IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Jail Appeal No. 233 of 2019

Appellant:	Barkat @ Sheesho through M/s. Mallag Assa Dashti and Zulfiqar Ali Mirjat, advocate
The State:	Mr. Muhammad Anwar Mahar, DDPP for the State
Date of hearing:	12.09.2023
Date of judgment:	12.09.2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of prosecution that the appellant and co-accused Amir Abdul Ghani during course of robbery committed murder of Muhammad Yousuf by causing him fire shot injury, for that they were booked and reported upon. On conclusion of trial, they were convicted under Section 392/34 PPC and sentenced to undergo rigorous imprisonment for 07 years and to pay fine of Rs.50000/- each and in default whereof to undergo rigorous imprisonment for 05 months; the appellant was further convicted u/s. 302(b) PPC and sentenced to undergo imprisonment for life and to pay compensation of Rs.1,00,000/- to the legal heirs of the deceased and in default whereof to undergo rigorous imprisonment for 06 months with benefit of section 382(b) Cr.P.C; both the sentences awarded to the appellant were directed to run concurrently by learned Vth- Additional Sessions Judge, Karachi Central vide judgment dated 04.03.2019, which the appellant has impugned before this Court by preferring the instant Criminal Jail Appeal.

2. As per office note, no appeal was preferred by co-accused Amir Abdul Ghani and he as per learned DDPP for the State has already been released by jail authorities on completion of his jail term.

3. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the police on the basis of statement of co-accused Amir Abdul Ghani which could not be used against him as evidence. By contending so,

he sought for acquittal of the appellant by extending him benefit of doubt which is opposed by learned DDPP for the State by supporting the impugned judgment.

4. Heard arguments and perused the record.

5. It is stated by complainant Muhammad Irshad that on the date of incident when he was sitting at his milk shop, there came the appellant and co-accused Amir Abdul Ghani, they robbed him of his cell phone and cash and on his cries they opened the fire which hit to Muhammad Yousuf who by sustaining that fire died on his way to hospital; the person(s) available at spot apprehended one of the culprit who disclosed his name to be Amir Abdul Ghani, on further inquiry , he disclosed the name of his accomplice to be Barkat @ Sheesho the appellant. If for the sake of arguments, it is believed that co-accused Amir Abdul Ghani disclosed the name of the appellant to be of his accomplice even then same cannot be used against him as evidence legally. It was further stated by him that he lodged the report of incident. It was recorded in shape of his 154 Cr.PC statement by I.O/SIP Muhammad Farooq. It was stated by I.O/SIP Fayaz Ahmed that on arrest the appellant admitted his guilt before him. If for the sake of arguments, it is believed to be so even then such admission in terms of Article 39 of Qanun-e-Shahadat Order, 1984 could not be used against him as evidence. On asking, the complainant was fair enough to admit that no identification parade of the appellant was conducted through the Magistrate; such omission on part of prosecution could not be lost sight of as it was essential to prove the identity of the appellant. The identity of the appellant by the complainant at trial does not satisfy the requirements of the law. Evidence of I.O/SIP Muhammad Nasrullah is to the extent that he completed the investigation and submitted challan of the case. His evidence is not enough to prove the case prosecution. His evidence is not enough to improve the case of prosecution. The appellant during course of his examination under Section 342 Cr.PC has pleaded innocence; such plea on his part could

not be overlooked. 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 reasonable doubt and to such benefit he is found entitled.

6. 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."*

7. In the case of *Faqir Ullah vs. Khalil-uz-Zaman and others* (1999 SCMR 2203), it has been held by Hon'ble Apex Court that;

> *"18. The first question is whether the confessional statement of the convict was to be accepted in toto or might have been accepted in part. The basic principle of Islamic Law is provided in Majellah-al-Ahkam-al-Adliyyah, (section 78) that the Bayyinah or evidence is a proof whose implications may extend to others while the confession is a proof whose implications are limited to the one who makes it. Under this principle the confessional statement of a person can only inculpate himself and no other person can be inculpated merely because some other person has made any admission. This principle is based on the well-known incident reported by almost all the compilers of the Ahadith in which the Holy Prophet (p.b.u.h.) punished a person with Hadd on the confession of the commission of Zina. But in spite of the fact that he had mentioned a particular woman by name with whom he had admitted to have committed Zina, the Holy Prophet (p.b.u.h.) did not convict the woman on the basis of this confession by the co-accused. He appointed a judicial officer to investigate and to independently find out whether the woman had committed Zina or not. The Holy Prophet (p.b.u.h.) directed the judicial officer to punish the Woman only, on her own free and independent admission. On the basis of this Hadith and several other Ahadith, Muslim Jurists have developed the principle that the implications of the confession of a person are confined to himself and cannot be extended to some body else. It also means that the confession made by a person may be accepted to the extent to which it affects himself and may be rejected to the extent to which it implicates some body else."*

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 by learned trial Court 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*