

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Jail Appeal No.S- 295 of 2017

Appellant: Jaggu son of Ropo Bheel,
Through Mr. Mian Taj Muhammad Keerio,
Advocate.

State: Mr. Shahid Ahmed Shaikh, D.P.G

Date of hearing: 16.12.2019

Date of decision: 16.12.2019

J U D G M E N T

IRSHAD ALI SHAH, J. The facts in brief necessary for disposal of instant appeal are that the appellant and others intimidated complainant Govind that his daughter Sht.Rekha has committed suicide by taking poisonous substance. On such information, the complainant went at the place of incident and found his daughter Sht.Rekha dead. He, thereby, was intimidated by PW Sawai that his daughter has been killed by the appellant and others and others by causing him hatchet blows and administering some poisonous substance to her, he then lodged FIR of the incident and on investigation appellant and others were challaned by the police to face trial for above said offence.

2. At trial, the appellant and co-accused Papu and Khano did not plead guilty to the charge and prosecution to prove it examined complainant Govind and his witnesses and then closed the side.

3. The appellant and co-accused Papu and Khanu, in their statements recorded u/s 342 Cr.P.C denied the prosecution allegation by pleading innocence by stating that they have been

involved in this case falsely by the complainant party, they did not examine anyone in their defence or themselves on oath to disprove the prosecution allegation against them.

4. On conclusion of the trial, learned Additional Sessions Judge, Tando Allahyar acquitted co-accused Papu and Khano while convicted and sentenced the appellant to undergo Rigorous Imprisonment for life with benefit of section 382-(b) PPC for having committed murder of his wife Sht.Rekha vide his judgment dated 24.11.2017, which is impugned by the appellant before this Court by way of instant appeal.

5. 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 in order to satisfy its dispute with him over matrimonial affairs; the FIR has been lodged by the complainant with un-explained delay of one day; the complainant is not an eye witness of the incident while PWs Sawai, Jhagmal and Mewath alias Mevo have not supported the case of prosecution, and co-accused Papu and Khan have been acquitted while appellant has been convicted on the basis of same evidence which is against the spirit of law. By contending so, he sought for acquittal of the appellant.

6. Learned D.P.G for the State by supporting the impugned judgment has sought for dismissal of the instant appeal.

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

8. The FIR of the incident has been lodged by the complainant with un-explained delay of one day that too after burial of the deceased which reflects consultation.

9. 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.”

10. Admittedly, the complainant has lodged the FIR of the incident, on the basis of narration of the incident allegedly furnished to him by PW Sawai. PW Sawai during course of his examination was fair enough to say that he does not know anything about the incident. By stating so, PW Sawai lied the complainant in his version that; it was he, who made narration of the incident to him, which has made the version of complainant to be doubtful. PWs Jhagmal and Mewath alias Mevo, on account of their failure to support the case of prosecution have been declared to be hostile to the prosecution as such their evidence hardly lends support to the case of prosecution. Co-accused Khanu and Papu have already been acquitted by learned trial Court on the basis of same evidence. In that situation, it would be hard to maintain the conviction against the appellant only for the reason that incident had taken place in his house.

11. In case of **Sardar Bibi and others vs. Munir Ahmed and others (2017 SCMR-344)**, it was held by the Hon'ble Court that;

“When the eye-witnesses produced by the prosecution were disbelieved to the extent of one accused person attributed effective role, then the said eye-witnesses could not be relied upon for the purpose of convicting another accused person attributed a similar role without availability of independent corroboration to the extent of such other accused”.

12. The conclusion which could be drawn of above discussion would be that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt and he too is found entitled to such benefit.

13. 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).”

14. The based upon above discussion, the conviction and sentence recorded against the appellant 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.

15. The captioned appeal is disposed of accordingly.

J U D G E

Ahmed/Pa