

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No. 510 of 2019

Appellant: Muhammad Zubair through Mr. Muhammad Riaz, advocate

The State: Mr. Muhammad Anwar Mahar, DDPP

Date of hearing: 30.08.2023

Date of judgment: 30.08.2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of prosecution that the appellant with rest of the culprits, in furtherance of their common intention, committed murder of Doulat Shah and Syed Iqbal by causing them fire shot injuries, for that the present case was registered. On arrest, the appellant was challaned accordingly by the police; he denied the charge and prosecution to prove the same examined in all five witnesses including complainant Syed Akbar Ali Shah and then closed its side. The appellant in his statement recorded under Section 342 Cr.P.C denied the prosecution's allegation by pleading innocence by stating that at the time of incident he was away from place of incident with DWs Bashir Ahmed and Nawab Gul. In order to prove his innocence, he examined himself on oath and above-named DWs. On conclusion of trial, he was found guilty for committing murder of Doulat Shah only; consequently convicted under Section 302(b) PPC and sentenced to undergo life imprisonment as *Tazir* and to pay compensation of rupees one million to the legal heirs of deceased Doulat Shah and in default whereof to undergo simple imprisonment for six months, with benefit of section 382(b) Cr.P.C by learned 1st Additional Sessions Judge, (MCTC) Karachi, West vide judgment dated 23.07.2019, which he has impugned 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; FIR is lodged with delay of about 04 hours; there is no recovery from the appellant or from the place of incident; co-accused Naveed @ Noni and Kareem have already been acquitted in very case by learned trial Court on after other; the Medical Officer and the Investigating Officer of the case have not been examined by the prosecution and evidence of the PWs being doubtful in its character has been believed by learned trial Court without lawful justification. By contending so, he sought for acquittal of the appellant by extending him benefit of doubt. In support of his contentions, he relied upon case *Sikandar Ali v. the State* (2023 YLR 427).

3. It is contended by learned DDPP for the State that the appellant is neither innocent nor is involved in this case falsely by the complainant party; his case is distinguishable to that of acquitted accused Naveed @ Noni and Kareem; the appellant has preferred to go in absconsion for about 24 years by such act he defeated the recovery of crime weapon from him; the Medical Officer and the Investigating Officer of the case being untraceable after retirement could not be examined by the prosecution on account of absconsion of the appellant. By contending so, he sought for dismissal of the instant Criminal Appeal.

4. Heard arguments and perused the record.

5. It is stated by the complainant that on 01.02.1995 after leaving his house when reached adjacent to Insaaf Bakery at Alamgir Road, there at about 10:00 p.m. time, he saw accused Kareem and Naveed @ Noni having a fight with his brother Doulat Shah and maternal uncle Syed Iqbal, who were employees in Police Department; in the meanwhile there came the appellant

from a Hair cutting Saloon with pistol in his hand and fired at Doulat Shah; who by sustaining such fires fell down on ground; in the meanwhile there came accused Abdul Rahman @ Lakarhara from the side of Hair cutting Saloon with a pistol in his hand and he fired at Syed Iqbal, who by sustaining those fires fell down on ground. All the accused then ran away. There came police party. Syed Iqbal died at the spot while Doulat Shah died on his way to hospital. On 02.02.1995, he lodged report of the incident with police. Whatever is stated by the complainant takes support from the evidence of PW Muhammad Sher Ali Shah. They have stood by their version on all material points despite lengthy cross-examination. They could not be disbelieved only for the reason that they are related inter-se. The delay of lodgment of FIR by 04 hours being natural in the circumstances could hardly be treated fatal to the case of prosecution. No doubt, 161 Cr.PC statement of PW Muhammad Sher Ali Shah has been recorded with delay of about 05 months, but plausible explanation to such delay is offered by him by saying that soon after incident he proceeded to his native village at Swat, for which a ticket was already booked by him. PW Adalat Shah besides being mashir has also supported the factum of incident and his evidence has gone un-rebutted. Of course, the Medical Officer and the Investigating Officer of the present case have not been examined by the prosecution against the appellant for the reason that they were found untraceable after their retirement. If the appellant would have surrendered timely then they would have been examined against the appellant by the prosecution. In such situation, the appellant could not claim benefit of their non-examination. Instead of them, the prosecution has been able to examine Dr. Qamar Ahmed Abbasi who identified the signatures of Dr. Shahid Shaikh on postmortem

reports and other documents and Inspector Najam Din Siddiqui who identified the signatures of I.O/SIP Fazal Mehmood on every document prepared by him in present case. By such act, the prosecution has obviously attempted to discharge its liability. No empty was secured from the place of incident but such fact is not enough to conclude that the appellant is innocent. The appellant by remaining in absconsion for about 24 years has defeated the recovery of crime weapon from him. He, as such could not get benefit of his wrong doing. Co-accused Nadeem @ Noni and Kareem were assigned no active role in commission of incident, it is why they were acquitted by learned trial Court one after other, in earlier round of litigation. The appellant could not claim benefit of their acquittal. His case is distinguishable to that of acquitted accused. He obviously has been attributed the role of committing death of deceased Doulat Shah by causing him fire shot injuries. He has also been absolved of the liability of committing murder of Syed Iqbal even by learned trial Court by making a conclusion that the prosecution has not been able to establish common intention on his part. Evidence brought on record by the prosecution is transpiring confidence. It could not be disbelieved on the basis of its quantity. It is settled by now that it is the quality of the evidence which prevails and not the quantity. The appellant in his statement recorded under Section 342 Cr.P.C has pleaded innocence and to prove such innocence has also examined himself on oath and his witnesses in defence. Such plea on his part deserved to be ignored as an afterthought. In these circumstances, it would be safe to conclude that no illegality or irregularity has been committed by learned trial Court by convicting the appellant.

6. In case of *Muhammad Raheel @ Shafique v. State* (PLD 2015 SC 145), it has been held by Apex Court that:

“5. Thus, their acquittal may not by itself be sufficient to cast a cloud of doubt upon the veracity of the prosecution’s case against the appellant who was attributed the fatal injuries to both the deceased. Apart from that the principle of falsus in unofalsus in omnibus is not applicable in this country on account of various judgments rendered by this Court in the past and for this reason too acquittal of the five co-accused of the appellant has not been found by us to be having any bearing upon the case against the appellant”.

7. In case of *Asfandiyar vs. The State and others* (2021 SCMR 2009), Apex Court has held that:

“Law does not require a particular number of witnesses to prove a criminal charge and statement of a solitary witness with a ring of truth is more than sufficient to drive home the charge; corroboration is a rule of prudence and not law and cannot be invariably insisted in every case. Belatedly taken plea of substitution by the petitioner that the deceased was done to death by one Ashfaq is nothing but a far cry; it is inconceivable that a father would substitute the assassin of his son with an innocent without rhyme or reason. Longstanding absconsion with arrest as late as on 2.5.2012 is yet another predicament bracing the petitioner. On an overall analysis of the evidence, we have not been able to find space to admit any hypothesis other than petitioner's guilt; view concurrently taken by the Courts below, being unexceptionable, calls for no interference. Petition fails. Leave declined.”

8. In case of *Bashir Ahmed Leghari vs. The State* (2020 SCMR 595), Apex Court has held that:

“In this backdrop, prosecution's failure to recover the weapon, statedly used in the occurrence, fades into insignificance; he is certainly not expected to keep the gun for such a long period of time with him as a souvenir of his crime.”

9. In view of the facts and reasons discussed above, it is concluded that the conviction and sentence awarded to the appellant by way of impugned judgment is not calling for any interference by this Court by way of instant Criminal Appeal. It is accordingly dismissed.

JUDGE