

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
**Criminal Jail Appeal No.S-01 of 2021**

**Appellant**                      Ali Asghar son of Dost Muhammad  
   bycaste Mahar.  
   Through Mr. Shabbir Ali Bozdar,  
   Advocate.

**The State**                      Through Syed Sardar Ali Shah Rizvi,  
   Additional Prosecutor General for the  
   State.

**Date of hearing**              18-10-2023

**Date of decision**            18-10-2023.

**J U D G M E N T**

**IRSHAD ALI SHAH, J-** It is the case of the prosecution that the appellant and absconding accused Abdul Ghafoor in furtherance of their common intention committed murder of Arbab alias Asif Ali Shah by causing him injuries with some hard and blunt substance and then thrown his dead body in heap of *Palal* in order to cause disappearance of evidence to save themselves from legal consequences, for that the present case was registered. On conclusion of trial, the appellant was convicted u/s 302 (b) PPC and sentenced to undergo rigorous imprisonment for life as Ta'azir and to pay compensation of Rs. 1000,000/- (Ten lacs) to the legal heirs of the deceased and in default whereof it was ordered to be recovered as arrears of land revenue; he was further convicted u/s 201 PPC and sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs. 100,000/- (One lac) and in default whereof to undergo simple imprisonment for six months; both the sentences were directed to run concurrently with benefit of section 382(b) Cr.P.C by learned Additional Sessions Judge/MCTC, Ubauro vide judgment dated 31-12-2020, which he has impugned before this Court by preferring the instant Crl. Jail Appeal.

2. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the complainant party; the FIR of the incident has been lodged with delay of about 09 days, lathi has been foisted upon the appellant and evidence of the PWs being doubtful in its character has been believed by learned trial Court without assigning cogent reasons, therefore the appellant is entitled to be acquitted of the charge by extending him benefit of doubt. In support of his contention he relied upon case of *Muhammad Abid Vs. The State and another (PLD 2018 SC 813)*.

3. None has come forward to advance arguments on behalf of the complainant. However, learned Additional Prosecutor General for the State by supporting the impugned judgment has sought for dismissal of instant CrI. Jail Appeal by contending that the prosecution has been able to prove its case against the appellant beyond shadow of doubt by producing reliable evidence. In support of his contention, he relied upon case of *Ghulam Nabi Vs. The State (2007 SCMR 808)*.

4. Heard arguments and perused the record.

5. It was stated by complainant Shabbir Ahmed Shah, PWs Ghulam Hyder Shah and Mumtaz Ali Shah that on 15-11-2013 they and deceased Arbab alias Asif Ali Shah when were available at their Otaq, there came the appellant and absconding accused Abdul Ghafoor; they were followed by two more culprits; they called deceased Arbab alias Asif Ali Shah, who went to meet with them, but did not return; then they went to the appellant and absconding accused Abdul Ghafoor; they told them that the deceased after meeting with them had gone back; they made search for the deceased but failed. It was further stated by them that on 23-11-2023 they again went to the appellant and absconding accused Abdul Ghafoor and asked from them on

Holy Quran as to what has happened to Arbab Ali Shah; on that they told them that they by committing his murder have concealed his dead body in heap of *palal* lying at the land of Ghulam Hussain Leghari; on being annoyed as they were refused *harap* by them. It is unusual that the culprits involved in the incident would admit their guilt publicly that too before the complainant party. It was further stated by them that they then went at the land of Ghulam Hussain Laghari, there they found lying the dead body of Arbab Ali Shah in heap of *palal*.; police also arrived there; the dead body of the deceased was taken to Taluka Hospital Daharki for post mortem. It was conducted by Dr. Shabbir Ahmed Dayo. It was further stated by them that after post mortem, the dead body of the deceased was given to them, which they took to their native place for burial and on 24-11-2013, they lodged report of the incident with PS Dad Laghari. It was lodged with delay of one day even to the recovery of the dead body of the deceased; such delay having not been explained plausibly could not be over looked; it is reflecting consultation and deliberation. Admittedly the complainant and his witnesses have not seen the appellant or absconding accused Abdul Ghafoor committing the death of the deceased, there evidence is only to the extent that they lastly seen the deceased in the company of the appellant and absconding accused Abdul Ghafoor. The last seen evidence normally is to be treated as weak in its character. If for the sake of arguments, it is believed that deceased after having gone with the appellant and absconding accused Abdul Ghafoor did not return, then it was obligatory upon the complainant party to have reported his missing to the police promptly, which they failed to report for considerable period, such omission on party of complainant party prima-facie suggests that the story of last seen evidence has been set up by them only to strengthen their case. PW Ghulam Hussain in whose

land, the dead body of the deceased was lying in heap of *palal* has not been examined by the prosecution. His non-examination could not be over looked. It was stated by I.O/SIP Sukhio Khan that on investigation, he apprehended the appellant who by admitting his guilt led to recovery of lathi allegedly used by him in commission of incident. Such recovery was made on 5<sup>th</sup> day of the arrest of the appellant. It was not found to be stained with blood; therefore, such recovery is to be judged with doubt. The recovery of lathi even otherwise is not enough to maintain conviction against the appellant in absence of reliable direct evidence. If for the sake of arguments, it is believed that the appellant actually has admitted his guilt before the said I.O/SIP even then such admission on his part in terms of Article 39 of Qanoon-e-Shahadat Order, 1984 could not be used against him as evidence. The appellant in his statement recorded under section 342 Cr.P.C has pleaded innocence by denying the prosecution's allegations against him; such plea of innocence on his part could not be lost sight of in the circumstances of the case.

6. The conclusion, which could be drawn of above discussion would be that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt and to such benefit he is found entitled.

7. In case of *Mehmood Ahmed & others vs. the State & another* (1995 SCMR 127), it was observed by the Apex Court that;

*"Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate".*

8. In case of **Tahir Javed vs. the State** (2009 SCMR-166), it was observed by Hon'ble Court that;

*“---Extra-judicial confession having been made by accused in the presence of a number of other persons appeared to be quite improbable, because confession of such a heinous offence like murder was not normally made in the public”.*

9. In case of *Muhammad Jamil vs. Muhammad Akram and others* (2009 SCMR 120), it has been observed by the Apex Court that;

*“When the direct evidence is disbelieved, then it would not be safe to base conviction on corroborative or confirmatory evidence.”*

10. In the case of *Muhammad Mansha vs. The State* (2018 SCMR 772), it was held by the Apex Court that;

*“4...Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".*

11. The case law which is relied upon by learned Additional Prosecutor General for the State is on distinguishable facts and circumstances. In that case, beside last seen evidence there was judicial confession of the accused. In the instant matter, there is no judicial confession of the appellant.

12. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellant under impugned judgment are set aside, consequently, he is acquitted of the offence for which he was charged; tried, convicted and sentenced by learned trial Court and shall be released forthwith, if not required to be detained in any other custody case.

13. The instant Criminal Jail Appeal is disposed of accordingly.

**J U D G E**

