

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**  
**Criminal Jail Appeal No.D- 27 of 2016**  
**[Confirmation case No.12 of 2016]**

**Before;**

Mr. Justice Irshad Ali Shah

Mr. Justice Amjad Ali Sahito

**Appellant:** Gul Hassan alias Gulan son of Abdul Rehman Shaikh,  
Through Mr. Zaheeruddin S. Laghari,  
Advocate.

**Complainant:** Asif Ali son of Abdul Majeed Khoso,  
Through Mian Taj Muhammad Keerio,  
Advocate

**State:** Ms. Rameshan Oad, A.P.G

**Date of hearing:** 12.12.2019

**Date of decision:** 12.12.2019

**J U D G M E N T**

**IRSHAD ALI SHAH, J.** The facts in brief necessary for passing the instant judgment are that the appellant as per prosecution has allegedly committed murder of Abdul Majeed and Mst. Pathani to grab their money by causing them dagger blows for that he was booked and reported upon.

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

3. The appellant, in his statement recorded u/s 342 Cr.P.C denied the prosecution allegation by pleading innocence by stating that he has been involved in this case falsely at the instance of Khan Muhammad Shar. He did not examine anyone in his defence or himself on oath to disprove the allegation against him.

4. On conclusion of the trial, learned Additional Sessions Judge, Tando Adam found the appellant to be guilty for the above said offence and then vide his judgment dated 22.03.2016 convicted and sentenced the appellant as under;

***“accordingly accused is convicted u/s 265-H(2) Cr.P.C and sentence the accused Gul Hassan alias Gulan son of Abdul Rehman Shaik, u/s 302(b) PPC and accordingly punished him with two times death as Tazir. He shall be hanged by neck twice till he is dead subject to confirmation of death sentence by the Honourable High Court of Sindh. He is also directed to pay Rs.2,00,000/-, fine to the L.Rs of deceased in terms of section 544-A Cr.P.C or in default he shall suffer six months more S.I.”***

5. Learned trial Court, then made a reference with this Court in terms of section 374 Cr.P.C for confirmation of death sentence awarded to the appellant. Simultaneously, the appellant has impugned the above said judgment by preferring an appeal. Those now are being disposed of by this Court by way of instant judgment.

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 without lawful justification; the appellant has not been supplied with the entire copies of the documents necessary for trial, in that way he has been prejudiced seriously in his defence; the complainant Asif Ali, PWs Soomar and Manzoor have not seen the appellant committing the alleged incident, therefore, their evidence ought not to have been believed by learned trial Court; PW Baby Seema was not a natural witness to the incident; no much reliance

could have been placed by learned trial Court on confessional statement of the appellant as it was neither true or voluntarily nor it was consistent with the injuries sustained by Mst. Pathani; and the prosecution has not been able to prove the motive of the incident. By contending so, he sought for acquittal of the appellant.

7. Learned A.P.G for the State and learned counsel for the complainant by supporting the impugned judgment have sought for dismissal of the appeal of the appellant.

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

9. Un-natural death of the above said deceased, the prosecution has been able to prove by examining medical officer(s) Dr. Ghulam Ali and Dr. Najma Begum. Now is to be examined liability of the appellant towards the alleged incident. It has come on record that deceased Abdul Majeed was living separately with his second wife Mst.Pathani and adopted daughter Baby Seema at "Mewati Paro" at Tando Adam. Complainant Asif Ali, PWs Soomar alias Zubairuddin and Manzoor went to him on 25.02.2011 with rupees two lac to make purchase of plot, which they allegedly gave to him in presence of the appellant and he then advised them to bring their NICs, necessary for doing the paper work for purchasing the plot. Subsequently, when they went back to the house of the deceased there they found baby Seema crying, she intimated the complainant and above said witnesses that Abdul Majeed and Pathani have been

killed by the appellant, on account of their failure to pay him money. They related the incident to police. Apparently, the complainant, PWs Soomar alias Zubairuddin and Manzoor have not seen the actual incident with their eyes. Their evidence, if any, is only to the extent that they have seen the appellant lastly in company of the deceased, when they delivered money to them (deceased), which in face of it, is appearing to be weak. The FIR of the incident has been lodged with un-plausible delay of about two days, that too after burial of the deceased, which reflects consultation and deliberation.

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. Baby Seema is said to be eye-witness of the incident. She was having no reason to be with the deceased. To cover-up such lacuna, she was introduced to be adopted daughter of the deceased. Nothing has been brought on record which may suggest that she actually was adopted by the deceased as their daughter. If she would have been there at the place of incident and at the time of incident, then she would not have been let alive by the culprit to implicate him in double murder case. Her availability at the place of incident as such is appearing to be doubtful one. Be that as it may, it was stated by baby Seema that she intimated the incident to the “Mohalla” people after

sunrise, who informed the police and the Khosas (the complainant party). No person from the "Mohalla" has been examined by the prosecution to lend support to such assertion of baby Seema, which too appears to be significant. In these circumstances, it would be hard to rely upon the evidence of baby Seema.

12. On arrest from appellant on his pointation as per SIO / SIP Piyar Ali on 09.03.2011 has been secured the dagger, allegedly used in commission of incident when it was found lying in a drainage / Sewerage line for about 15 days. Yet as per memo of recovery, it was found to be stained with the blood, which appears to be surprising. Same is said to have been subjected to chemical examination, but no such report has been brought on record by the prosecution. In these circumstances, the appellant could hardly be connected with the recovery of alleged crime weapon.

13. Next evidence with the prosecution is confessional statement of the appellant. It is said to have been recorded on 09.03.2011 on next date of his arrest by Mr. Abdul Hakim, the then Civil Judge & Judicial Magistrate, Tando Adam. Surprisingly, he supported the contents of the confessional statement allegedly made by the appellant. When was asked to point out the appellant, he instead of appellant, pointed out someone else, who happened to be Gulzar Ali, accused involved (before learned trial Court) in 23-1(A) Arms Ordinance case. Even otherwise, confessional statement of the appellant speaks of single injury to each of the deceased, which is

found to be inconsistent with medical evidence, which is furnished by medical officer Dr. Ghulam Ali, which speaks of nine injuries on person of deceased Abdul Majeed. In that situation, it would be unsafe to connect the appellant with the alleged confessional statement.

14. In case of *Sadi Ahmad and another vs The State (2019 SCMR 1220)*, the Hon'ble apex Court has held that;

***“(a) Penal Code (XLV of 1860)---***

***----Ss. 302(b) & 392---Qatl-i-amd, robbery--- Reappraisal of evidence---Benefit of doubt--- Prosecution case was that the accused and co-accused hired a cab driven by the deceased; that they robbed and killed the deceased and while they were on their way to dispose of the vehicle, they met an accident wherein a woman died; that the accused became unconscious after the accident, while co-accused fled from the scene--- Prosecution relied upon evidence of last seen and a confessional statement by one of the accused, beside certain recoveries, to drive home the charge---Held, that according to the crime report, three prosecution witnesses saw the deceased departing with the accused persons--- In the totality of circumstances, statements of the complainant, and prosecution witnesses, there was little evidence to safely frame the co-accused with the crime as he was never exposed to the witnesses in the identification test--- Prosecution's case was that accused impersonated himself when he met an accident while trying to dispose of the stolen vehicle and his real identity was established subsequent thereto---No one had been produced to establish identity of accused in injured condition, when apprehended after the accident---Nothing was available on the record to infer that a woman died in the accident, so what was left in the field was deficient last scene evidence and confessional statement of co-accused , recorded***

*by the Trial Court--- Last seen evidence was outside the bounds of proximity in terms of time and space, besides otherwise being far from confidence inspiring---Prosecution had not been able to drive home the charge beyond reasonable doubt, therefore, in the absence of reliable evidence against the accused and co-accused, they were acquitted by extending them the benefit of doubt---Appeal was allowed accordingly”.*

15. Again, in case of *Wazir vs The State and another (2019 SCMR 1297)*, the Hon’ble apex Court has held that;

*“(a) Penal Code (XLV of 1860)---*

*----S. 365-A--- Anti-Terrorism Act (XXVII of 1997), S. 7(e)---Kidnapping or abduction for extorting property, valuable security etc., act of terrorism--  
-Reappraisal of evidence---Case based on confessional statement of accused---Once prosecution opted to rely upon a confessional statement of an accused to his detriment it must come forward with the disclosure above all suspicions and taints---Occurrence took place in February 2002, whereas the appellant statedly made his confessional statement months later on 27-6-2002---Confessional statement spreading over four hand written pages was strangely elaborate and exhaustive; it was more of an elaborative statement to cater for the needs of the prosecution than a declaration of guilt by a remorseful or repentant offender---Argument that such a detailed narrative could neither be voluntary nor spontaneous was not entirely without substance---Confessional statement of accused could not be favourably received without being imprudent for another reason; it had been disbelieved qua eight co-accused persons---Furthermore findings recorded by the medical officer with regard to cause of death were not in line with the details purportedly furnished by the accused--- Prosecution case against the appellant was not free from doubt and thus it would be un-safe to maintain his conviction---Appeal was allowed and accused was acquitted of the charge.”*

16. The discussion involved a conclusion that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt and appellant is found to be entitled to such benefit.

17. In case of ***Muhammad Masha vs The State (2018 SCMR 772)***, it was observed by the Hon'ble Supreme Court of Pakistan that;

***“4....Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749).”***

18. The based upon above discussion, the conviction and sentence recorded against the appellant together with the impugned judgment are set-aside. Consequently, the appellant is acquitted of the offence, for which he was charged, tried and convicted by learned trial Court, he shall be released forthwith in the present case.

19. The captioned appeal and death reference are disposed of accordingly.

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