

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Crl. Jail Appeal No. S- 03 of 2012

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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For hearing of main case.

Mr. Ali Asghar K. Panhiyar Advocate for appellant.
Mr. Achar Khan Gabole Advocate for complainant.
Mr. Aftab Ahmed Shar, Additional P.G for the State.

Date of hearing: 21-09-2020

Date of Judgment: 21-09-2020

J U D G M E N T

Aftab Ahmed Gorar J. Through instant Crl. Jail Appeal, appellant Muhammad Essa by caste Gabole has called into question the impugned judgment dated 24.01.2012, passed by learned IV-Additional Sessions Judge, Mirpur Mathelo in Sessions Case No.121 of 2010 arising out of Crime No.21 of 2010 registered at P.S, Mirpur Mathelo under sections 302, 355 & 34 PPC, whereby the appellant was convicted for offence under Section 302(b) and sentenced to suffer R.I for life with fine of Rs. 100,000/- to be paid to the legal heirs of deceased and in case of default thereof, to under R.I for 06-months more. Appellant was also convicted for offence under Section 355 PPC and sentenced to suffer R.I for 02-years with fine of Rs.10,000/- to be paid to legal heirs of deceased and in case of default thereof, to suffer R.I for 03-months more. Both the sentences were ordered to run concurrently with benefit of Section 382-B PPC extended to the appellant.

2. The facts of the prosecution case, as set-out in the FIR, are that on 11.02.2010, complainant Mst. Naziran lodged FIR alleging therein that Mst. Noor Jahan, aged about 22/23 years was her daughter and married to accused Essa Gabole, who had suspicion over her character. On 11.02.2010, complainant with her brother-in-law Khursheed and maternal cousin Ali Hassan went to visit Mst. Noor Jahan, where accused Muhammad Essa, Muhammad Moosa, Jabbar and Ghaffar were available. Accused Muhammad Essa asked Mst. Noor Jahan that she is 'Kari' hence, she will be murdered. At about 03-00 p.m, accused Muhammad Moosa, Ghaffar and Jabbar Gabole forcibly dragged Mst. Noor Jahan, who fell down on the ground and all accused started throttling her, while accused Muhammad Essa took knife and chopped her nose and lip and also made straight fire of gun upon her with intention to commit her murder. On cries of complainant party, neighbourers came running there and on seeing them, accused persons fled away. Thereafter, complainant saw that nose and upper lip of Mst. Noor Jahan was cut and blood was oozing and she also sustained firearm injuries on her person, as such she succumbed to her injuries at the spot. Consequently, above FIR was lodged.

3. During trial the prosecution examined as many as six witnesses. The appellant when examined under Section 342 CrPC denied the prosecutor story and submitted that he is innocent and has falsely been implicated by the complainant. Appellant did not

examine himself on oath in disproof of charge; however, he examined Mst. Zohran as defence witness.

4. Learned trial Court on assessment of evidence and after hearing learned counsel for parties convicted and sentenced the appellant, as stated above vide judgment, which is impugned through this Criminal Jail Appeal.

5. Learned counsel for appellant mainly contends that the appellant is innocent and has nothing to do with the alleged offence; that the learned trial Court has not properly assessed the evidence of prosecution which is insufficient to warrant conviction against the appellant; there are glaring contradictions in the evidence of prosecution witnesses so also material infirmities and discrepancies in the prosecution case, but the same were ignored by learned trial Court while passing the impugned judgment; that PW-3 ASI Abdul Ghafoor claiming to be I.O of the case while replying to a suggestion admitted that the gun was not sent to the Ballistic Expert nor any report is produced in Court. He also admitted that after conducting post-mortem by the Medical Officer, the FIR was lodged later on. Lastly, learned counsel for appellant submits that appellant is previous non-convict and there is no other instance of appellant's involvement in any case, therefore, he prayed for reducing the sentence of the appellant to that of already undergone as the appellant has served out major portion of sentence in jail.

6. Learned counsel appearing on behalf of the complainant as well as learned Additional P.G conceded to the reduction of sentence of appellant to that of already undergone.

7. Having heard the learned counsel for the parties and going through the evidence of the prosecution witnesses, it transpires that PW-3 ASI Abdul Ghafoor, who carried out investigation of the crime and during course of cross-examination, while replying to a suggestion he admitted to have not sent the gun to the Ballistic Expert nor any report is produced in Court. He also admitted that after conducting post-mortem of deceased by the Medical Officer, the FIR was lodged later on.

8. Furthermore, as per jail roll dated 03.09.2020, the appellant has served out his substantial portion of sentence for 10-years, 06-months and 22-days and remissions earned by the appellant are 04-years and 29-days, as such he has served out his major portion of sentence inside the jail.

9. For the foregoing peculiar facts and circumstances of the case so also by consent of both the learned counsel for the parties and following the dictum laid down in case of **Muhammad Mumtaz v. Mehtab and another (2020 SCMR 200)**, while maintaining the conviction awarded to the appellant by learned trial Court vide impugned judgment, instant Crl. Jail Appeal stands dismissed, however, the sentence awarded to the appellant is reduced to that of already

undergone. The sentence in terms of fine amount and in case of default thereof shall remain intact. Appellant Muhammad Essa Gabole is in jail. He shall be released forthwith, if he is not required in any other case subject to deposit of fine amount in terms of impugned judgment.

JUDGE

Ahmed