

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Jail Appeal No. 351 of 2020

Appellant: Shakeel Ahmed through Mr. Gul Muhammad Farooqui, advocate

The State: Ms. Rubina Qadir, DPG for the State

Date of hearing: 11.09.2023

Date of judgment: 11.09.2023

J U D G M E N T

IRSHAD ALI SHAH, J- The appellant is alleged to have committed murder of Mst. Faiza, wife of his brother Khalil Ahmed, by causing injuries on her neck with sharp cutting weapon, for that he was booked and reported upon by the police. The appellant denied the charge and the prosecution to prove the same, examined in all 10 witnesses and then closed its side. The appellant in his statement recorded under Section 342 Cr.PC denied the prosecution's allegation by pleading innocence. On conclusion of trial, he was convicted under Section 302(b) PPC and sentenced to undergo imprisonment for life as *Tazir* and to pay compensation of Rs.500,000/- to the legal heirs of the deceased 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 Central vide judgment dated 14.01.2020, 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 he has been convicted and sentenced by learned trial Court virtually on the basis of no evidence, therefore, he is entitled to be acquitted of the charge by extending him benefit of doubt, which is opposed by learned DPG for the State by supporting the impugned judgment by contending that on arrest from the appellant has been secured the dagger which he allegedly used in commission of the incident.

3. Heard arguments and perused the record.

4. It was stated by complainant Muhammad Imran that on 23.12.2018 he was intimated by PW Kamran that the dead body of Mst. Faiza is lying in her house; on such information, he went at the place of incident by informing the other relatives, there came the police party of PS Supermarket; the dead body of the deceased was shifted to Abbasi Shaheed Hospital for postmortem and then his 154 Cr.PC statement was recorded wherein it was stated by him that the appellant has committed the murder of the deceased as she was opposing his marriage with her sister Mst. Iqra. It has been recorded on 24.12.2018. It was with delay of about 01 day to actual incident. No plausible explanation to such delay is offered by the prosecution; therefore, it could not be overlooked. It was stated by PW Khalil Ahmed that on receipt of information about the incident which was communicated to him by PW Muhammad Javed he went at the place of incident and found there lying dead body of his wife Mst. Faiza with her throat cut. It was stated by PW Muhammad Javed that the appellant telephoned him, which he could not attend being busy therefore it was attended by his wife Mst. Shakila; she then intimated him that the appellant has told her that he has committed murder of Mst. Faiza. It was stated by Mst. Shakila that the appellant told her on telephone that he has committed murder of Mst. Faiza. By stating so, she was fair enough to say that her 161 Cr.PC statement was not recorded; she was not even able to disclose the number of cell phone whereby she was telephoned. It was stated by PW Muhammad Ramzan that he was intimated about the incident by PW Kamran as such he went at the place of incident and found the dead body of the deceased lying there on the ground with her throat cut. It was stated by PW Muhammad Zahid that on hearing of cries he went at the place of incident and there came to know about the death of the lady. Evidence of the complainant and above named witnesses prima facie suggests that none of them actually has seen the appellant committing the death of the deceased personally; therefore, their

evidence hardly lends support to the case of prosecution. It was stated by I.O/SIP Karim Dad that on investigation he recorded the 161 Cr.PC statements of the PWs on 28.12.2018. It was with delay of about 05 days even to lodgment of the FIR of the incident. No plausible explanation to such delay is offered, therefore, such delay could not be ignored. It was further stated by him that he then apprehended the appellant, secured from him an unlicensed pistol of 30 bore and he then led him to recovery of dagger from back side wall of PS Liaquatabad. Such place of recovery apparently was not in exclusive possession of the appellant. It was further stated by him that he obtained the CDR reports. No forensic report of such CDR is produced. His evidence prima facie suggests that the appellant has also confessed his guilt before him. If the for the sake of arguments, it is believed that such confession was actually made by the appellant before him, even then same in terms of Article 129(g) of Qanun-e-Shahadat Order, 1984 could not be used against him as evidence. On asking, he was fair enough to admit that the finger prints of the appellant were not obtained. Such omission could not be lost sight of for the reason that those were essential to connect the appellant with dagger allegedly used by him in commission of the incident. It was stated by PW Muhammad Imran that the appellant purchased from him the dagger allegedly used by him in commission of the incident. No receipt to prove such sale is brought on record. 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.

5. In case of *Mehmood Ahmed & others vs. the State & another (1995 SCMR-127)*, it was observed by the Apex Court that;

“Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.

6. 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.”

7. In case of *Muhammad Jamil vs. Muhammad Akram and others (2009 SCMR 120)*, it has been held by the Apex Court that;

“When the direct evidence is disbelieved, then it would not be safe to base conviction on corroborative or confirmatory evidence.”

8. 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".

9. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellant under impugned judgment 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.

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

JUDGE

Nadir*