IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Jail Appeal No. 227 of 2020

[Muhammad Ali ……v…… The State]

Date of Hearing	:	14.07.2023
Appellant through	:	M/s. Wiqas Ahmed Khan, Zaib un Nisa and Asif Rashid, Advocates.
Respondents through	:	Mr. Zahoor Shah, APG.

O R D E R

Zulfiqar Ahmad Khan, J:- Through instant Criminal Appeal, the appellant has impugned the judgment dated 18.02.2020, passed by the learned Additional Sessions Judge-I, Thatta, in Sessions Case No. 202 of 2016, arising out of FIR No.09/2016, under section 302 PPC at Police Station Bannu, whereby appellant was convicted and sentenced to 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 28.04.2016 at 0230 hours, the appellant committed murder of his wife namely Mst. Firdos by throttling.

3. After framing of charge, the prosecution has examined as many as nine (09) witnesses. PW-01 Dr. Zarina Soomro (WMLO) at Exh. 6, PW-02, Inayatullah Lundhan at Exh. 7, PW-03 Nawab Lundhan at Exh. 8, PW-04 Mundhu Lundhan at Exh. 9, PW-05 Darya Khan Lundan at Exh. 10, PW-06, Jan Muhammad Magsi at Exh. 11, PW-7 ASI Abdul Qadir Solangi at Exh. 12, PW-8 Ali Hassan Lundano at Exh. 13 and PW. 9 Inspector Ahmed (I.O. of the case) at Exh. 14.

Thereafter prosecution side was closed vide Ex:15 and statements of appellant under section 342, Cr.P.C. was recorded at Exh. 16, 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. The appellant being aggrieved and dissatisfied with his conviction has preferred instant appeal. Learned counsel for the appellant contended that there are several discrepancies in the prosecution case which was not considered by the learned trial Court. According to him, this is an unseen incident, none of the witnesses produced by the prosecution had seen the incident, however, it has been introduced on record through by the evidence of these witnesses that the deceased committed suicide which creates a serious doubt into the genuineness of the prosecution case and it is a settled principle of criminal administration of justice that a single doubt appearing in the prosecution case, benefit of that doubt is to be given to the accused not as a matter of grace or concession but as a matter of right. While concluding his submission, he requested for setting aside of the impugned judgment.

6. On the other hand learned APG argued that learned trial Court is the fact finding authority and having examined the all material available on record, the learned trial Court convicted the

appellant which judgment based on the sound reasons and does not call for the interference by this Court.

7. I have heard the arguments and have gone through the relevant record. On reappraisal of the evidence, it is observed that neither the complainant nor anyone else is an eye-witness of the alleged occurrence. Upon perusal of record the prosecution failed to introduce on record the motive of murdering the deceased by the appellant. In criminal jurisprudence and in murder trial, the prosecution has to base its case on five piece of evidence i.e. (1) Ocular evidence, (2) Recovery of incriminating articles, (3) Medical evidence, (4) Circumstantial evidence and (5) Motive. In a case based on circumstantial evidence the prosecution is obligated to show that different pieces of evidence brought on the record are inter-linked so as to make a single chain whose one end touches the dead person and the other clenches the neck of the accused. Further, the evidence must be of a quality to be incompatible with the innocence of the accused. Any missing link in the chain would destroy the entire prosecution case. In Hashim Qasim and another v. The State (2017 SCMR 986) the Hon'ble Supreme Court of Pakistan ruled:

> “In cases of circumstantial evidence, there are chances of procuring and fabricating evidence. Therefore, Courts are required to take extra care and caution to narrowly examine such evidence with pure judicial approach to satisfy itself, about its intrinsic worth and reliability, also ensuring that no dishonesty was committed during the course of collecting such evidence by the Investigator circumstantial evidence may sometimes appear to be conclusive but it must always be narrowly examined, if only because this count of evidence may be fabricated in order to cast suspicion on another, therefore, it is all the more necessary before drawing inference, if the accused’s guilt from circumstantial evidence to be sure and that there are no other co-existing circumstances,

> which weaken or destroy the inference then, in that case alone it may be relied upon otherwise, not at all."

8. It is pertinent to record here that motive in murder trial is also an essential factor to bring the guilt of the accused at home but here in this case the prosecution has failed to prove the significant factor of motive of accused in murdering his wife. PW-3 Nawab (Exh. 8 at page 103 of the paper book) during his examination in chief introduced on record the following factor regarding the relationship of deceased and accused which is delineated hereunder:-

> "They had one daughter from such wedlock. I never saw any strain relation between accused Muhammad Ali and his wife Mst. Firdos and they had always been residing happily until death of deceased Mst. Firdos."

9. It is gleaned from appraisal of the foregoing that the accused and deceased used to live together and were surviving a happy life, therefore, the valuable substance of motive of accused in murdering his wife is missing in the prosecution case. Apart from above, the prosecution witnesses were subject to the test of cross-examined admitted that their statements were not recorded by the police in their presence. The criminal jurisprudence is very clear that the prosecution agency is supposed to record statements of witness in their presence and they are bound to write the same word by word as uttered by the said witness. Therefore, any lacuna and discrepancy if found on the prosecution in this regard that benefit would also go in favour of the accused. Furthermore, it is a well settled principle of law that if two views are possible on the evidence adduced in the case, one indicating the guilt of accused and other to his innocence,

the view favourable to the accused is to be adopted[1]. Mere heinousness of the offence if not proved to the hilt is not a ground to punish an accused. It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt, it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must got to the petitioner. The Hon'bel Supreme Court in the case of Mst. Asia Bibi v. The State (PLD 2019 SC 64) while relying on the earlier judgments of this Court has categorically held that "if a single circumstance creates reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then he/she shall be entitled to such benefit not as a matter of grace and concession, but as of right. Reference in this regard may be made to the cases of Tariq_Pervaiz v. The State (1995 SCMR 1345) and Ayub Mosih v. The State (PLD 2002 SC 1048)."" The same view was reiterated in Abdul Jabbar v. State (2019 SCMR 129) when the Hon'ble Supreme Court observed that once a single loophole is observed in a case presented by the prosecution, such as conflict in the ocular account and medical evidence or presence of eye-witnesses being doubtful, the benefit of such loophole/lacuna in the prosecution's case automatically goes in favour of an accused. The conviction must be based on unimpeachable, trustworthy and reliable evidence. Any doubt arising in prosecution case is to be resolved in favour of the accused. However, as discussed above, in the present case the prosecution has failed to prove its case beyond any reasonable shadow of doubt.

[1] Per Sayyed Mazhar Ali Akbar Naqvi in Saghir Ahmed v. the State (2023 SCMR 241) and Shahid Orakzai v. Pakistan Muslim League (2000 SCMR 1969), Ijaz Hussain v. The State (2002 SCMR 1455), Iftikhar Hussain and others v. The State (2004 SCMR 1185) and Muhammad Zubair v. The State (2010 SCMR 182).

10. In these circumstances, I am of the opinion that the quality and standard of evidence is lacking, which is required to establish a criminal case for justifying conviction and sentence. The appeal filed by the appellant was allowed and the impugned judgment dated 18.02.2020 recorded by the learned Additional Session Judge-I Thatta was set aside by means of short order dated 14.07.2023. Above are the reasons of the short order.

Karachi
Dated: 19.07.2023.

JUDGE

Aadil Arab.