

IN THE HIGH COURT OF SINDH AT KARACHI*Present: Ahmed Ali M. Shaikh, CJ and Omar Sial, J*

Crl. Acq. Appeal No. 645 of 2018

Zulfiqar v. Aasia & others

*Mr. Muhammad Akbar Awan, Advocate for appellant.**Mr. Fakir Ghazi Darban Hisbani, Advocate for respondents.**Mr. Ali Haider Saleem, APG.***JUDGMENT**

Omar Sial, J: Zulfiqar s/o Madar has impugned a judgment dated 3-12-2018 passed by the learned Additional District & Sessions Judge No. 4, Karachi East. In terms of the said judgment the respondents in these proceedings i.e. Aasia and Ayaz Ahmed were acquitted in the case arising out of F.I.R. No. 664 of 2016 registered under sections 302 and 34 P.P.C.

2. A brief background to the case is that Zubaida Bibi lodged the aforementioned F.I.R. on 15-7-2016 reporting an offence that had occurred on 8.7.2016. She recorded that she received a phone call from her daughter-in-law Aasia (one of the respondents herein) that her son Imran had died of electrocution. When Zubaida Bibi reached her son's house she saw that Imran's head and face had injuries and blood was flowing. Zubaida alleged that Aasia had an affair with Ayaz Ahmed (the second respondent in these proceedings) and that the two had first got Imran drunk after which they strangled Imran and in a scuffle Imran hurt his head and face against a bed. The two then took Imran to the roof where they electrocuted him.

3. We have heard the learned counsel for the appellant as well as the learned APG. Our observations are as follows.

4. The learned counsel argued that even though Aasia had made a confession the learned trial court had acquitted the accused. Aasia retracted the confession at trial.

5. We have examined the confessional statement. The confessional statement states that Imran was given sleeping pills prior to being killed. However, this fact does not reconcile with the medical report which states that there was no intoxicant or poison found in the body. The confession states that Ayaz strangled Imran with a belt, however, the medical report does not

reconcile with the confession as the doctors were of the opinion that the death had occurred due to a hard and blunt material hit on the head. We are also not satisfied with the manner in which the confession has been recorded as it appears that a pre-printed format was used by the learned magistrate. The flow of the confession language i.e. English when the appellant is admittedly illiterate appears to be not convincing even though on the pre-printed format it is written that the appellant was explained the same in the language she understood. On the whole the confession is not corroborated by what the prosecution had alleged as to the manner in which the events had unfolded. Very rightly the learned trial court did not convict on the basis of the sole retracted confession.

6. We note that the learned judge has quite comprehensively covered not only the aspect of the confession but other grounds as well on which he has based his judgment to acquit the respondents. No argument has been raised which would merit an interference with the impugned judgment. Needless to say a double presumption of innocence also works in favour of the respondents.

7. The learned counsel has been unable to point out to any non-reading or mis-reading of evidence in the impugned judgment. He could also not satisfy us that there is any jurisdictional issue with the impugned judgment or that the same is capricious, perverse or arbitrary.

8. Above are the reasons for our short order of 23-2-2021 in terms of which we dismissed the appeal.

JUDGE

CHIEF JUSTICE