

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Jail Appeal No. 504 of 2018

Appellant: Malik Shabbir Muhammad Awan through
M/S Abdul Qadir Soomro and Kashif Khan
Tanoli, advocates

The State: Mr. Khadim Hussain Khuharo, Additional
Prosecutor General Sindh

Date of hearing: 07.08.2023

Date of judgment: 07.08.2023

J U D G M E N T

IRSHAD ALI SHAH, J- The appellant is alleged to have committed murder of Tahir Nawaz his step son by causing him fire shot injuries for that he was booked and reported upon. On conclusion of trial, he was convicted under Section 302 PPC and sentenced to undergo rigorous imprisonment for life and to pay compensation of Rs.50,000/- to the legal heirs of the deceased and in default whereof to undergo simple imprisonment of 03 months with benefit of section 382(b) Cr.P.C by learned V-Additional Sessions Judge, Karachi West vide judgment dated 05.09.2018, which is impugned by the appellant before this Court by preferring the instant 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 police and evidence of the prosecution witnesses being doubtful in its character has been believed by the learned trial Court without lawful justification, therefore, the appellant is entitled to be acquitted by extending him benefit of doubt, which is opposed by learned Addl. PG for the State by supporting the impugned judgment by contending that the prosecution has been able to prove its case against the appellant beyond shadow of doubt.

3. Heard arguments and perused the record.

4. Admittedly, the appellant has himself lodged FIR of the incident against unknown culprits claiming to be stepfather of the

deceased. On 8th day of incident, Mst. Bano Bibi claiming to be real mother of the deceased by making an application with the police suspected the appellant and others to be involved for committing death of the deceased. As per I.O/SIP Riaz Ahmed excepting appellant, rest of the culprits suspected by Mst. Bano Bibi to be involved for committing death of the deceased have been let of by him. PW-Tariq who has alleged to have seen the appellant committing the death of deceased by causing fire shot injuries, on asking was fair enough to admit that his 161 Cr.PC statement was recorded by police after 20 days of the incident. No explanation to such delay is offered, therefore, his evidence could hardly be relied upon to maintain conviction for the reason that he apparently has been introduced in investigation by the police only to strengthen the case against the appellant. PW-Imran who as per IO/SIP Riaz Ahmed, besides PW Tariq, witnessed the incident has not been examined by the prosecution. The inference which could be drawn of his non-examination in terms of Article 129(g) of Qanun-e-Shahadat Order, 1984, would be that he was not going to support the case of prosecution. If for the sake of arguments, it is believed that the appellant during course of investigation has admitted his guilt before police even then same in terms of Article 39 of Qanun-e-Shahadat Order, 1984, could not be used against him as evidence. There is no recovery any sort from the appellant. The appellant has pleaded innocence by claiming to have been involved in this case falsely by the police at the instance of Mst. Bano Bibi. In these circumstances, it would be safe to conclude that the prosecution has not been able to prove the involvement of the appellant in commission of incident beyond shadow of reasonable doubt.

5. In case of *Abdul Khaliq vs. the State (1996 SCMR 1553)*, it was observed by Apex Court that;

"---S.161---Late recording of statements of the prosecution witnesses under section 161 Cr.P.C. Reduces its value to nil unless delay is plausibly explained."

6. In the case of *Muhammad Mansha vs. The State (2018 SCMR 772)*, it has been 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".

7. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellant by way of 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.

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

JUDGE