

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Jail Appeal No.S – 238 of 2016

Appellant: Anwar alias Anoo son of Mohammad Uris Hajano through Mr. Anwar H. Ansari, Advocate.

Respondent: The State, through Mr. Shahzado Saleem Nahiyoan, Deputy Prosecutor General Sindh for the State.

Date of hearing: 17-02-2021.

Date of decision: 19-02-2021.

JUDGMENT

IRSHAD ALI SHAH, J-. The appellant by way of instant criminal appeal has impugned judgment dated 15.7.2011, passed by learned IInd Additional Sessions Judge, Tando Muhammad Khan, whereby he for an offence punishable u/s 302 (b) PPC has been convicted and sentenced to undergo Rigorous Imprisonment for life (without labour) as “*Tazir*” with fine of rupees Two Lacs payable to legal heirs of deceased Khayal Muhammad, as compensation, and in case of default to make payment of fine, to undergo Simple Imprisonment for one year, with benefit of Section 382-B Cr.PC.

2. The facts in brief necessary for disposal of instant appeal are that the appellant with one more culprit allegedly on account of exchange of hot words with the deceased over cricket match caused him dagger/knife injury, who died of such injury, for that he was booked and reported upon.

3. The appellant denied the charge and prosecution to prove it, examined complainant Khuwaja Muhammad and his witnesses and then closed the side.

4. The appellant in his statement recorded u/s 342 Cr.P.C denied the prosecution's allegation by pleading innocence by inter alia stating that he at the time of incident was of only 16 years of the age; the complainant party is disputed with him over plot; which they were intending to occupy, therefore, they have involved him in this case falsely; there was no cricket match on the date of incident and PWs Gul Muhammad and Khair Muhammad are not eye witness of the incident and to prove such fact he produced their electoral roll. None was examined by the appellant in his defence or himself on oath in terms of section 340(2) Cr.P.C.

5. On conclusion of the trial, the appellant was convicted and sentenced by way of impugned judgment as is detailed above.

6. It is contended by the learned counsel for the appellant that the appellant being innocent has been involved in this case by the complainant party only to satisfy its dispute with him over plot; otherwise there was no motive for the incident; the complainant is not an eye witness of the incident, yet has pointed out the place of incident to the police; the FIR of the incident has been lodged with delay of about one day and PWs Gul Muhammad and Faiz Muhammad have not witnessed the incident being resident of

distant area; there is doubt with regard to use of weapon of the incident being dagger or knife; there is no sketch of the wardat and the complainant and his witnesses being related interse have been believed by learned trial Court without lawful justification. By contending so, he sought for acquittal of the appellant. In support of his contention, he relied upon cases of 1) *Mst. Ghafooran vs Abdul Ghafoor and others* (1995 SCMR 486), 2) *Malik Saleh Muhammad Gunjial vs Kamran Elahi Bandial and others* (2008 SCMR 1), 3) *Qudrat Ullah vs The State* (2008 M.L.D 1476), 4) *Muhammad Asif vs The State* (2008 SCMR 1001), 5) *Kamran & others vs The State* (SBL 2014 SC 177), 6) *Muhammad Asif vs The State* (2017 SCMR 486) and 7) *Shakeel Ahmed vs The State* (S.B.L.R 2015 Sindh 100).

7. Learned D.P.G for the State by rebutting the above contention sought for the dismissal of the instant appeal by contending that the appellant is neither innocent nor is involved in this case falsely by the complainant party; the delay in lodgment of FIR has been explained properly; dagger and knife are one and same thing; the evidence brought by prosecution was straight forward and the appellant has already been dealt with leniently by learned trial Court.

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

9. PWs Gul Muhammad and Khair Muhammad being eye witnesses of the incident have inter-alia stated that on 15.07.2011 at about 11:00 a.m they found the appellant causing dagger injury to deceased Khayal Muhammad on his left thigh at the time when he was caught hold by absconding accused Adal. They took injured Khayal Muhammad to hospital and on information furnished by them on phone, complainant Khuwaja Muhammad came at Hospital. The doctor on the duty then confirmed the death of Khayal Muhammad. The complainant then called the police. Whatever, is stated by the complainant is based on information which was furnished to him by PWs Gul Muhammad and Khair Muhammad. The complainant and his PWs have stood by their version on all material points with regard to death of the deceased at the hands of the appellant and the absconding accused; therefore, they could not be disbelieved only for the reason that they related inter se or otherwise.

10. In case of ***Ali Bux v. State (2018 SCMR 354)***, it has been observed by Hon'ble apex Court that;

“3. The occurrence in this case had taken place in broad daylight and at a place where at the same could have been seen by many persons available around the place of occurrence. An information about the said occurrence had been provided to the police on telephone within fifteen minutes of the occurrence. In the FIR lodged in respect of the incident in question the present appellants had been nominated and

specific roles had been attributed to them therein. The ocular account of the incident had been furnished before the trial Court by three eye-witnesses namely Ali Akbar complainant (PW-01) Ghulam Shabir, (PW-02) and Bilawal (PW-03) who had made consistent statements and had pointed their accusing fingers towards the present appellants as the main perpetrators of the murder in issue. The said eye-witnesses had no reason to falsely implicate the appellants in a case of this nature and the medical evidence had provided sufficient support to the ocular account furnished by them”.

11. No doubt the FIR of the incident has been lodged with delay of about one day, but such delay could hardly be treated fatal to the case of prosecution. It was natural in the circumstances. PWs Gul Muhammad and Khair Muhammad might have been registered as voters at the area other than the place of incident but such fact is not enough to exclude their evidence by making a conclusion that they are chance witnesses. It was day time incident, which even otherwise exclude the possibility of mistaken identity of the appellant and the absconding accused. No proof is brought on record which may suggest that the appellant was having a dispute with the complainant party over plot. Indeed, the complainant party was having no reason to have involved the appellant in a false case at the cost of life of an innocent person. The death of the deceased as per the narration made by the complainant party was on account of exchange of hot words over Cricket match. If for the sake of arguments, it is believed that the motive of the incident is weak or

prosecution is not able to prove it, even then it could not be made a reason to disbelieve the case of the prosecution.

12. In case of ***Zulfiqar Ali vs. the State (2008 SCMR-796)***, it has been held by the Honourable Supreme Court of Pakistan that;

“Inadequacy or weakness of motive or failure to prove the motive is immaterial if accused is found guilty of causing the murder of the deceased and he does not deserve any leniency”.

13. No wrong is committed by the complainant by pointing out the place of incident to the police, which may be fatal to the case of prosecution. The post-mortem report on the dead body of the deceased of course was conducted by the Medical Officer prior registration of F.I.R. It was natural in the circumstances and for this reason the case of prosecution could not be allowed to fail. The place of incident is well defined in memo of place of incident, therefore, non-preparation of sketch of Vardat could hardly be treated to be omission on part of prosecution, which may justify extending benefit of doubt to the appellant.

14. On arrest, from the appellant has been secured the knife/dagger, which he allegedly used in commission of incident. Such recovery is proved by the prosecution by examining SIO/SIP Rehan Ali Shah and PW/Mashir Sabir Shah being transpiring confidence witnesses. Line of distinction could hardly be drawn between dagger and knife. It was sharp cutting weapon whereby

the injury to the deceased was caused which resulted in his death. In these circumstances, the learned Trial Court was right to make a conclusion that the prosecution has been able to prove its case against the appellant beyond shadow of doubt.

15. The case law which is relied upon by learned counsel for the appellant is on distinguishable facts and circumstances. In case of *Mst. Ghafooran (supra)* the leave was granted by the Hon'ble Apex Court to examine acquittal of the accused in a forgery case. In the instant matter no acquittal or forgery of document is involved. In case of *Malik Saleh Muhammad Gunjial (supra)* an Order of Election Tribunal was examined by the Apex Court. In the instant matter, no Election dispute is involved. In case of *Qudrat Ullah (supra)* it was held that the chance witnesses could not be believed. In the instant matter, the witnesses are natural and their availability at the place of incident being shopkeeper could hardly be disputed. In case of *Muhammad Asif (supra)* the delay of about two hours in lodgment of F.I.R was found to be fatal. In the instant matter, the delay in lodgment of F.I.R was natural with remote chance of deliberation. In case of *Kamran & others (supra)* the identity of the appellants before Magistrate was found to be doubtful. In the instant matter, the appellant has not been identified by the complainant party before Magistrate. In case of *Muhammad Asif (supra)* on same evidence one set of accused was acquitted while

other set of accused was convicted. In the instant matter, there is no acquittal on the basis of same evidence. In case of *Shakeel Ahmed (supra)* there was conflict between medical and ocular evidence. In the instant matter, there is no conflict between medical and ocular evidence.

16. In view of the facts and reasons discussed above, it could be concluded safely that the conviction and sentence recorded against the appellant by learned trial Court by way of impugned judgment are not calling for any interference by this Court by way of instant appeal, it is dismissed accordingly.

Judge

Ahmed/Pa,