IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Appeal No.S-08 of 2018

Date of hearing:	02.12.2022
Date of decision:	02.12.2022.
Appellants:	Muhammad Umer and Mst Rukhsana (both on bail), Through Syed Zafar Ali Shah advocate.
Complainant:	Ahmed Khan, Through Mr. Ghulamullah Chang advocate.
The State:	Through Mr. Nazar Muhammad Memon, Addl.P.G.

JUDGMENT

MUHAMMAD IQBAL KALHORO, J.- Appellants stood a trial in Sessions Case No.01/2017 arising out of Crime No.146/2016 of PS Tando Ghulam Ali u/s 302, 201, 34 PPC, against allegations of murdering deceased Haji Khan alias Hajjan son of complainant Ahmed Khan and causing disappearance of evidence to screen themselves from the legal punishment, have been convicted u/s 302(b)/34 PPC to suffer life imprisonment, in addition, to suffer 05 years imprisonment and to pay fine of Rs.50,000/- each u/s 201/34 PPC, in default to pay fine, further undergo 06 months SI with benefit u/s 382-B CrPC and concurrent running of sentneces, vide impugned judgment dated 20.12.2017 passed by learned 2nd Additional Sessions Judge Badin, which they have challenged by means of this appeal.

2. As per brief facts, the incident took place on 10.10.2012, however, FIR was registered on 01.12.2016 by father of deceased, after 04 years, against appellants, one of whom Mst. Rukhsana is wife of the deceased, wherein he has given a detail of the story as to how he came to know about involvement of the appellants in the murder of his son. He has stated that initially when his son disappeared, Mst. Rukhsana, his wife, had told him that he had gone to Karachi for earning purpose but then on 30.03.2016 his son, PW Asghar and cousin Abdul Jabbar had found one skull in jungle which, on DNA report, was identified to be of his said son. Then, on 26.11.2016 his brother Ali Hassan and he overheard appellants Mst. Rukhsana and Muhammad Umer, conversing inside the house, about DNA report and their involvement in murder of the deceased, and that they should be ready to face the consequences.

3. On the basis of such FIR, appellants were arrested on 07.12.2016 and during investigation confession of appellant Mst. Rukhsana dated 09.12.2016 was recorded to the effect that appellant Muhammad Umer was in

love with her. He had come to meet her on the night of incident, when her husband woke up, upon which, Muhammad Umer committed his murder and threatened her not to disclose this fact to any one otherwise he would kill her children. On the basis of such evidence, appellants were referred to the court u/s 173 CrPC for a trial, in which, prosecution, in order to prove the charge, examined 09 PWs and produced all necessary documents including FIR, Memos, 164 CrPC statement of appellant Mst. Rukhsana, DNA report, Sketch of Place of Incident etc. In their statement u/s 342 CrPC, appellants have denied the prosecution case without, however, leading any evidence in defense. Appellant Mst. Rukhsana has categorically retracted her confession and has stated that police had compelled her to confess or to face consequences. After a full-dressed trial, trial court has convicted the appellants and sentenced them in the terms as stated above.

4. I have heard learned counsel for the parties and perused material available on record. Learned defense counsel has argued that there is absolutely no evidence against appellants; that the entire case is based on alleged judicial confession of appellant Mst. Rukhsana but that it was recorded after 04 years of incident, sufficient to indicate that it was not voluntary. Moreso, it has been retracted. Apart from that no independent and corroborative piece of evidence has been found indicating involvement of the appellants.

5. Learned counsel for complainant has admitted that there is absolutely no evidence against appellants and has given in fact no objection to their acquittal.

6. However, learned Additional PG by pointing out to confession of Mst. Rukhsana has supported the impugned judgment, but has not been able to rebut the fact that this confession was recorded after 04 years of incident and only after FIR was registered against appelalnts on the basis of a conversation between them overheard by complainant and his brother, a witness, discussing about DNA report and their part in killing the deceased. This alleged episode took place on 26.11.2016, yet complainant went to police to register FIR on 01.12.2016, after 05 days, without any explanation. When complainant was examined as PW-1, he has not referred to such episode or the fact that he and his brother PWs had overheard both the appellants admitting murder of the deceased. In FIR, complainant has stated that they had overheard such conversation by standing outside of the house and keeping ear over the wall. But PW-2, who has quoted such conversation in evidence, has deposed that they had entered the house of Mst. Rukhsana and overheard such conversation by standing outside of the room. Although, the extra judicial confession is a weak type of evidence in itself but the way the witnesses have conducted

themselves and contradicted each other in describing the same, as indicated above, plus delay of 05 days in reporting the same, has made the extra judicial confession, allegedly made by the appellants totally unreliable.

7. The other piece of evidence is judicial confession of appellant Mst. Rukhsana. She has retracted the same in her statement u/s 342 CrPC and has stated that she was compelled by the police to do so, else to face the consequences. Appellant Mst. Rukhsana was arrested on 07.12.2016 and was produced before Magistrate, after 02 days, on 09.12.2016, for judicial confession. She remained mum for 04 years and never ever thought of admitting the guilt before and disclosing her part in the story. But, suddenly after being implicated in the case as accused and her arrest, she went on admitting the guilt before the Magistrate, which: the time afflux of four years plus FIR and her arrest, is sufficient to show that her confession was not voluntary. A voluntary confession would mean that a person is admitting the offence by responding to a call of his or her conscience without any compulsion or duress, etc., and is made normally, immediately after the incident and not after a long time of incident, and only after arrest. A person who admits offence after 04 years cannot be said to be responding to call of his/her conscience, nor it can be believed that he/she has got suddenly remorseful of his/her said deed, is feeling burden on his/her conscience and has voluntarily appeared in the court to confess his/her crime. Therefore, in my view, the confession made by appellant Mst. Rukhsana cannot be termed to be voluntary and be relied upon to maintain conviction. Moreso, except her confession, there is absolutely no evidence corroborating her story or the manner in which the incident is described by her to have been executed. This is perhaps the reason why learned counsel for complainant has frankly given his no objection to the acquittal of appellants.

8. I am also of the view that in absence of independent and corroborative evidence supporting the story of confession made by appellant Mst. Rukhsana, she and appellant Muhammad Umer cannot be convicted merely on the basis of such confession, already retracted and which does not appear to be voluntary. I am, therefore, of the view that the prosecution has not been able to prove the case against appellants beyond a reasonable doubt.

9. Consequent to above discussion, this appeal is allowed, the impugned judgment is set-aside and appellants are acquitted of the charge on a benefit of doubt. They are on bail, their bail bonds are cancelled and surety discharged.

JUDGE