

JUDGMENT-SHEET
**IN THE HIGH COURT OF SINDH CIRCUIT
COURT HYDERABAD**

Criminal Jail Appeal No.S-195 of 2018

Date of hearing: 18.04.2022.
Date of Judgment: 18.04.2022.
Appellants: 1) Shr: Jaami is represented by Mr. Abdul Majeed Magsi, called absent
2) Rehman Gul through Mr. Muhammad Yaseen Leghari, advocate
Respondent: The State through Mr. Fayaz Hussain Saabki, Assistant Prosecutor General, Sindh

J U D G M E N T

SALAHUDDIN PANHWAR, J:- Through instant Criminal Jail Appeal, appellants namely Shr: Jaami and Rehman Gul have challenged the impugned judgement dated 06.08.2018 [Re-The State v. Rehman Gul & another] emanating from Crime No.242 of 2017, registered at PS Tando Muhammad Khan for the offences under sections 302, 201, 34 PPC, passed by the 2nd Additional Sessions Judge, Tando Muhammad Khan, whereby; both the appellants were convicted for the offence under section 302 PPC and sentenced to imprisonment for life. Besides, under section 201 PPC they were also sentenced to suffer R.I. for seven years. However, both the sentences were ordered to run concurrently. Benefit of section 382-B Cr.P.C. was extended to the appellants.

2. Precisely, relevant facts are that complainant Rajo son of Lokho Thakur Kolhi lodged FIR of the instant case against the appellants at PS Tando Muhammad Khan stating therein that his son Alam Chand aged about 24/25 years was elder amongst his

children; that Alam Chand disclosed complainant that Rehman Gul and his wife were found in objectionable condition. Rehman Gul also threatened him of dire consequences. On 02.09.2017, in the evening, nephew of the complainant Ramesh informed the complainant that police of Tando Muhammad Khan has recovered the dead body of Alam Chand. After completing formalities i.e. post-mortem and funeral ceremony, the complainant along with Master Chando and Ramesh went to the house of Babu, where Babu was not present in his house while his wife namely Shrimati Jami disclosed that since Alam Chand had seen her with Rehman Gul in objectionable condition, therefore, on 31.08.2017 at 07.00 p.m when Alam Chand was sleeping on cot in her house; she and appellant Rehman Gul caused murder of Alam Chand by giving kick blow on his testicle, as well as fist blows on his chest and by strangulating his throat. Thereafter, Rehman Gul with help of two unknown persons thrown the dead body of Alam Chand into rainy water near Railway Pathak, Tando Muhammad Khan.

3. During investigation appellants were arrested and sent up for trial. Learned trial Judge examined following witnesses:-

01. Complainant Rajomal as (Ex.03) who produced FIR as (Ex. 03/A).
02. PW Ramesh as (Ex.04).
03. PW Ommi as (Ex.05).
04. PW Mohan as (Ex.05) who produced Danishtnama as (Ex.05/A), mashirnama of place of incident as (Ex.05/B), mashirnama of dead body as (Ex.05/C), mashirnama of arrest of accused Rehman Gul as (Ex.05/D), sketch of place of incident as (Ex.05/E).
05. PW Tapedar Ali Gohar as (Ex.06), who produced letter of SHO PS Tando Muhammad Khan as (Ex.06/A).

06.PW Dr. Pehlaj Mal as (Ex.08) who produced letter of police as (Ex.08/A), provisional and final post-mortem reports as (Ex.08/B & 8/C).

07.PW/I.O. Shamsher Ali as (Ex.09) who produced Roznamcha entry No.11 at (Ex.09/A), Roznamcha entry No.12/15 at (Ex.09/B), on 02.09.2017 mashirnama of recovery of dead body as (Ex.09/C), Lash Chakas Form at (Ex.09/D), receipt of dead body at (Ex.09/E), copy of Roznamcha entry No.16 at (Ex.09/F), roznamcha entry No.17 at (Ex.09/G), mashirnama of arrest of accused Shrimati Jami at (Ex.09/H), roznamcha entry No.12/19 at (Ex.09/J), Chemical Examiner Report at (Ex.09/K) and roznamcha entry No.05/20 at (Ex.09/L).

4. Statements of appellants under section 342 Cr.P.C. were recorded, wherein; they professed not guilty and claimed that they are innocent. However, the learned trial Court after full-dressed trial, found the appellants guilty and sentenced them in the manner as stated above; which they have impugned through the instant appeal, same was admitted for regular hearing.

5. At the outset, learned counsel for the appellants contends that this is a case of grave injustice as in the present case, there was no ocular account and circumstantial evidence; however, the appellants were convicted on the basis of extra-judicial confession recorded by the police officials, which is inadmissible under the law; in this regard, the learned counsel has referred the Article 38 of the Qanun-e-Shahadat Order, 1984. Learned counsel has contended that; in fact the instant case is of no evidence; therefore, the prosecution had to adduce strong convincing evidence to establish the prosecution case, which is lacking. Learned counsel by praying for acquittal of the appellants has relied upon the cases laws reported as: 'HAMID NADEEM v. THE STATE' [2011 SCMR 1233], 'MUHAMMAD MUKHTIAR alias MOJU v. THE STATE' [2010 P Cr. L J 1750], 'RAJAB ALI and another v. THE STATE' [2012

MLD 518] and 'TARQUE HUSSAIN and another v. The STATE and 4 others' [2018 MLD 1573].

6. In contra, learned Assistant Prosecutor General Sindh conceded that there is no evidence against the appellants but they admitted their guilt before police officials; however, he supported the impugned judgment.

7. Heard and perused the material available on record.

8. It is pertinent to mention here that in criminal administration of justice, trial Court is under obligation to *swift the grain from the chaff* after recording evidence. Conviction must be founded on unimpeachable evidence and certainty of guilt. Any doubt that arises in prosecution case must be resolved in favour of the accused. Reliance is placed on *2015 P.Cr.LJ 1603*.

9. Here in the present case candidly there was no ocular account to the dead body of Alam Chand which was recovered from rainy water standing near Railway Phatak but same was not on the pointation of the present appellants. Evidence of Ramesh and Rajomal was recorded, both these witnesses are not eye witnesses; hence, they have not linked present appellants with concrete evidence. Where there is no direct evidence to show as to in what circumstances victim was murdered, the Court has to discharge its onerous duty of determining whether the death was caused by the felonious act of some other person and, if so, what offence, if any, had been committed by such a person and it was not sufficient in such a case to say that since there was no direct to --

10. Medical Evidence is showing kicks and fists blows. Suffice to say the medical evidence can only point out nature of injuries and weapon used, cannot directly connect the appellants until and unless corroborated by the ocular evidence or circumstantial evidence. There is only one iota of evidence relied by

the trial Court, which is statement before the police officials, therefore, learned counsel has rightly referred to article 38 of the Qanun-e-Shahadat Order, 1984, which speaks as under:-

*“38. Confession to police officer not to be proved.
No confession made to a police officer shall be proved as against a person accused of any offence.”*

11. In view of Articles 38 of Qanun-e-Shahadat Order, 1984 admission of guilt before the police officials is inadmissible; however, the fact with regard to recovery by subsequent facts is inadmissible under Article 40 of the Qanun-e-Shahadat Order, 1984. It is settled principle of law that the disclosure before the police has no legal value under the provisions of Qanun-e-Shahadat Order, 1984. In this case the alleged confession of accused during police investigation while in custody has no evidentiary value and same cannot be used against him and no weight can be given to such disclosure of accused. Information or disclosure of any accused in custody of the police before a police officer is inadmissible/irrelevant under Article 38 and 39 of Qanun-e-Shahadat, Order 1984. Reliance is placed on **2017 P.Cr.LJ 479**.

12. Here in the present case mere admission of guilt before the police officials is based to connect the appellants with the commission of offence without considering the fact that there was no recovery of incriminating article(s) or any cogent and convincing circumstantial material. The conviction cannot be based on extra judicial confession when admittedly same is not corroborated by other reliable evidence. The extra-judicial confession before police officials is regarded to be a weaker type of evidence by itself, therefore, greatest care and caution has to be exercised while relying on such extra-judicial confession keeping in mind to assess the other aspects of the case. It has been held in the case of Muhammad Aslam and another v. The State reported a **2003 SCMR 862** that an

extra-judicial confession allegedly made by accused is of no value if it was made before two persons at the same time. Extra-Judicial confession is a weak piece of evidence. It must be shown that it was made, and made voluntarily and further that it was made truly.

13. In the present case, admittedly the dead body was not recovered on the pointation of appellants nor were they produced before a Magistrate for recording their confessional statements to make it credible piece of material for using the same against them. Even no recovery was affected from the appellants. In the like cases, it is prime duty of Investigating Officer to conduct investigation with full care and cautions and collect evidence by unbroken chain-to-chain from the last seen upto the incident with credible and convincing evidence from all corners. When such circumstantial evidence is firmly collected leaving no lacuna, it could be based to convict the culprits. It is held in the case law reported as 2008 P.Cr.LJ 1075 that chain of evidence in a case of circumstantial evidence should be in a geometrical progression touching from one to the dead body and from other side to the next of accused in shape of motive, last seen evidence, recovery of dead body, extrajudicial confession, pointing of place of occurrence by the accused and recovery of weapon of offence, if any, and if one link of the chain is missing the whole evidence would be discredited and the prosecution case would fall on the ground. In the instant case, it is not so as discussed above.

14. So far motive of the incident, as alleged, is that the deceased had seen illicit terms between both the appellants but the complainant Rejomal deposed in his cross-examination that *"It is correct to suggest that I am not obtained confirmation about illicit relationship between accused Shrimati Jaami and Rehman Gul from any person of locality. It is correct to suggest that her husband of Shrimati Jaami had not made any complaint to any one or even to*

the police about illicit relationship of both the accused." On appraisal of this piece of evidence of the complainant, it appears that the complainant himself is not sure about the motive taken in the instant case which allegedly resulted murder of deceased as per prosecution story. Motive is energetic source of mind which provides propelling force and gives impetus to perform any action or to do any act. Motive is the cause, manner and method of thoughts in the mind of a person for performing action which is hidden in the mind of accused. Lack of, absence, inadequacy, weakness of the motive, if any set up by the prosecution and failure to prove it or the motive shrouded in mystery, are not the grounds to withhold penalty of death or to order sentence of life imprisonment, if prosecution has succeeded to prove its case beyond any reasonable doubt. Motive not established, confession of accused was extra-judicial confession, as such carried no weight. Conviction and sentence is set aside and accused acquitted. Reliance is placed on **2017 YLR 648**.

15. Therefore, I observe that while appreciating evidence adduced by the prosecution, the prosecution must stand on its own legs and prove the case against the accused beyond reasonable doubt as its burden lies heavily upon the prosecution. It is not sufficient merely saying that murder has been committed by the accused but the judicial mind must be satisfied that the accused has committed the offence demonstrating with concrete and tangible evidence particularly when the offence is unseen, in such a case, the prosecution must put in chain-to-chain from last seen upto the offence the involvement of the accused with credible and believable substance. Where the prosecution failed to bring home the guilt of accused beyond reasonable doubt, conviction recorded and sentence awarded to accused by the trial Court could not be sustained. Reliance is placed on **2014 MLD 1050**.

16. Accordingly the learned trial Judge has failed to appreciate legal proposition as referred above; hence, impugned judgment cannot be maintained in any way. As a result of the above, present appeal is allowed. Impugned judgment dated 06.08.2018 is hereby set-aside. Both the appellants were ordered to be released forthwith, if not required in any other custody case. These are the reasons for my short order dated 18.04.2022.

JUDGE

Abdullah Channa/PS