

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Jail Appeal No. 917 of 2019

Appellant: Syed Muhammad Ilyas through Mr. Muhammad Hanif Noonari, advocate

The State: Mr. Saleem Akhter Buriro, Addl. PG for the State

Date of hearing: 27.09.2023

Date of judgment: 27.09.2023

J U D G M E N T

IRSHAD ALI SHAH, J- The appellant is alleged to have committed murder of Imran Saeed by causing him injuries with some sharp cutting weapon, for that he was booked and reported upon by the police. On conclusion of trial, he was convicted u/s. 302 PPC and sentenced to undergo rigorous imprisonment for life and to pay compensation of Rs.200,000/- 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 IInd-Additional Sessions Judge, Karachi East vide judgment dated 30.09.2020, 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 on the basis of his judicial confession which is retracted, therefore, he is liable to be acquitted by extending him benefit of doubt, which is opposed by learned Addl. PG for the State by contending that judicial confession of the appellant is true and voluntarily, which also finds support from ancillary evidence.

3. Heard arguments and perused the record.

4. It was, *inter-alia*, stated by complainant Tariq Saeed and PW Khalid Saeed that the deceased was their brother, was serving in East Side Hospital at Korangi Industrial Area Karachi; on 07.02.2015 he went for his work but did not return, therefore on 09.02.2015, they intimated his missing to police; on 10.02.2015 they on information went at PS Gulshan-e-Iqbal met with ASI Aslam Bhatti, who informed them that the appellant has committed murder of the deceased; the appellant then led them, ASI Aslam Bhatti and police party of PS Gulshan-e-Iqbal to Servant Quarter of Bungalow No.D/27, Block-7, Gulshan-e-Iqbal, Karachi and disclosed that after committing murder of the deceased he has buried his dead body in room of that servant quarter; it was dug out, was found in seven pieces and was identified by them to be of their brother Imran Saeed; it was referred to Abbasi Shaheed Hospital for postmortem; later-on as per the complainant he lodged report of the incident with the police; the appellant was apprehended. The evidence of the complainant and PW Khalid Saeed could not be rejected out rightly only for the reason that they are not eye witnesses to the actual death of the deceased. Apparently, they have supported the case of prosecution to the extent of missing of the deceased and recovery of his dead body from a room of servant quarter at the pointation of the appellant, which prima facie suggest his involvement in commission of the incident. It was stated by ASI Muhammad Aslam that on 10.02.2015 when he was available at PS Gulshan-e-Iqbal Karachi there at about 12.30 a.m. came the appellant and disclosed to him to have committed the murder of a person in Bungalow No.D/27, Block-7, Gulshan-e-Iqbal, Karachi; on such disclosure he was arrested u/s. 54 Cr.PC, the complainant was informed accordingly, the appellant then led him, his policy party, the complainant and PW Khawaja Saeed to

recovery of the dead body of the deceased which was found cut in seven pieces, from the room of servant quarter of the said bungalow, it then was referred to Abbasi Shaheed Hospital for postmortem, it was conducted by Dr. Shahid Nizam. It is evident that beside recovery of the dead body of the deceased a hatchet was also recovered from the place of incident by ASI Muhammad Aslam, which was allegedly used by the appellant in commission of the incident. It was stated by I.O/Inspector Muhammad Aslam that on investigation, on admission of the guilt by the appellant he was produced before the Magistrate having jurisdiction for recording his judicial confession. It was recorded on 16.02.2015 by Mr. Abdul Qadeer the Magistrate having jurisdiction apparently after observing necessary codal formalities, whereby the appellant admitted to have committed murder of the deceased with chopper after taking wine together with the deceased. As per report of Chemical Examiner, no alcohol substance was found in viscera of the deceased. The confessional statement of the appellant is appearing to be true and voluntarily, it could not be disbelieved only for the reason that it has been retracted by the appellant during course of his examination under Section 342 Cr.PC. by stating that he himself went at the police station to furnish information about the death of the deceased and then was involved in this case falsely by the police officials on account of his failure to make payment to them. Such plea on the part of the appellant appears to be afterthought therefore, it deserves to be ignored. No time limit is prescribed by the law for recording a judicial confession, it could only be recorded when its maker is found ready to make it without coercion or compulsion, therefore, in such situation, the delay in recording judicial confession of the appellant, if any, may not be treated fatal to the case of prosecution. No doubt, the

owner of bungalow from where the dead body of the deceased was recovered has not been examined by the prosecution, but his non-examination is not appearing to be enough to conclude that the appellant is innocent. The owner of the said bungalow and his wife as has come on record were too old. Perhaps for this reason they have not been made witness to the case. None of the witness so examined by the prosecution was having any enmity with the appellant to have involved him in this case falsely. In that situation, learned trial Court was right to make a conclusion that the prosecution has been able to prove its case against the appellant beyond shadow of reasonable doubt.

5. In the case of *Mst. Joygun Bibi v. The State* (PLD 1960 (SC (Pak) 313) it has been held by the Apex court that:

"We are unable to support the proposition of law laid down by the learned Judges in this regard. The retraction of a confession is a circumstance which has no bearing whatsoever upon the question whether in the first instance it was voluntarily made, and on the further question whether it is true. The fact that the maker of the confession later does not adhere to it cannot by itself have any effect upon the findings reached as to whether the confession was voluntary, and if so, whether it was true, for to withdraw from a self-accusing statement in direct face of the consequences of the accusation, is explicable fully by the proximity of those consequences and need have no connection whatsoever with either its voluntary nature, or the truth of the facts stated. The learned Judges were perfectly right in first deciding these two questions, and the answers being in the affirmative, in declaring that the confession by itself was sufficient, taken with the other facts and circumstances to support Abdul Majid's conviction. The retraction of the confession was wholly immaterial once it was found that it was voluntary as well as true."

6. In view of the facts and reasons discussed above, it is concluded safely that no illegality or irregularity has been committed by the trial Court while passing the impugned judgment which may justify this Court to make interference with it, consequently, instant Criminal Jail Appeal is dismissed.

JUDGE