

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No. 881 of 2019

Appellant: Mishal Ghani through Mr. Shoaib Ali Khatian,advocate

The State: Through Mr. Muhammad Anwar Mahar, DDPP

Date of hearing: 28.08.2023

Date of judgment: 28.08.2023

J U D G M E N T

IRSHAD ALI SHAH, J.- The facts in brief necessary for disposal of instant Criminal Appeal are that the appellant with his brother Islam Ghani is alleged to have committed murder of Mst. Shabina by causing her fire shot injuries, for that he was booked and reported upon by the police. At trial, the appellant denied the charge and the prosecution to prove the same, examined in all ten witnesses and then closed its side. The appellant in his statement recorded u/s. 342 Cr.P.C denied the prosecution's allegation by pleading innocence; he did not examine anyone in his defence or himself on oath. However he produced copy of FIR Cr. No.591/2013 u/s. 319 PPC lodged with PS Katlang Mardan to prove his involvement in the present case falsely on account of previous enmity. On conclusion of trial, he was convicted under Section 302(b) PPC and sentenced to undergo life imprisonment and to pay compensation of Rs.200,000/- to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for six months, without passing an order u/s 382(b) Cr.P.C, by learned 1st Additional District & Sessions Judge Karachi East

vide judgment dated 04.12.2019, which is impugned by the appellant before this Court by preferring the instant Criminal 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 complainant party in order to satisfy its enmity/ dispute with him over property; the FIR of the incident has been lodged with delay of about 01 day; there is no independent witness to the incident and the appellant has already been acquitted in a case relating to recovery of unlicensed pistol from him. By contending so, he sought for acquittal of the appellant in the present case by extending him benefit of doubt.

3. Learned DDPP for the state by supporting the impugned judgment has sought for dismissal of instant Crl. Appeal by contending that the prosecution has been able to prove its case against the appellant beyond shadow of doubt and the pistol which was recovered from the appellant was other than the one which was used by him in commission of the present incident, therefore, his acquittal in that case has got no relevancy with the facts and circumstances of the present case.

4. Heard arguments and perused the record.

5. It was stated by complainant Kalran Bibi that on the date of incident, when she, PWs Mst. Sumaira, Mst. Samina, Mst. Ameena, Amjad and the deceased were available in their house, there at 08:00 p.m. came the appellant while his brother Islam Ghani choose to stand outside of her house; the appellant started abusing PW Amjad, on that Mst. Shabina intervened; she was pushed down and then was fired at by the

appellant; she was taken to Dar-ul-Sehat Hospital in a rickshaw; there she was declared dead; later on there came I.O/SIP Muhammad Siddique Abbasi who took the dead body of the deceased to JPMC Karachi. On account of non-availability of the Women Medical Officer, it was kept in cold storage; on next morning the postmortem over the dead body of deceased was conducted and it then was handed over to them for burial, which they did and then she lodged FIR of the incident; it was recorded by I.O/SIP Muhammad Siddique Abbasi. He also conducted initial investigation of the case. The delay of 01 day in lodgment of the FIR of the incident is appearing to be natural in the circumstances; it even otherwise is fully explained, therefore, same could hardly be treated fatal to the case of prosecution. As per FIR of the incident, the appellant was also involved for committing murder of his father, who happened to be the brother of the complainant of the present case, probably on such account he developed grudge against the complainant party. Whatever is stated by the complainant takes support from the evidence of PWs Mst. Samina, Mst. Sumaira and Amjad. They have stood by their version on all material points despite lengthy cross-examination by learned counsel for the appellant; they could not be disbelieved only for the reason that they are related *inter-se* and there is no independent witness to the incident. The relationship of the complainant and her witnesses is not enough to disbelieve them. They are natural witnesses to the incident. The incident has taken place inside of the house of the complainant; therefore, the strangers were having no reason to have gone inside the house of the complainant together with the appellant to witness the incident to take

place. The appellant is closely related to the complainant party as such the complainant party was having no reason to have involved him in this case falsely only to satisfy its dispute/enmity with him over property. No doubt PW Nadeem and Mst. Aameena have not been examined by the prosecution but their non-examination is not enough to disbelieve the case of prosecution. It is the quality of the evidence which matters and not the quantity. The appellant after commission of incident instead of joining the investigation preferred to go in absconsion for noticeable period; he as per I.O/SIP Nazar Muhammad was arrested by police party of PS Jariyawala at Faislabad, Punjab, was then apprehended by him in the present case formally and during course of investigation he led him to recovery of unlicensed pistol, which as per learned DDPP was other than the one which was used by him in commission of the incident. This he apparently did knowingly to save him from legal consequences. The appellant might have been acquitted in case relating to recovery of unlicensed pistol but such acquittal itself is not enough to earn acquittal for him in the present case, ignoring the strong and trustworthy ocular account of evidence against him, which is coupled with recovery of empties from the place of incident which were secured by I.O/SIP Ghulam Hussain under memo. In these circumstances, learned trial Court was right to conclude that the prosecution has been able to prove its case against the appellant beyond shadow of doubt. The plea of innocence which the appellant has taken at trial deserved to be ignored as an afterthought. Indeed, the appellant has been dealt with leniently by the learned trial Court by awarding him lesser punishment.

6. In case of *Arshad Beg vs. The State (2017 SCMR 1727)*, it has been held by the Apex Court that;

“5. This occurrence which took place in the broad daylight occurrence was reported to the Police with due promptitude as the FIR was got registered just after one hour of the occurrence. The ocular account was furnished by brothers of the deceased namely Afzal Beg complainant (PW.6) and Muhammad Ashraf Beg (PW.7). They were cross-examined by the defence at length but they remained consistent on all material aspects of the case. Even otherwise this is a case of single accused and substitution in such like cases is a rare phenomenon as normally kith and kin of the deceased (in this case real brothers) would not implicate an innocent person by letting off the real culprits. Therefore, we hold that both the witnesses of ocular account were present at the spot and had witnessed the occurrence. Ocular account furnished by these witnesses is substantially supported by medical evidence as three firearm injuries were observed on the person of Sharif Beg (deceased) out of which only one was exit wound whereas two were entry wounds. Therefore, the prosecution case stood proved against the appellant beyond any shadow of doubt and conviction of the appellant under section 302(b), P.P.C. is fully justified.....”

7. In view of the facts and reasons discussed above, it is concluded safely that no case for interference with the impugned judgment is made out; consequently, the instant Criminal Appeal fails and is dismissed accordingly. However, benefit of Section 382(b) Cr.P.C is extended to the appellant.

JUDGE