

IN THE HIGH COURT OF SINDH, AT KARACHI
Criminal Appeal No. 362 of 2019

Appellant: Zakir Ali through Mr. Moula Bux Bhutto,
advocate

The State: through Mr. Muhammad Anwar Mahar,
DDPP for the State

Date of hearing: 19.09.2023

Date of judgment: 19.09.2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellant besides committing murder of Abdul Waheed misappropriated motorcycle, computer and licensed pistol of his brother Shahnawaz which the deceased was having at the time of incident, for that he was booked and reported upon by the police. On conclusion of trial, the appellant was convicted under Section 302 PPC, without specifying the penal clause and sentenced to undergo imprisonment of life and to pay compensation of Rs.500,000/- to the legal heirs of the deceased with benefit of Section 382 (b) Cr.P.C by learned 1st -Additional Sessions Judge/MCTC, Malir, Karachi vide judgment dated 28.05.2019, 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 police in a blind FIR on the basis of recovery which has been foisted upon him, therefore, the appellant is entitled to be acquitted of the charge by extending him benefit of doubt, which is opposed by learned DDPP for the State by contending that on arrest from the appellant has also been secured the knife which he has allegedly used in commission of the incident and

prosecution has been able to prove its case against him beyond shadow of doubt.

3. Heard arguments and perused the record.

4. Admittedly, the FIR of the incident has been lodged with delay of about 02 days. It is against unknown culprits. Neither complainant Abdul Hameed nor PW Shahnawaz has seen the appellant committing the alleged incident. As per the complainant, police came at the place of incident on his information. As per I.O/SIP Syed Sadakat Ali, he went at the place of incident on information provided to him by one Saleem; he has not been examined by the prosecution. Dr. Manzoor Ali Memon who conducted the postmortem on the dead body of the deceased too has not been examined by the prosecution on account of his death. As per I.O/SIP Hafeez Tanoli, the appellant on arrest admitted his guilt before him. If for the sake of arguments, it is believed that the appellant has actually admitted his guilt before the said I.O/SIP even then same in terms of Article 39 of Qanun-e-Shahadat Order, 1984, could not be used against him as evidence. There is no finger print report on the knife which could have connected the appellant with its recovery. By awarding no punishment to the appellant for recovery of the articles of the deceased which he allegedly misappropriated, he has been impliedly acquitted for such allegation even by the learned trial Court. The appellant has pleaded innocence. 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 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".

6. 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.

7. The instant Criminal Appeal is disposed of accordingly.

JUDGE