

IN THE HIGH COURT OF SINDH, AT KARACHI
Criminal Appeal No. 669 of 2019

Appellants: Muhammad Shakeel & another through Mr. Khuda Dino Sangi, advocate

The State: Mr. Muhammad Anwar Mahar, DDPP

Date of hearing: 08.09.2023

Date of judgment: 08.09.2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of prosecution that the appellants in furtherance of their common intention are alleged to have committed murder of Awais by causing him fire shot injuries, for that they were booked and reported upon by the police. On conclusion of trial, they were convicted under Section 302(b) PPC and sentenced to undergo rigorous imprisonment for life and to pay compensation of Rs.200,000/- each to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for 06 months with benefit of Section 382 (b) Cr.P.C by learned 1st Additional Sessions Judge/MCTC, Karachi South vide judgment dated 27.08.2019, which they have impugned before this Court by preferring the instant Criminal Appeal.

2. It is contended by learned counsel for the appellants that the appellants being innocent have been involved in this case falsely by the police in a blind FIR and they have been convicted and sentenced by the learned trial court virtually on the basis of no evidence, therefore, they are entitled to be acquitted by extending them benefit of doubt, which is opposed by learned DDPP for the State by supporting the impugned judgment by contending that prosecution has been able to prove its case against them beyond shadow of doubt.

3. Heard arguments and perused the record.

4. FIR of the incident is lodged against unknown culprits. The very case at one moment as per I.O/SIP Muhammad Islam was

disposed of under `A` Class. At trial, complainant Sameer was fair enough to admit that he does know the appellants as he is not eye witness to the incident. It was stated by I.O /SIP Bahzad Ali that on arrest the appellants admitted their guilt before him. If for the sake of arguments, it is believed to be so even then such admission on their part could not be used against them as evidence in terms of Article 39 of Qanun-e-Shahadat Order, 1984. On asking, he was fair enough to admit that the appellants have not been subjected to identification parade through the eye witnesses before the Magistrate; such omission on his part could not be overlooked. In such eventuality, the identity of the appellants by PWs Waseem and Danish at trial could hardly be relied upon on the basis of their 164 Cr.PC statements for the reason that such identity does not fulfill requirements of law. The appellants have pleaded innocence; such plea could not be ignored. In these circumstances, it would be safe to conclude that the prosecution has not been able to prove its case against the appellants beyond shadow of doubt and to such benefit they are found entitled.

5. In case of *Asghar Ali @ Saba vs. the State and others* (1992 SCMR 2088), it has been held by the Apex Court that;

"The identification in Court of a person produced as an accused months after the event could not satisfy the requirements of law for proving the identity of the culprit."

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 appellants under impugned judgment are set aside, consequently, they are acquitted of the offence for which they were 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 of short order of even date, whereby the instant Criminal Appeal was disposed of.

JUDGE