

# IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Appeal No. 331 of 2019

[Tanveer Ahmed .....v..... The State]

Date of Hearing : 01.08.2023  
Appellant through : Mr. Intikhab Ahmed, Advocate.  
Respondents through : Mr. Habib Ahmed, Advocate for the complainant.  
Mr. Hussain Bux Baloch, Addl. P.G.

## ORDER

**Zulfiqar Ahmad Khan, J:-** Through instant Criminal Appeal, the appellant has impugned the judgment dated 03.05.2019, passed by the learned Additional Sessions Judge-I Karachi South, in Sessions Case No. 349 of 2019, arising out of FIR No.299/2010, under section 397, 302 PPC at Police Station Frere, Karachi, whereby appellant was convicted and sentenced to suffer life imprisonment and fine of Rs.100,000/-. In default, the appellant has to undergo S.I. for 6 months. The benefit provided under Section 382-B Cr.P.C was also extended to the appellant.

2. The allegation against the appellant is that on 05.11.2009 at about 1900 hours he in conjunction with his absconding accused while committing robbery committed murder of deceased Waseemullah while making firing.

3. After framing of charge, the prosecution has examined as many as sixteen (16) witnesses. PW-01 Inamullah at Exh. 4, PW-02, Dr. Naseer Ahmed at Exh. 5, PW-03 Zubaida Begum at Exh. 7, PW-04 Mst. Bushra Rehman at Exh. 8, PW-05 Nasir Sami at Exh. 10, P.W. -6 Abdul Ghani at Exh. 11, PW. 7 Dr. Abdul Razzaq at Exh.13,

P.W. 8 Muhammad Shujaat Mirza at Exh. 16, PW-9 Dr. Muhammad Mudassir Shaikh at Exh. 18, P.W. 10 Tariq Roshan at Exh. 18, PW-11 H.C. Muhammad Shahbaz at Exh. 20, PW-12 Tariq Qayum at Exh. 21 PW-13 Shah Nawaz at Exh.22 PW-14 Nasir Sami at Exh. 25 and PW-15 Badshah Khan at Exh. 26 and PW-16 Manzoor Hussain at Exh.27, Thereafter prosecution side was closed vide Ex:28 and statements of appellant under section 342, Cr.P.C. was recorded at Exh. 29, who claimed his innocence, however, neither examined himself on oath nor led defense witnesses in support of their claim.

4. After observing all formalities and hearing the parties, the learned trial Court convicted the appellant through impugned judgment in the manner described in the operative part of this edict.

5. Learned counsel for the appellant, at the very outset, submits that though the appellant has a good case on merit but since he is aged about 50 years and is suffering from multiple diseases which are not curable inside jail so also is a lone bread earner of his family. He further submits that appellant has already served out major portion of his sentence; therefore, under the circumstances he would be satisfied and shall not press this Criminal Appeal if the sentence awarded to the appellant is reduced to one as already undergone.

6. Learned counsel for the complainant assisted by learned Addl. P.G. has opposed this appeal on merit. Learned counsel for the complainant argued that the prosecution witnesses deposed the factum of incident in their examination in chief and no major contradiction introduced on record in their cross examination. Learned counsel for the complainant further contended that in the

Identification Parade the witnesses picked up the accused to be the malefactor of the incident and the FSL report also supports the prosecution version that the car was hit by the bullet fired by the appellant. In these circumstances, he opposed for the grant of appeal rather requested for enhancement of the sentence awarded by the learned trial Court.

7. I have heard the arguments of learned counsel for the parties and perused the record. It is an admitted position that the prosecution witnesses during course of their deposition deposed the factum of alleged incident in their examination-in-chief and that the learned defense counsel exercised his all abilities to shake the confidence of the prosecution witnesses but they are (private witness but relatives of the deceased) stubborn on one point that the appellant is the person who fired upon the deceased while committing robbery. The Forensic Division Sindh, Karachi examined the car and opined (Examination Report is available at page 505 of the paper book) that the hole on the car bearing registration No.AMD 486 was caused due to the passage of fired projectile of fire arms. It would be worth to reproduce the opinion of the Forensic Science Laboratory issued by office of the Assistant Inspector General of Police Forensic Division Sindh Karachi which is delineated hereunder:-

“Opinion: The examination of case has revealed as under:-

1. The hole now marked as ENT (right side back door (cross) is caused due to the passage of fired projectile of fire arms.

2.Direction of fire was from right towards left.

8. These prosecution witnesses were subjected to lengthy cross-examination by the defence but nothing favourable to the appellant/convict or adverse to the prosecution could be brought on record. All the PWs remained consistent on each and every material point and successfully advanced the prosecution case so far as it relates to the homicidal death of deceased is concerned, the witnesses have given a reasonable explanation for their presence at the place of occurrence at the relevant time and have made consistent statements before the trial court which statements have inspired confidence. As far as the question that the private witnesses being relatives of the deceased, therefore, his testimony cannot be believed to sustain conviction of the appellant/convict is concerned, this Court has time and again held that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses unless previous enmity or ill will is established on the record to falsely implicate the accused in the case. The medical evidence available on the record corroborates the ocular account so far as the nature, time, locale and impact of the injury on the person of the deceased is concerned.

9. It is noted that appellant was convicted and sentenced to suffer life imprisonment with fine of Rs.100,000/-. Perusal of record reveals that the appellant is behind the bar since 19.10.2010. Nothing has come on record as to whether the appellant has ever remained involved in such type of cases or he was convicted. Moreover, the appellant/convict is behind the bars since 19.10.2010 no adverse complaint has been introduced on record from the jail authorities. It is expedient to mention here that the sentence awarded by the

learned trial Court would not meet the ends of justice reasoning that the appellant was neither named in the FIR nor any Huliya has ever been described. It further unfurls that the sketch prepared by the prosecution also does not match and concur with the record, therefore, keeping in view the mitigating circumstances, this Criminal Appeal is hereby dismissed, and the impugned judgment dated 03.05.2019 is maintained. Resultantly, the conviction and sentence awarded to the appellant is reduced to one as already undergone. Resultantly, the appellant Tanveer Ahmed son of Mir Muhammad, who is confined in Central Prison, is directed to be released forthwith, if not required in any other case.

Karachi  
Dated: 01.08.2023.

JUDGE

Aadil Arab.