

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No. 409 of 2019

Appellant: Muhammad Ikram Khan Rehmani through
Mr. Habib-ur-Rehman Jiskani, advocate

The State: Mr. Muhammad Anwar Mahar, DDPP

Date of hearing: 25.08.2023

Date of judgment: 25.08.2023

J U D G M E N T

IRSHAD ALI SHAH, J- The appellant is alleged to have committed murder of Muhammad Qayyum, a young boy of 12/13 years of age, by strangulating his throat after subjecting him to unnatural lust, for that he was booked and reported upon by the police. On conclusion of trial, he was convicted u/s. 377 PPC and sentenced to undergo rigorous imprisonment for life without imposing fine upon him being mandatory; he was further convicted under Section 302 PPC without specifying the clause and sentenced him to undergo rigorous imprisonment for life with fine of Rs.5,00,000/- payable to the legal heirs of the deceased as compensation by learned Xth-Additional Sessions Judge, Karachi West vide judgment dated 09.07.2019, which he has impugned before this Court by way of the instant Crl. 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 the 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, which is opposed by learned DDPP 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. The FIR of the incident has been lodged on 17.03.2015 by complainant SIP Malik Tariq Mehmood, on recovery of the dead

body of unknown boy, from Cantonment Graveyard; it was kept in cold storage, after usual formalities, by inviting the public large to identify it, was identified on 19.03.2015 by PW Saleem Shahid to be of his son Muhammad Qayyum and he then on 28.03.2015 by making statement under Section 161 Cr.PC suspected the appellant to be responsible for the present incident. As per I.O /SIP Abdul Razzaq on arrest the appellant admitted his guilt before him. If for the sake arguments, it is believed that such admission was actually made by the appellant before the said I.O/SIP even then same in terms of Article 39 of Qanun-e-Shahadat Order, 1984 could not be used against him as evidence. On asking, the said IO/SIP was fair enough to admit that there was no eyewitness to the incident and he met with none, who may have seen the appellant with the deceased. There is no DNA report which may suggest the involvement of the appellant with act of unnatural lust with the deceased. The appellant in his statement recorded u/s. 342 Cr.PC has pleaded innocence by denying the prosecution's allegation by stating that PW Saleem Shahid being his relative has got him involved in this case falsely, only to usurp his money which he kept with him as *amanat*. 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 doubt and to such benefit he is found entitled.

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 under impugned judgment are set aside, 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. Above are the reasons for short order of even date, whereby the instant Criminal Appeal was allowed.

JUDGE