

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Jail Appeal No.S-256 of 2016

Date of hearing: 14.11.2022
Date of decision: 21.11.2022
Appellant: Sharfuddin @ Sharfo,
Through Mr. Niaz Muhammad Ghanghro,
advocate
The State: Through Mr. Nazar Muhammad Memon,
Addl.P.G Sindh.

JUDGMENT

MUHAMMAD IQBAL KALHORO, J:- On 04.05.2010 at about 1715 hours at Phuleli Bazaar near Dehli Hotel Hyderabad, appellant in presence of complainant Muhammad Islam, his nephew Jibrán, inflicted a knife injury to his another nephew namely Muhammad Ali, brother of PW Jibrán on his chest, and left him bleeding, along with chhuri / knife, resulting into his death. FIR, however, was registered on 05.05.2010 at about 1200 hours which contains more or less same facts. On the day of incident viz. 04.05.2010, the police after receipt of information had reached the spot within half an hour of the incident at about 1745 hours and prepared inquest report. Then, body was brought at Liaquat University Hospital Hyderabad where, at about 06:15 p.m., postmortem of the deceased was conducted. The report (Ex.11/B) confirms an incised injury over heart of deceased caused by a sharp cutting weapon resulting in instantaneous death of the deceased. The appellant was arrested on 05.05.2010 at about 1600 hours from in front of his house situated in Hashmat Bano Town Hyderabad and on the same day as a result of interrogation he voluntarily led police party to his house and produced crime weapon i.e. chhuri and his clothes both stained with human blood. Such facts were duly recorded by the police in relevant dockets.

2. With such evidence, the challan was submitted and trial commenced after framing of the charge in which prosecution has examined as many as 07 witnesses to support its case and has produced all the necessary documents: FIR, relevant memos, postmortem report, positive chemical report in respect of crime weapon

and clothes of the accused confirming stains of human blood over them, etc. After closure of prosecution side, statement of appellant u/s 342 CrPC was recorded, he has simply denied the prosecution story without however leading any evidence in defense. The trial court, at the conclusion of trial, announced the judgment on 01.12.2016 convicting and sentencing the appellant u/s 302(b) PPC to suffer life imprisonment as Tazir and to pay compensation of Rs.2,00,000/- to the legal heirs of deceased as required u/s 544-A CrPC, in default, to suffer SI for 06 months more with benefit of Section 382-B CrPC. Hence, this appeal.

3. Learned defense counsel has argued that the appellant is innocent and has been falsely implicated in this case; the place of incident is not fully established by the prosecution as no human blood was either found there, nor any attempt was made to discover the same; the evidence of Medico Legal Officer and postmortem report show that the correspondent hole to the injury on clothes of the victim was not found which vitiates the entire trial; the positive chemical report in respect of crime weapon and clothes of the accused is of no effect as the evidence to suggest where, from date of recovery i.e. 05.05.2010 to the date of receiving the same by the Lab. i.e. 17.05.2010, the articles were kept, hence safe custody of those articles is not established. In support of his contentions, learned counsel has relied upon 2021 SCMR 1373, 2018 SCMR 506 and 2005 SCMR 1128.

4. On the other hand, learned Additional PG has supported the impugned judgment and has pointed out to evidence of the eyewitnesses to support his arguments.

5. I have considered submissions of parties and perused material available on record including the case law cited in defense. Prosecution has examined two eyewitnesses Complainant Muhammad Islam as PW-1 (Ex.06) and PW-2 Jibrán (Ex.07), who both were present at the spot at the time of incident. Their evidence is simple, direct and to the point, hence, confidence inspiring. They have described the whole incident without wavering at any place. They both have said that they were present with deceased Muhammad Ali on the day of incident at the place of incident when appellant Sharfuddin emerged from front side, armed with a chhuri, and accosted the deceased, who was standing by a 'Paan Cabin' and inflicted him a knife/chhuri blow on his heart and then escaped. In their cross examination, nothing has come on record

to stoke a streak of doubt to the story narrated by both the witnesses. They have stood firm and have been successful in dislodging attempt of the defense counsel aimed at discrediting their veracity.

6. Prosecution has further examined Arif as PW-3 (Ex.8), a witness to all memos prepared to record the relevant facts ranging from taking possession of dead body after postmortem, to memo of arrest of the appellant and recovery, etc. In his evidence, he has supported the preparation of all these documents in his presence and with his signature. In cross-examination, nothing to injure evidence adduced by him has come on record. Next is evidence of PW-4 Illahi Bux (Ex.09), who is IO of the case. He has stood by his word of visiting place of incident in presence of mashirs, arresting the accused, effecting recovery of incriminating articles from him and sending the same in sealed condition to the office of chemical analyzer for examination. He has produced relevant documents including report of chemical analyzer at Ex.14/A, which confirms his assertion to the effect that all the articles from 1 to 9 including clothes of the accused and bloodstained chhuri/knife were received by Chemical Analyzer in a sealed condition, examined and found stained with human blood. The relevant memos and evidence of IO establish the fact beyond doubt that these articles were sealed at the time of recovery and Lab report shows that they were received in the same condition. Therefore, there is no question of tampering with the same or any doubt about their safe custody meanwhile. The articles sealed at the spot and received by the relevant Lab in sealed condition would tend to dislodge any assumption of manipulation or tampering, meanwhile, with the same from period of sealing to the time when the articles were received at Lab.

7. Next, prosecution has examined PW-5 Mst. Farzana (Ex.10), wife of deceased, who has revealed that prior to marrying with the deceased she was married with appellant who had divorced her suggesting the same could be a motive of the incident, although she has not specifically quoted the same to be as such the motive. The Medico Legal Officer Dr. Baldev (PW-6 Ex.11) in his evidence has confirmed death of the deceased by an incised stab wound over left side of chest of the deceased, 2.5 cm x 1 cm cavity deep. He has verified that this injury was caused to the deceased by a sharp cutting weapon and resulted into his death supporting, in the main, the narration of the incident stated by the eyewitnesses.

8. A collective glance over evidence of prosecution would show that the prosecution from all angles has been successful in establishing the case against the appellant. This is a daytime incident which occurred on a busy thoroughfare within sight of prosecution witnesses to whom the appellant was already known being previous husband of the wife of deceased. Non recovery of bloodstained earth from a busy road used day in and day out is understandable and would not make prosecution case doubtful on this point. There is no ulterior motive to the witnesses to falsely implicate appellant in the murder of deceased, who was nephew and brother of the witnesses. The recovery of bloodstained clothes and chhuri and the positive chemical report in respect of which along with the postmortem report and the evidence of Medico Legal Officer have filled up whatever was left out in prosecution case. Nothing in fact is available on record suggesting that appellant has been booked in this case falsely out of any malafide. Objection raised in defense that prosecution has not examined any independent witness from the spot is irrelevant, in that the people in the murder case do not come forward to give evidence against the accused and secondly the witnesses examined by the prosecution are not the chance witnesses but being residents of same locality, their presence at the spot was but natural. Mere failure of Medico Legal Officer to mention corresponding hole to the injury in the postmortem report would not make the case doubtful against appellant who otherwise from overwhelming evidence of the witnesses appears to be connected with the alleged offence.

9. From above discussion, I am of the view that prosecution has succeeded in proving case against appellant beyond a reasonable doubt and the impugned judgment recording conviction and sentence of appellant is unimpeachable, on any ground, legal or factual, hence, the same is maintained. Consequently, the appeal is dismissed.

JUDGE