door; the deceased was found dead having been strangled by a cloth ligature, and a pillow was on her face; that there was also an injection mark on her arm. Both the Complainant and PW Kyle were also witnesses to Karamat's arrest, to his pointation of the crime scene, and to the recovery of the deceased's valuables and documents from Karamat's residence, all of which events were affirmed by them in their deposition. The parcel containing the items recovered from Karamat's residence was de-sealed in Court. Apart from the NIC, passport and cheque book that were in the deceased's name, her laptop, mobile phones and jewelry were also identified by the Complainant and PW Kyle.

9. On cross-examination, the Complainant denied that he had an extra key of the deceased's apartment; he stated that Abdul used to have an extra key of the deceased's apartment, but that on the fateful day, the deceased had taken the key back from Abdul for the reason that she was expecting a guest; that the Complainant had suspected Karamat of the crime and not Nasreen or Abdul because Karamat's wallet had been found at the crime scene, and because the dead body had a fresh injection mark and only Karamat had know-how of administering injections.

10. PW Kyle had further deposed that on 05-06-2014 he was asked by the deceased to purchase juices for her, and he was told by the

deceased that he need not attend to her at night as she was expecting a friend who would attend to her; that when Kyle asked her whether she required dinner, the deceased said that Karamat had cooked food for her; that Karamat used to attend the deceased after two to three days; that Kyle had met Karamat at the deceased's apartment two or three times during which Karamat mentioned that he resided at Qayyumabad; and that on 05-06-2014 when Kyle had gone to visit the deceased, he had seen Karamat at the deceased's apartment using a laptop.

On cross-examination, PW Kyle explained that at the time of the FIR the Complainant did not have knowledge of all of the missing items of the deceased and that is why those were not mentioned in the FIR; he stated that the deceased used to give her apartment's key to Abdul only when she was ill wanted him to stay over; and that on 05-06-2014 when he had gone to deliver juices as requested by the deceased, the deceased had told Kyle that Karamat would be coming to attend to her at night.

11. PW Abdul Haq was a friend of the Complainant and the owner of a *pan* shop nearby. He deposed that on the request of the Complainant, he (Abdul) had been delivering day-to-day items needed by the deceased since the last 7/8 years; that he used to drop by the deceased's apartment at night after closing his cabin; that the deceased did not keep well and Karamat used to attend the deceased and give her physiotherapy, and sometime he also cooked for the deceased; that on 05-06-2014, between 19:00 to 19:30 hours, the deceased had phoned Abdul and asked him not to come over that night as Karamat would be attending to her. He corroborated the Complainant and PW Kyle as to the events leading to the discovery of the dead body. On cross-examination, Abdul acknowledged that he used to sleep over at the deceased's apartment when she was sick; he denied that he was in possession of an extra key of the deceased's apartment; and he denied the suggestion that relations between the deceased and the Complainant were strained.

12. PW Nasreen was the house-maid employed by the deceased. She deposed that she used to come to work at the deceased's apartment from 10:00 a.m. to 12:00 noon; that one Bengali person used to come to the deceased's apartment frequently (a reference to Abdul); that the deceased had informed her that she had hired Karamat as a cook; that she had on one occasion seen Karamat at the deceased's apartment; that on the fateful day (05-06-2014) and in her presence, the deceased had phoned Karamat and inquired why he had not attended to her since the last 4 to 5 days and insisted that he should come over that very day; that the deceased had mentioned to Nasreen that Karamat used to provide her services of medical dressing, drips and injections when needed; that on the next day (06-06-2014) Nasreen was not able to go to the deceased's apartment for work as her daughter had to appear for an exam.

13. PW Syed Mudassir Ahmed, was the son-in-law of the deceased who had been called by the Complainant after the dead-body had been discovered. He also deposed that PW Abdul used to facilitate the deceased in her day-to-day needs.

14. PW Khudadad Khan was an estate agent in the area through whom the deceased had obtained the apartment on rent. He deposed that he knew the deceased for the last 5/6 years; that the deceased used to call him from time to time for maintenance work at the apartment and for paying her utility bills; and that the deceased had also invested some money through him. He deposed that the deceased had gone to Uganda and on her return she had rented the apartment which was about 3 months prior to her death; that about 15/20 days prior to her death, when he had gone to the deceased's apartment to collect her utility bills, he had seen Karamat at the deceased's apartment and also a house-maid; that on 06-06-2014, about 05:00 p.m., he received a call from the Complainant enquiring whether the deceased had contacted him or not, to which he replied in the negative; that later he received another call from the Complainant informing him that the door of the deceased's apartment was locked but the electric bulb outside was lit, and

asking him whether he should break open the lock, to which Khudadad advised the Complainant to contact the Police.

On cross-examination, PW Khudadad stated that the deceased had informed him of her third marriage with one Qaiser Advocate, and that the purpose of renting the apartment was to reside with her husband Qaiser; that subsequently the deceased also informed him that her marriage with Qaiser was over as Qaiser had misappropriated some of her valuables; he denied the suggestion that relations between the Complainant and the deceased were strained.

15. PW Muhammad Aslam was the I.O. He deposed that during investigation the Complainant informed him that some of the possessions of the deceased were missing from the apartment viz. laptop, two mobile phones, cheque book, golden ornaments, artificial jewelry, passport and CNIC of the deceased.

16. Learned counsel for the Appellant submitted that there was no eye-witness of the incident nor had any person seen Karamat enter the deceased's apartment on the day of the incident. Learned counsel pointed out that in the FIR the Complainant had stated that he had opened the deceased's apartment with a spare key in his possession, whereas on cross-examination, he denied that he possessed a spare key and then both the Complainant and PW Kyle deposed that the door of the apartment was first opened with the assistance of a key maker and in the presence of the police. Learned counsel submitted that it was apparent that the Complainant was hiding true facts which made the Complainant a suspect himself; and that since the Complainant had made a false deposition, his entire evidence should be discarded. Learned counsel submitted that apart from two mobile phones, the FIR did not allege theft of any other property which shows that all items allegedly recovered from Karamat's house had been foisted on him. Learned counsel submitted that the prosecution had failed to explain that even though the house-maid Nasreen and one Abdul Haq also frequented the deceased's apartment, and there was an ex-husband of the

deceased, Qaiser Advocate, with whom the deceased was estranged, why none of them were made suspects.

17. Learned counsel for the Complainant submitted that though the evidence against Karamat was circumstantial, but the same was reliable as the chain of circumstantial evidence remained unbroken; that PW Kyle had deposed that he had seen Karamat at the deceased's apartment on 05-06-2014 working a laptop; that the CDR of Karamat's mobile phone places him at the scene and time of the crime; that the finger-print report and the wallet seized from the crime scene also implicates Karamat; that though Karamat's confession was extra judicial, it was nonetheless corroborated by other evidence and cannot be ignored; that the valuables of the deceased were recovered from Karamat's house on his pointation; and that Karamat had never taken the plea that those valuables had been given to him by the deceased herself. Learned counsel submitted that the conduct of an accused after the incident is material, in that, before the murder, Karamat was a frequent visitor, but he vanished thereafter until he was arrested.

The learned APG supported the arguments made by the Complainant's counsel; however, he pointed out that Karamat was not confronted with the finger-print report during his examination under section 342 Cr.P.C.

18. Heard the learned counsel and appraised the evidence.

Per the postmortem report, there was a ligature mark on the neck of the deceased caused by the crepe bandage tied around her neck; and that the cause of death was Asphyxia from constriction of the neck by using a crepe bandage. Thus, the fact that the deceased was strangulated to death was beyond doubt.

19. Though the alleged crime was an unseen incident and Karamat's conviction rests on circumstantial evidence, it is settled law that even in a case involving capital punishment, conviction can follow on circumstantial evidence, but that such circumstantial evidence should provide all links in an unbroken chain where one

end of the chain touches the dead body and the other the neck of the accused.

20. The deceased was a 65 year old lady residing alone in an apartment. Both the son and the grandson of the deceased i.e, the Complainant and PW Kyle, who regularly checked upon the deceased, had deposed that Karamat had been attending the deceased for the past one month or so to give her physiotherapy, and at times he also cooked for the deceased. PW Kyle had further deposed that he had met Karamat at the deceased's apartment two or three times during which Karamat mentioned that he resided at Qayyumabad. PW Abdul Haq, who had been supplying day-to-day items needed by the deceased for many years, deposed that Karamat used to come to the deceased's apartment to give her physiotherapy and sometimes to cook for her. PW Nasreen, the house-maid employed by the deceased, had deposed that the deceased had informed her that she had hired Karamat as a cook; and that she had on one occasion seen Karamat at the deceased's apartment; that the deceased had mentioned to Nasreen that Karamat used to provide her medical dressing, drips and injections when needed. PW Khudadad Khan, who used to attend to the maintenance work in the deceased's apartment and who collected and paid utility bills for the deceased, also stated that about 15/20 days prior to the deceased's death, he had seen Karamat at the deceased's apartment. Thus, the fact that Karamat was a person who regularly visited the deceased at her apartment was proved beyond any shadow of doubt.

21. Per the postmortem report, the post-mortem commenced at 05:15 a.m. on 07-06-2014, and the time between death and postmortem was approximately 32 to 36 hours, which would make the time of death somewhere between 17:15 to 21:15 hours on 05-06-2014. I now turn to the evidence of Karamat's whereabouts on the day and time of the murder.

22. PW Nasreen, the house-maid who used to work at the deceased's apartment from 10:00 am to 12:00 noon, deposed that on

05-06-2014 (day of incident) when she was present at the deceased's apartment, the deceased had phoned Karamat and inquired as to why he had not attended to her since the last 4 to 5 days and she had insisted that Karamat should come over on that day. PW Kyle had deposed that on 05-06-2014 (day of incident) he was asked by the deceased to purchase juice for her, and he was told by the deceased that he need not attend to her at night as she was expecting a friend. On cross-examination, Kyle stated that he had gone to deliver the juice to the deceased at 13:45 hours (on 05-06-2014) when the deceased informed him that Karamat would be coming to attend to her later in the day. The deposition of PW Kyle reads that he had seen Karamat using a laptop at the deceased's apartment on "05-06-2014". That part of the deposition was highlighted by the Complainant's counsel to argue that the deceased had been last seen with Karamat. But the date of "05-06-2014" mentioned in that part of the deposition does not appear to be correct as Kyle had also deposed that when he had gone to the deceased's apartment on 05-06-2014, he was told by the deceased that Karamat would be coming later in the day. In other words, Kyle's testimony when read as a whole, cannot be taken as evidence of 'last seen'. It is however evidence of the fact that the deceased was expecting Karamat at her apartment on 05-06-2014. PW Abdul Haq, who used to drop by the deceased's apartment for her day-to-day needs, also deposed that on 05-06-2014 (day of incident), between 19:00 to 19:30 hours, the deceased had informed him over the phone that he need not attend to her that day as Karamat will be looking after her. Thus, the prosecution had established that on 05-06-2014, the day of the incident, the deceased was expecting Karamat at her apartment in the latter part of the day.

23. Karamat's mobile phone had been seized at the time of his arrest (Exhibit 3-H). A CDR was obtained of the mobile number in Karamat's use and of the deceased (Exhibit 12/Q/1). The CDR of Karamat's mobile number 0311-8258792 shows that on 04-06-2014 he made ten calls to the deceased at 0315-8693899. Then, on 05-06-2014 (day of incident), six calls were exchanged between Karamat and the

deceased, the last one at 15:33 hours. The location of the deceased's mobile number 0315-8693899 reads "*Plot No. 623, Block E, near Aamir Clinic, Mehmoodabad*", the coordinates of the deceased's apartment. The CDR of Karamat's mobile number 0311-8258792 shows that on the day of the incident, from 15:48 hours and at least upto 20:40 hours, he was at "*Plot No. 623, Block E, near Aamir Clinic, Mehmoodabad*", the deceased's apartment, and that after 20:40 hours no further call was made or received by Karamat on the day of the incident. The last outgoing call made from the deceased's mobile number on the day of the incident was at 21:33 hours. The first call recorded of Karamat's mobile number on the next day, 06-06-2014, was at 10:02 hours to show the location as "*House No. 32-33, Qaiyumabad, Korangi Road*", the coordinates of Karamat's residence, his exact address being House No. 34, Street No. 4-A, Qayyumabad, Korangi Road. Thus, the CDR established not only that mobile number 0311-8258792 was in Karamat's use, but that evidence also places Karamat at the scene of the crime at the time of the murder as opined in the post mortem report i.e., between 17:15 to 21:15 hours on 05-06-2014.

24. The next set of evidence relied upon by the prosecution to implicate Karamat was the one collected from the scene of the crime; i.e., Karamat's finger-print on the frame of the bed in which the dead body was found (Exhibit 11-D); and one wallet from under the deceased's bed which contained the original CNIC of Karamat's wife, Kaneez Fatima, and two business cards of caterers which bore the name of Karamat Hussain and his mobile number (Exhibit 3-F). However, I am not inclined to take into account that evidence, firstly, because it was established that Karamat used to administer physiotherapy to the deceased and thus his finger-print on the frame of the bed may have been from before; and secondly, while examining Karamat under section 342 Cr.P.C. the trial court did not specifically confront him with his finger-print and wallet found at the scene of the crime. It is settled law that evidence implicating an accused cannot be used to convict him if he was not confronted with it under section 342 Cr.P.C. But that does not mean to say that every

inadequate examination under section 342 Cr.P.C. results in vitiating the trial, nor does it mean to say that the other independent evidence standing against the accused stands diminished. In *S.A.K. Rehmani v. The State* (2005 SCMR 364) it was held that every error or omission in complying with section 342 Cr.P.C. does not necessarily vitiate the trial; that the question whether the trial is vitiated depends upon the degree of the error and whether prejudice has been or is likely to have been caused to the accused; that unless miscarriage of justice is shown to have occurred, an inadequate examination under section 342 Cr.P.C. cannot be made a ground for setting aside conviction; and that the intent of section 342 Cr.P.C. is not simply to benefit the accused, but it is a part of a system for enabling the Court to discover the truth.

25. In my view, even discarding the evidence of Karamat's fingerprint and wallet at the scene of the crime, the chain of circumstantial evidence against him is complete and uninterrupted with the recovery of the valuables and documents of the deceased from Karamat's residence on his pointation. Per the memo of recovery and seizure of case property (Exhibit 3-J), Karamat lead the Police to his residence and produced from a box the following items: a Dell laptop; two mobile phones; NIC, passport and cheque book of the deceased; some artificial jewelry; four bracelets; two pearl bracelets; eleven bangles; one packet of ear-rings; and one packet containing three necklaces (Exhibit 3-J); all of which were identified by the son (Complainant) and grandson (PW Kyle) of the deceased as the property of the deceased. On examination under section 342 Cr.P.C., Karamat was duly confronted with the recovery of the said items and was given an opportunity to explain how those items came to be in his possession. He did not give any exculpatory statement, nor did he lead any evidence in his defense. His reply was simply "*No sir it is false.*"

26. Learned counsel for the Appellant had submitted that a doubt was created when in the FIR the Complainant stated that he had opened the deceased's apartment with a spare key in his possession,

but on cross-examination he denied that he possessed a spare key and stated that the door was opened by a key-maker in the presence of the police. That part of the Complainant's deposition reads : *"It is not a fact that in my 161 Cr.P.C. and 154 Cr.P.C. I have depicted that an extra key of the said house wherein my mother was residing were with me"*. But even assuming that such denial can be taken to contradict one fact narrated in the FIR, I do not see how that helps the case of the Appellant when all evidence implicates him. For the same reason, the other persons who frequented the deceased's apartment stood absolved of any suspicion. There is nothing to show that any of the prosecution witnesses had any motive to falsely implicate the Appellant.

27. Having assessed the evidence as above, I am satisfied that the prosecution has succeeded in establishing the guilt of the Appellant beyond doubt. Consequently, this appeal is dismissed and the judgment of the trial court is sustained.

JUDGE

Karachi
Dated: 31-03-2020