

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No. 262 of 2020

Appellants: Muhammad Anas and Muhammad Arif through M/s. Muhammad Daud Narejo, Muhammad Yousif Narejo and Muhammad Sharif Dars, advocates

The State: Mr. Saleem Akhter Buriro, Additional Prosecutor General Sindh

Date of hearing: 21.09.2023

Date of judgment: 21.09.2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellants with one more culprit fired at Mst. Chand Bibi and Umar Farooq with intention to commit their murder; Mst. Chand Bibi eventually died of such injuries while Umar Farooq was admitted in hospital for treatment of his injuries, for that the present case was registered. At trial, the appellants were charged for the said offence which they denied and prosecution to prove the same, examined in all 12 witnesses and then closed its side. The appellants in their statements recorded under Section 324 Cr.PC denied the prosecution's allegation by pleading innocence; they did not examine any one in their defence or themselves on oath. On conclusion of trial, they were convicted u/s. 302(b) PPC and sentenced to undergo imprisonment for life and to pay compensation of Rs.300,000/- to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for 06 months; they were further convicted under Section 324 PPC and sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.50,000/- each and in default whereof to undergo simple imprisonment for 03 months; both the sentences were directed to run concurrently with benefit of section 382(b) Cr.P.C by learned 1st -Additional Sessions Judge/ MCTC, Karachi South

vide judgment dated 30.01.2020, which they have impugned before this Court by preferring the instant Crl. 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; the identification parade of the appellants was defective one and evidence of the PWs being doubtful in its character has been believed by the learned trial Court without assigning cogent reasons, therefore, the appellants are entitled to be acquitted of the charge by extending them benefit of doubt. In support of their contention, they relied upon case of *Kamal din @ Kamala vs. the State* (2018 SCMR 577).

3. None has come forward to advance arguments on behalf of the complainant. Learned Addl. PG for the State conceded to acquittal of appellant Muhammad Arif, however, he sought for dismissal of instant Criminal Appeal in respect of appellant Muhammad Anas by contending that the pistol secured from him has been found matched with the empty secured from the place of incident which prima facie suggests his involvement in commission of incident.

4. Heard arguments and perused the record.

5. The FIR of the incident is lodged by complainant Altaf Hussain on narration of the incident made to him by his father and sister-in-law, it was lodged with PS Gizri with delay of about 02 days; it is against the unknown culprits; same on investigation as per I.O/SIP Nasrullah was disposed of under "A" Class. It was stated by I.O/SIP Ali Gohar that it was informed to him on 24.05.2016 by SIP Raja Tanveer of PS Darkhshan that he has apprehend the appellants in some other case and has secured from them the pistols and they on inquiry have confessed before him to have committed the present incident. It was further stated by him that on such information,

he obtained the custody of the appellants in present case, on inquiry, they also admitted before him to have committed the present incident. If for the sake of arguments, it is believed that the appellants actually have confessed their guilt before the above named police officials even then same in terms of Article 39 of Qanun-e-Shahadat Order, 1984, could not be used against them as evidence. It was further stated by said I.O/SIP that later-on, the appellant were identified by PW Umar Farooq on 28.05.2016, in an identification parade; it was conducted on 4th day of their actual arrest of the appellants. No plausible explanation to such delay is offered. As per PW Umar Farooq, it was night time incident; he and the deceased were fired at from behind. If it was so, then identity of the appellants by him through an identification parade could reasonably be judged with doubt. Such identification parade as is indicated in evidence of PW Mr. Sheesh Khoso, the Magistrate having jurisdiction, was joint one. If it was so then same besides being improper was unsafe. PW SIP Raja Tanveer who actually have apprehended the appellants and secured from them the pistols allegedly used by them in commission of the incident has not been examined by the prosecution in the present case; his non-examination as such could not be lost sight of as it was essential to prove the recovery of the pistols from the appellants. Even otherwise, the appellants are said to have already been acquitted in such recovery cases. The car allegedly used in commission of the incident though secured from the appellants has never been produced at trial. In these circumstances, it would be safe to conclude that the prosecution has not been able to prove the involvement of the appellants in commission of alleged incident beyond shadow of reasonable doubt and to such benefit they are found entitled.

6. In case of *State vs. Sher Zaman and two others* (PLD 2005 Karachi 270), it has been held by the Hon'ble Division Bench of this court that;

"Identification test of accused was held after four days of their arrest---Such delayed identification test further suffered from infirmity for the reason that it was conducted jointly"

7. In case of *Muhammad Jamil vs. Muhammad Akram and others* (2009 SCMR 120), it has been observed 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 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.

10. Above are the reasons of short order of even date, whereby the instant Criminal Appeal was allowed.

JUDGE