IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Appeal No.S-71 of 2020

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Present:
Mr. Justice Zulfiqar Ali Sangi.

Appellants:		Manzoor Ahmed son of Abdul Kareem by caste Lohar, through, Mr. Achar Khan Gabol, advocate for appellant
State through:		Mr. Aftab Ahmed Shar, Addl. P.G
Date of hearing	:	**16.10.2023**
Date of decision	:	**16.10.2023**

J U D G M E N T

Zulfiqar Ali Sangi, J.– The appellant/accused named above has filed instant Crl. Appeal, whereby he has impugned the judgment dated 05.11.2020 passed by Additional Sessions Judge-III (MCTC-II) Sukkur, in Sessions Case No. 455 of 2020 (Re. The State v. Manzoor and another) arising out of FIR No. 02/2020 offence u/s 302, 311 & 34 PPC registered at P.S New-Pind Sukkur, whereby he was convicted and sentenced to suffer imprisonment for life and to pay compensation of Rs. 500,000/- to the legal heirs of deceased Mst. Fakhar-un-Nisa, in terms of Section 544-A Cr.PC. In case of default of payment of compensation amount, the appellant/accused shall undergo S.I for six months more with benefit of 382-B Cr.P.C, hence he preferred the instant appeal.

2. Precisely, the case of prosecution as unfolded in the FIR lodged by ASI Irshad Ali at PS New-Pind Sukkur on 10.01.2020 at 1830 hours are that on 09.01.2020 he along with his sub-ordinate staff members, left PS vide roznamcha entry No. 10 at 1600 hours for patrolling purpose on foot. After patrolling at difference places when they reached at New-Pind Graveyard, where he received spy information that accused Manzoor Ahmed son of Abdul Kareem Lohar along with his cousin Nazeer Ahmed and one un-known companion have committed the murder of Mst. Fakhar-un-Nisar (wife of accused Nazeer Ahmed) on the pretext of Karap. On such, information police proceeded towards the house of accused Manzoor Ahmed situated at Chona Bhatta New-Pind Sukkur. At about 1730 hours, they reached at pointed place where they saw and identified accused Manzoor Ahmed and Nazeer Ahmed who on seeing the police party escaped away. Police party tried to apprehend them but could not succeed. Police party found accused Nazir Ahmed duly armed with TT pistol. Police party conducted search of the house of accused, where they found a dead body of Mst. Fakhar-un-Nisa having firearm injuries over her body. After observing necessary formalities, the dead body was shifted to Civil Hospital Sukkur through PC Muhammad Yasin, while

remaining police party returned back to P.S. Police party tried to arrest the accused but could not succeed. Since, none from the LRs of deceased have approached for lodgment of FIR, as such, complainant lodged FIR against the above named accused on behalf of State.

3. On the conclusion of usual investigation, challan was submitted against the appellant/accused and another for offence U/S 302, 311 & 34 PPC.

4. After completing legal formalities, the trial Court had framed charge against accused to which he pleaded not guilty and claimed to be tried.

5. In order to prove accusation against accused, the prosecution has examined in all 04 witnesses, they have produced certain documents and items in support of their evidence. Thereafter, the side of the prosecution was closed.

6. The appellant/accused was examined under section 342 Cr.PC, wherein he had denied the allegations leveled against him and pleaded his innocence. After hearing the parties and assessment of the evidence against the appellant/accused, the trial Court convicted and sentenced the appellant/accused as stated above against the said conviction he preferred this appeal.

7. Learned counsel for the appellant/accused argued that accused is innocent and has falsely been implicated in this case by the police to show their efficiency; that all the PWs are police officials hence they are set-up; that there is no any eyewitness of the incident as neither the complainant nor any other PWs have witnessed the occurrence; that the alleged property has been foisted upon appellant/accused; that all the PWs are police officials and no independent corroboration in shape of private witness is brought on record; that there are material contradictions in the evidence of prosecution witnesses with regard to recovery, sealing and safe custody, but those have not been taken into consideration by the learned trial Court while passing the impugned judgment; that the evidence adduced by the prosecution at the trial is not properly assessed and evaluated by the trial Court which is insufficient to warrant conviction against the appellant/accused; that the judgment passed by the trial Court is preserve and liable to be set-aside; that the trial Court has failed to appreciate the factual as well as legal aspects of the case while convicting the appellant/accused. Lastly he prayed that the appellant/accused may be acquitted by extending him the benefit of doubt.

8. Conversely, learned Additional Prosecutor General Sindh, opposed the aforementioned appeal on the ground that prosecution has successfully proved its case against the appellant/accused beyond a reasonable doubt and all the witnesses including complainant, IO/seizing officer have fully implicated the appellant/accused in their evidence recorded by the trial Court; that all the necessary documents including the entries of station diary, the memo of place of incident and recovery, FIR, FSL and post mortem report etc have been produced; that there appears no any *malafide* or ill-will on the part of police officials to falsely implicate innocent person; that during the cross-examination counsel had not shaken their evidence; that there are no major contradictions in the evidence of prosecution witnesses. Lastly he submitted that appellant/accused was rightly convicted by the trial Court and prayed that appeal of appellant/accused may be dismissed.

9. I have heard learned Counsel for the appellant/accused, learned A.P.G for the State and have examined the record carefully with their able assistance.

10. From the perusal of evidence of the complainant and eye witness/mashir prima facie, it appears they have not witnessed the accused while committing the murder of Mst. Fakhur-un-Nisa with their eyes and the appellant has been involved to the extent that he while seeing the police party/complainant party escaped away along with co-accused. During cross examination when complainant was asked as to whether he saw the appellant while making firing upon the deceased to which he stated that **"he did not see that which of the accused made fire shot upon the deceased Mst. Fakhar-un-Nisa and that accused Manzoor was empty handed at that time.** If for the sake of arguments, it is believed that the complainant and his witnesses actually were available at the place of incident at the time of commission of murder of deceased, then they ought to have resisted the murder of deceased, which they failed, which prima-facie suggest that actually they were not available at the place of occurrence. During cross examination complainant further stated that at the place of vardat "**none from the locality/neighbor were available there and they did not inquire from locality about the happening of the incident"**. The complainant party reached there on receipt of spy information with regard to the commission of incident. If this version is believed to be so, then it also makes the presence of the complainant and his witness at the place of incident to be doubtful. None from the legal heirs of deceased came forward to lodge FIR of the incident or even appeared before the investigation officer or the trial Court for recording their

evidence/statement. As per SIP Abdul Ghafoor, who conducted the investigation of the case, he secured blood stained earth, empties from the place of incident and last worn clothes of deceased. If it is believed that such recovery was there; even then it is not enough to maintain the conviction against the appellant when ocular against appellant has been found to be doubtful. Record further reflects that the recovered incriminating articles were sent to the Chemical Examiner's Laboratory on 19.02.2020 after the delay of 1 month and 10 days without furnishing any explanation. The positive report of the chemical examiner would not prove the case of prosecution. There is no direct evidence against the appellant which connect him with the commission of offence. All the PWs deposed that the appellant was seen by them empty handed and was available outside of the house. As per complainant's cross examination the dead body of the deceased lady was lying in one room of the said house. Mere presence outside of the house where incident took place being empty handed is not sufficient to award conviction in the case of capital punishment. It is settled law that the Court (s) must never be influenced with severity of the offence while appreciating evidence for finding guilt or innocence because severity of an offence could only reflect upon quantum of punishment. Therefore, even such like tragic cases, the Court (s) are always required to follow the legally established position that it is intrinsic worth and probative value of the evidence which plays a decisive role in determining the guilty or innocent and not heinousness or severity of offence. Moreover, IO has not deposed a single word that either the samples were deposited in to the Malkhana or the same were handed over to anyone for keeping the same in safe custody, which too creates very serious doubt in the case of prosecution. The investigation of the case in hand has been carried out in a casual and stereotyped manner.

11. Thus, in my view even when taking the prosecution case as a whole, and at its best, in terms of un-seen and un-witnessed incident. A murder case, should be like a well-knit chain, one end of which touches the dead body of the deceased and the other the neck of the accused. No link in chain of the circumstances should be broken and the circumstances should be such as cannot be explained away on any reasonable hypothesis other than guilt of accused person. Chain of such facts and circumstances has to be completed to establish guilt of the accused person beyond reasonable doubt and to make the plea of his being innocent incompatible with the weight of evidence against him. Any link missing from the chain breaks the whole chain and renders the same unreliable; in that event conviction cannot safely be recorded, especially on a capital charge. In the present case, chain is incomplete.

Therefore, I am unable to rely upon such type of evidence. Reliance is placed upon the case of Naveed Asghar and 2 others v. The State (PLD 2021 Supreme Court 600).

12. The rule of benefit of the doubt is essentially a rule of prudence which cannot be ignored while dispensing justice following the law. The conviction must be based on unimpeachable evidence and certainty of guilt and doubt arising in the prosecution case must be resolved in favour of the accused. The said rule is based on maxim. "**It is better that ten guilty persons be acquitted rather than one innocent be convicted"** which occupied a pivotal place in the Islamic Law and is enforced strictly because of the saying of the Holy Prophet (**PBUH)** that the "**mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent."** It is well settled law that the prosecution is bound to prove its case against the accused beyond any shadow of reasonable doubt, but no such duty is casted upon the accused to prove his innocence. It is also been held by the Superior Courts that the conviction must be based and found on unimpeachable evidence and certainty of guilt, and any doubt arising in the prosecution case must be resolved in favour of the accused. Reliance is also placed on case of **Naveed and 2 others vs. The State (PLD 2021 SC 600).**

13. After reassessment of the evidence, I have found that in the present case there are also a number of legal infirmities /lacunas, which have created serious doubt in the prosecution case. It is a settled principle of law that for extending the benefit of the doubt there do not need to be multiple circumstances creating doubt. If a single circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to such benefit not as a matter of grace and concession, but as a matter of right, as has been held in the case of Tariq Pervez v. The State reported as (1995 SCMR 1345), wherein the Hon'ble Supreme Court has held as under:-

> *"The concept of benefit of doubt to an accused person is deep-rooted in our country for giving him benefit of doubt, it is not necessary that there should 9 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 will be entitled to the benefit not as a matter of grace and concession but as a matter of right".*

14. The over-all discussion arrived at conclusion that the prosecution has miserably failed to prove the guilt against present appellant beyond shadow of any reasonable doubt. Resulting upon above discussion, I am of the judicious view that the learned trial Court has not evaluated the evidence in its true perspective and thus arrived at an erroneous

conclusion by holding present appellant as guilty of the offence. Thus, the instant Criminal Appeal is allowed, the conviction and sentence recorded against the appellant by way of impugned judgment could not sustain, the same are set-aside and the appellant is acquitted of the charge.

15. These are the reasons of my short dated 16.10.2023.

J U D G E

M.Ali/steno