

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 907 of 2019

Criminal Appeal No. 908 of 2019

Appellant : Muhammad Imran
through Mr. Insaf Ahmed Shaikh, Advocate

Respondent : The State
through Ms. Robina Qadir, D.P.G.

Date of hearing : 14th November, 2022

JUDGMENT

Omar Sial, J.: A police party of the Saddar police station led by S.I. Malik Muhammad Hayat was on patrol duty on 02.12.2015 when at about 11:15 a.m. it heard noise of gun shots. The police reached the spot where the sound had come from and saw a woman and a minor child lying on the road whereas a man with a pistol in his hand was trying to board a rickshaw. The fleeing man was apprehended and a pistol recovered from him. Upon inquiry from the man, he told the police that the woman lying on the road was his wife and that he had shot her. This man was the appellant in these proceedings, Muhammad Imran. Both, the woman and subsequently the child, died. Imran was arrested and as the pistol he possessed was unlicensed, 2 separate cases were registered against him. F.I.R. No. 318 of 2015 under section 302 P.P.C. and F.I.R. No. 319 of 2015 under section 23(1)(a) of the Sindh Arms Act, 2013.

2. Muhammad Imran pleaded not guilty and claimed trial. **PW-1 S.I. Malik Muhammad Hayat** was the first responder. **PW-2 A.S.I. Muhammad Iqbal Amjad** was a traffic constable who was an eye witness. **PW-3 S.I. Arif Shah** was the police officer who arrived first at the morgue where the dead bodies had been taken. He inspected the dead body and prepared the inquest report. **PW-4 S.I. Muhammad Anwar** was a witness to the inspection of place of occurrence and arrest of appellant as well as recovery

of crime weapon. **PW-5 Dr. Shumaila Siddiqui** did the post mortem on the woman. **PW-6 Dr. Kaleem** provided medical aid to the child until he died. **PW-7 Abdul Rasheed** was the dead woman's brother. **PW-8 Inspector Nazar Abbas** was the investigating officer of the case. **PW-9 Muhammad Siddique** was a witness to the inspection of dead bodies and the inquest report. In his section 342 Cr.P.C. statement the appellant professed innocence, denied all wrong doing and further stated that his wife was illegally living with a man by the name of Mohammad Arif.

3. At the end of the trial, the learned 1st Additional Sessions Judge, Karachi South on 24.12.2019, through 2 separate judgments, found the appellant guilty as charged and sentenced him to a life in prison and a fine of Rs. 300,000 (or in default of payment stay a further period of 6 months in prison) for having committed an offence punishable under section 302(b) P.P.C. He was also found guilty of an offence under section 23(1)(a) of the Sindh Arms Act, 2013 and sentenced him to 7 years in prison and a fine of Rs. 50,000 or a further period of 3 months in prison. The appellant has filed Criminal Appeal Nos. 907 of 2019 and 908 of 2019, respectively, challenging the 2 convictions. As both cases emanate from the same transaction, both appeals will be disposed of through this judgment.

4. The learned counsel for the appellant has argued that the whole story of the appellant being caught on the spot trying to flee was a concocted one and nothing of the sort had happened; the fact that none of the dead woman's relatives became a complainant in the case was also suspicious according to the learned counsel. He submitted that the appellant had no motive to kill his wife; she was in any case living with another man by the name of Arif and that the fact that there were no independent witnesses nor was the rickshaw driver examined, also created massive doubt in the prosecution case. The learned DPG on the other hand was of the view that there were 3 eye witnesses to the incident who had no enmity or ill-will towards the appellant, they were all natural witnesses; the appellant had shot his wife due to an estranged relationship and the baby had died as his head hit the road when he dropped from his mother's

embrace. The learned DPG thus whole heartedly supported the impugned judgments. None appeared on behalf of the complainant despite notice. I have heard the learned counsel for the appellant as well as the learned DPG and have also reviewed the record. My findings and observation are as follows.

5. Although the police party on duty did not see the actual fires being shot, S.I. Malik Mohammad Hayat had reached the spot in its immediate aftermath. He had himself seen the appellant attempting to flee in a rickshaw. The only objection which the appellant's counsel raised in his testimony was that the officer did not try to associate any private witness and that the memo of recovery he had made did not record the inscription found on the seized pistol. The police officer's evidence at trial does not reveal any reason why he would falsely implicate the appellant. Neither was any enmity, friction, ill-will or dishonesty of the police officer expounded upon when he was cross examined. If, for arguments sake, Malik Mohammad Hayat had made up a story, there was still no reason for Mohammad Iqbal Amjad, the traffic constable on duty at the time, to also give false evidence of what he had seen. This witness also saw the woman and child lying on the ground and the appellant trying to flee in a rickshaw with a pistol in his hand. The arrest as well as recovery were made in front of him. The learned counsel's argument that the constable Mohammad Iqbal Amjad did not produce his duty roster at trial and hence could not be believed, to me is an argument devoid of any weight. Nothing of substance was derived from this witness in his cross examination that would go in the appellant's favour. I find these witnesses to have given honest testimonies. Both had valid and logical reasons to be on the spot at that date and time. Nothing came on record that could suggest that the 2 witnesses lied to the court or that they had an axe to grind with the appellant and hence falsely framed him. All initial steps taken in the detection, arrest, recovery and registration of the case were done promptly leaving little room for any manipulation. I see no reason why the testimony of the 2 aforementioned

witnesses should not be relied upon to uphold the conviction and sentence of the appellant.

6. The medical evidence led at trial shows that the woman had died due to a single bullet injury on her head whereas the baby had died due to falling on the road. This reconciles completely with the ocular version. In fact the manner in which the occurrence was reported and the medical evidence that followed adds much weight to the prosecution case. It appears that the motive of the appellant was to only kill his wife but as an accident the baby died too by falling on to the road. I am not inclined to agree with the learned counsel that the appellant had no motive to kill his wife. To me, what the counsel has taken as a defence for his client i.e. that the wife was living with another man by the name of Arif, is motive enough for a male chauvinist to kill his wife as his "honor" would not allow it. As regards the learned counsel's argument that none of the family members of the woman were witnesses at trial, the answer is contained in the evidence of Abdul Rasheed, the brother of the deceased woman. He told the court that the family was annoyed with the woman for living with Arif and that they had also moved an application with the police station in this regard. It is pertinent to mention though that according to Muhammad Siddique, the uncle of the appellant, the woman had been living with her parents. Even if Siddique's version was true, it would mean that the family of the deceased had even less of a reason to kill her. It was an unfortunate woman who had been isolated by her family for perhaps falling in love with another man and killed by her jilted husband. While the learned counsel did not raise the plea that the family members of the woman had killed her, there was also no evidence produced at trial to even remotely show the same. It is also not unusual to see in recent years that independent members of the public, except in rare case, do not want to involve themselves with criminal cases that have nothing to do with them. While not the ideal situation, keeping in view the protracted trials and the resultant police harassment, perhaps their reluctance cannot be completely denounced. The facts of the case were such i.e. 2 independent police

officers seeing the immediate aftermath of the occurrence, that I am of the view that no independent person or the rickshaw driver being examined at trial, will not adversely impact the prosecution case.

7. The prosecution case is that when the appellant was arrested he was in possession of an unlicensed weapon. This unlicensed weapon as also said to be the crime weapon. The empty recovered from the place of incident was sent to the forensic laboratory for analysis on 04.12.2015 i.e. on the second day after the incident and the laboratory vide its report dated 07.12.2015 confirmed that the empty recovered was of a bullet fired from the weapon which was in possession of the appellant at the time of the arrest. In the circumstances of the present case, I do not see any reason why a pistol would be foisted upon the appellant by the police. He was admittedly not able to produce a license for the weapon and thus an offence under section 23(1)(a) Sindh Arms Act, 2013 was complete, in addition to the recovery of the murder weapon.

8. Keeping the evidence led at trial in mind, I am of the view that the prosecution had proved its case against the appellant beyond reasonable doubt. I see no reason to interfere with the judgments of the learned trial court. Both appeals stand dismissed.

JUDGE