

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Jail Appeal No. 806 of 2019

Appellant: Muhammad Arabi through Mr. Iftikhar Ahmed Shah, advocate

The State: Mr. Muhammad Anwar Mahar, DDPP

Date of hearing: 24.08.2023

Date of judgment: 24.08.2023

J U D G M E N T

IRSHAD ALI SHAH, J- The appellant is alleged to have committed murder of Mst. Rehana wife of complainant Abdul Majeed by causing her injuries with sharp edged heavy object, for that he was booked and reported upon by the police. On conclusion of trial, he was convicted u/s. 302(b) PPC and sentenced to undergo rigorous imprisonment for life and to pay compensation of Rs.2,00,000/- to the legal heirs of the deceased, with benefit of section 382(b) Cr.P.C by learned I-Additional District & Sessions Judge, Karachi East vide judgment dated 22.09.2018, which he has impugned before this Court by preferring the instant Criminal 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 at the instance of complainant party and has been convicted and sentenced by learned trial Court virtually on the basis of no evidence, therefore, he is entitled to be acquitted by extending him benefit of doubt. In support of his contentions, he relied upon the case of *Nadeem Ramzan v. the State* (2018 SCMR 149)

3. Learned DDPP for the State by supporting the impugned judgment has sought dismissal of the instant jail appeal by contending that on arrest from the appellant has been secured the hammer which he allegedly used in commission of the incident.

4. Heard arguments and perused the record.

5. It was stated by the complainant that on the date of incident when he went back to his house, did not find there his wife Mst. Rehana and his minor daughter baby Mahnoor; on enquiry he was told by his mother that she has gone to visit doctor with her brother Kashif for treatment of her ailment, PW Kashif came back at home without Mst. Rehana; on inquiry, he told him that after attending the doctor Mst. Rehana was dropped by him at Khokhrapar Bus Stop; on such information, he and his relatives made search for recovery of Mst. Rehana; during course whereof, they went at the house of the appellant, there was found lying his wife Mst. Rehana dead, while his daughter Mahnoor unconscious; he reported the incident to police. It was recorded by SIP Niaz Ahmed, who then conducted initial investigation of the case. The mother of the complainant who actually saw the deceased lastly, going with PW Kashif has not been examined by the prosecution. Her non-examination could not be lost sight of. Evidence of PW Kashif is only to the extent that he took the deceased to the doctor for treatment of her ailment and then dropped her at Khokhrapar Bus Stop. It was stated by PW Khuda Bux that on the date of incident he and PW Ghulam Hussain met with the appellant and found him in confused position; his clothes were found sustaining blood marks, on inquiry he told them that he has vomited blood, thus his clothes have sustained its marks; subsequently the dead body of the deceased was found in his house. On asking he however was fair enough to admit that he has not seen the incident, it was PW Ghulam Hussain who intimated him about the incident. PW Ghulam Hussain 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. It was stated by I.O/SIP Gul Baig that the appellant during course of interrogation admitted before him to have committed the alleged incident. If for the sake of arguments, it is believed to be so even then such admission in terms of Article 39 of Qanun-e-Shahadat Order, 1984,

could not be used against him as evidence. On asking, the said I.O/SIP was fair enough to admit that no person has seen the appellant committing the death of Mst. Rehana. In that situation, it would be hard to maintain the conviction against the appellant on the basis of recovery of the dead body of the deceased and hammer allegedly used in commission of the incident from his house, which, apparently was also shared with him by PW Kashif. In these circumstances, it would be safe to conclude 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.

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".

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

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

JUDGE