

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Crl. Appeal No.S – 56 of 2019

Appellant: Abdul Rehman alias Ranjho son of Hyder Rodnani, through Mr. Muhammad Sachal R. Awan, Advocate

Respondent: The State, through Ms. Rameshan Oad, A.P.G.

Date of hearing: 14-12-2020.

Date of decision: 14-12-2020.

JUDGMENT

IRSHAD ALI SHAH, J: The facts in brief necessary for disposal of instant appeal are that the appellant with rest of the culprits allegedly in furtherance of their common intention committed Qatl-e-amd of Abdullah by cutting his throat with dagger and then went away by insulting complainant Ghulam Muhammad and his witnesses, for that they were booked and reported upon.

2. At trial, the appellant did not plead guilty to the charge and the prosecution to prove it, examined complainant Ghulam Muhammad and his witnesses and then closed its side.

3. The appellant in his statement recorded u/s 342 Cr.P.C denied the prosecutions' allegation by pleading innocence and produced news clipping of daily Newspaper Kawish dated

22.04.2010 to prove that a dead body of unknown culprit was secured by police personnel of PS Johi.

4. The appellant did not examine himself on oath however, he examined SIP Buxal Khan and Ali Nawaz in his defence and then closed the side.

5. On evaluation of evidence so produced by the prosecution learned Ist Additional Sessions Judge, Dadu found the appellant guilty for the above said offence and then convicted and sentenced him to undergo Rigorous Imprisonment for life and to pay compensation of Rs.100,000/- to the legal heirs of deceased Abdullah and in case of default whereof to undergo Simple Imprisonment for six months vide his judgment dated 25th October, 2011, which is impugned by the appellant before this Court by way of instant appeal.

6. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the complainant party; the FIR has been lodged with delay of about one day; it was unseen incident and the evidence of the prosecution being doubtful and untrustworthy has been believed by learned trial Court without lawful justification; therefore, the appellant is liable to his acquittal on point of doubt.

7. It is contended by learned APG for the State that the appellant has committed murder of the deceased by cutting his throat with dagger and on arrest from him has been secured such dagger; therefore, he has rightly been convicted and sentenced by learned trial Court on the basis of proper appraisal of evidence. By contending so, she sought for dismissal of the instant appeal. In support of her contention she relied upon cases of *Ansar Mehmood vs Abdul Khaliq and another (2011 SCMR 713)* and *Abdul Khalique vs The State (2020 SCMR 178)*.

8. I have considered the above arguments and perused the record.

9. It is stated by complainant Ghulam Muhammad and PW Ghulam Nabi that on 21.04.2010 when they and Mashooque Ali were going back to their village through their motorcycle after attending their work at Johi, when they reached at the lands of Akber Rodnani there at about 4:00 p.m. they found appellant and others committing death of deceased Abdullah by cutting his throat with daggers and then made their escape good. They took the dead body of the deceased to Taluka Hospital Johi through Jeep and incident formally was reported by them to PS Drigh Bala. It was on next date. On asking the complainant and PW Ghulam Nabi have dispute each other with regard to time of their

arrival at Taluka Hospital Johi at least by three hours, such dispute could not be overlooked. PW Mashooque has not been examined by the prosecution, for no obvious reason. The presumption which could be drawn of his non-examination under Article-129 of the Qanoon-e-Shahadat Order, 1984 would be that he was not going to support the case of the prosecution. As per medical officer Dr. Mehboob the duration between death and post mortem was about 06 to 15 hours. If it was so, then question arises as to where the dead body of the deceased for intervening period was lying? No explanation to such delay is offered by the prosecution. HC Bilal who formally delivered the dead body of the deceased to Medical Officer at Taluka Hospital Johi for post mortem has not been examined by the prosecution for the reason that he has been won over by the accused. SIO/ASI Muhammad Ishaque, on asking was fair enough to admit that he heard at Taluka Hospital Johi that the dead body of the deceased has been brought by the complainant together with the police of PS Johi. Why the police party of PS Johi came into picture? To have an answer to it, the appellant has examined SIP Buxal Khan. As per him, on 21.04.2010 he was SHO at PS Johi and came to know that dead body of an unknown person is lying in locality of village Shahak Rodnani and it was not being clarified as to in which of the police station such place was falling. However, he deputed a constable to go at the place of incident. He went there

and there also came the villagers who identified the dead body of the deceased to the person of Rodnani caste. The place of incident was clarified to be situated within jurisdiction of P.S. Drigh Bala; he therefore, directed the police constable to take the dead body of the deceased to Taluka Hospital Johi. Perhaps this was the reason for police party of PS Johi to come into picture, which furnishes the answer to query made above. Whatever is stated by SIP Buxal Khan, if is considered in juxta position with the evidence furnished by the prosecution then it appears to be more convincing which makes it clear that the incident was unseen one. The lodgment of FIR by the complainant with PS Drigh Bala with delay of about one day obviously could not be said to be un-plausible. It is reflecting deliberation and consultation.

10. In case of *Muhammad Asif vs the State (2008 SCMR 1001)*, it has been held by Hon'ble apex Court that;

"Delay of about two hours in lodging FIR had not been explained—FIRs which were not recorded at the Police Station, suffered from the inherent presumption that same were recorded after due deliberation."

11. The dagger was secured from the appellant on 3rd day of his arrest. It is said to have been used by the appellant in commission of incident. On recovery, as per memo, it was not found stained with the blood. Surprisingly, PW/Mashir Haji

Mithal insisted that on recovery it was found stained with the blood. Obviously, it was a false statement on his part. It is alleged to have been recovered by SIO/SIP Abdul Majeed. He on asking was fair enough to admit that the memo of such recovery was prepared by WHC. It was not end of the affairs. On further asking it was admitted by him that 161 Cr.P.C statements of the PWs were written by WHC. If it was so, then it goes to suggest that the material investigation of the present case was conducted by WHC of PS Drigh Bala, as such, he was to have been examined by the prosecution as investigating officer of the present case. His non-examination could not be ignored. It has prejudiced the appellant seriously in his defence. In these circumstances, the appellant could hardly be connected with the recovery of alleged dagger.

12. The above discussion involves a conclusion that the prosecution has not been able to prove its case against the appellants beyond shadow of doubt.

13. In case of *Tariq Pervaiz vs the State (1995 SCMR 1345)*. It has been held by the Hon'ble Supreme Court that:-

“For giving benefit of doubt to an accused, it is not necessary that there should be many circumstances creating reasonable doubt in a prudent mind about the guilt of accused, then he would be entitled to such benefit not as a matter of grace and concession but of right.”

14. The case law which is relied upon by learned A.P.G for the State is on distinguishable facts and circumstances. In case of *Ansar Mehmood (supra)* an issue of summoning of medical officer was involved. In case of *Abdul Khaliq (supra)* the statement of the complainant to the extent of accused was endorsed by the eye witnesses and medical officer. In the instant case evidence of the complainant and the witness has been found to be doubtful for the delayed action.

15. In view of the facts and reason discussed above, the conviction and sentence recorded against the appellant by way of impugned judgment are set-aside; consequently, the appellant is acquitted of the offence for which he has been charged, tried and convicted by learned trial Court, he shall be released forthwith in the subject case, if not required in any other custody case.

16. Above are the reasons of short order dated 14.12.2020 whereby the instant appeal was allowed.

Judge

Ahmed/Pa,