

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No. 342 of 2017

Appellant : Alam Zaib @ Loe Lala
through Ms. Abida Parveen Channar, Advocate

Respondent : The State
through Mr. Zahoor Shah, DPG

JUDGMENT

Omar Sial, J: Sher Wali, who was the owner of a travelers lodge named Mehmund Musafir Khana, was informed at 1:30 a.m. on 30-12-2014 by a traveler named Taufiq (who was also resident in the lodge at that time), that Loe Lala (which ostensibly was the alias of the appellant Alam Zaib), had hit a fellow traveller who was sleeping with a stone. Sher Wali went to check the situation and saw that the victim was bleeding from his mouth and nose and was in an unconscious state. The victim was dispatched in an ambulance to the Abbasi Shaheed Hospital where he was pronounced dead. F.I.R. bearing number 153 of 2015 was registered at the F.B. Industrial Area police station under section 302 PPC on the complaint of Sher Wali on 30.12.2015 at 0500 hours.

2. Sher Wali, the complainant, was examined as the first prosecution witness. Toufiq Afridi, who was said to be the only eye witness was examined as the second prosecution witness. Shoukat Ali was the third prosecution witness. He was the person Sher Wali is said to have called after the incident and the person who ostensibly informed the police. S.I. Niaz Ali Jiskani was the fourth prosecution witness who had arrested the accused and prepared memo of arrest. I. A.S.I. Syed Irshad Ali was the fifth prosecution witness. He was the police officer who had reached the place of incident first and had conducted the preliminary formalities. S.I. Abul Kalam was the sixth prosecution witness. He was the investigating officer of the case. Dr. Shahid Nizam, the seventh prosecution witness was the doctor who conducted the post mortem.

3. I find it strange that even though Sher Wali claimed that he owned the Musafir Khana and that the deceased was also resident there, Sher Wali could not and in fact did not reveal the identity of the deceased to the police till the registration of the F.I.R. To the contrary, he recorded in the F.I.R. that it was impossible for him to identify the deceased but that from the lodge record he could be traced. He went on to record that

he did not know the name or residence of the deceased. At least till 1530 hours on 30.12.2015 (when the memo of inspection of scene of crime was prepared by the police) the identity of the deceased was unknown. This is unbelievable as the record shows that the appellant was arrested at 7:10 a.m. on 30-12-2015 and his identity is specifically stated in the memo of arrest. No evidence that Sher Wali had anything to do with the said Musafir Khana or that the said Musafir Khana even existed was produced at trial. To the contrary, while Sher Wali said at trial that he owned Mehmund Musafir Khana, the memo of inspection of place of crime shows that the name of the lodge was Awami Musafir Khana. Nor was any record of the guests staying there produced. Nor was any other guest or resident of the locality examined as witness. It could be reasonably presumed that the identity of the people staying at the Musafir Khana (it being a 1000 square yard plot where charpoys were kept for travelers) would be known to its owner and management and the fact that the same is shrouded in mystery adversely impacts the prosecution case. The mystery was deepened when Toufiq testified at trial that he knew the deceased and that he (the deceased) was ostensibly a regular guest at the lodge.

4. Sher Wali and Toufiq were both cited as witnesses to the inquest report and the memo of inspection of dead body ostensibly prepared by the police at the hospital. This fact does not reconcile with the testimony of Toufiq, who stated that he had accompanied the deceased to the hospital with the police while Sher Wali had gone off looking for the accused in another mobile directly from the place of incident – *“It is correct that after the incident I was in the police mobile. It is correct that Sher Wali was in another police mobile searching the accused.”* A third version was given by A.S.I. Syed Irshad Ali, who testified that he had sent the body to the hospital and that both Toufiq and Sher Wali had accompanied him to the police station. Further, Toufiq and Sher Wali were both said to be present in the immediate aftermath of the killing but while Sher Wali, till the time the F.I.R was registered expressed his complete inability to identify the deceased. Toufiq testified at trial *“it is correct that I know the deceased. Voluntarily says that since he used to stay in the same Musafir Khana and was a labour.”* It is rather incomprehensible as to why Toufiq too would not reveal the identity of the deceased to the police, even if it was to be rather unbelievably assumed that his identity was unknown to the owner of the lodge.

5. The memo of arrest records that the appellant was arrested by S.I. Niaz Ali Jiskani on the identification of Sher Wali. In his testimony however Jiskani stated that he had arrested the appellant on the identification of Toufiq. According to Jiskani, he was

informed about the incident by his police station and when he reached the place of incident he saw that A.S.I. Irshad was already present on the spot. A.S.I. Syed Irshad Ali however gave a different version at trial stating that he was at the police station when he received a call from Jiskani informing him that an unknown person had killed an unknown person and that he should reach the place of incident. S.I. Abul Kalam was the author of the memo of inspection in which he had specifically recorded that there was no Mehmud Musafir Khana board at the place of incident. In his testimony however he stated that there was a board on the spot.

6. As mentioned above, the identity of the deceased was also shrouded in mystery. No document was produced or witness examined in this regard. While Toufiq stated that the identity was known to him at the time of the incident, Sher Wali apparently got to know some time later. The testimonies of the witnesses is not supported by the Death Report issued by the KMC Graveyard Section, the certificate of which shows that an unknown person was buried by them on 10-1-2016 and that the body was received by them on 29-12-2015 at 4:00 a.m. No forensics were conducted to match the blood on the stone and mattress with that of the deceased.

7. In view of the above, no confidence inspiring, reliable and trustworthy evidence was produced at trial to establish the nexus of the appellant with the crime. I am of the opinion that the prosecution was unable to prove its case against the appellant beyond reasonable doubt. The benefit of such doubt should have gone to the appellant in accordance with well-established principles of law. Accordingly, the appeal is allowed and the appellant is acquitted of the charge. He may be released forthwith if not required in any other custody case.

JUDGE