

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No.497 of 2021
Criminal Jail Appeal No.505 of 2021

Appellants: Mst. Hira @ Muskan and Sajjad Ahmed @ Shahzad through M/s. Nisar Ahmed Metlo and Habib-ur-Rehman Jiskani, advocates

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

Date of hearing: 29.04.2024

Date of judgment: 29.04.2024

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellants in furtherance of their common intention murdered Waqas Ahmed by way of asphyxia, for that they were booked and reported upon by the police. On the conclusion of the trial; they were convicted under Section 302(c) PPC; appellant Sajjad Ahmed @ Shahzad was sentenced to undergo rigorous imprisonment for fourteen years while appellant Mst. Hira @ Muskan was sentenced to undergo rigorous imprisonment for seven years; both of them were awarded the benefit u/s 382(b) Cr.PC by learned IVth-Additional Sessions Judge/MCTC-Ext., Karachi, South, vide judgment dated 07.08.2021, which they have impugned before this Court by preferring two separate appeals.

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 at the instance of the complainant party and they have been convicted and sentenced by the learned trial Court virtually on the basis of no evidence, therefore, they are

entitled to be acquitted of the offence for which they have been charged by extending them the benefit of the doubt; which is opposed by learned DDPP for the State by contending that on arrest the appellants have led to the recovery of cell phone of the deceased and they have also confessed their guilt before the investigating officer during the interrogation.

3. Heard arguments and perused the record.

4. It was stated by complainant Muhammad Usman that the deceased was married to his sister Mst. Aisha; she intimated to him that the deceased had gone missing; his missing was reported by them with the police. Later on, it was informed to him by Mst. Aisha that PW Zahoor Ahmed has told her that the deceased had been done to death in his house; on such information, he went to the pointed house and found the dead body of the deceased lying there with his hands and legs tied behind with a rope. I.O/SIP Muhammad Yousuf of PS Baloch Colony with his police party came to the place of the incident; he shifted the dead body of the deceased to Jinnah Hospital Karachi for postmortem. It was conducted by Dr. Sikandar Azam; the death of the deceased being unnatural on account of asphyxia was confirmed by him. The complainant then made a statement u/s 154 Cr.PC concerning the death of the deceased suspecting appellant Sajjad Ahmed @ Shahzad; it was recorded by I.O/SIP Muhammad Yousuf; the same later-on was incorporated into FIR; he also conducted the initial investigation of the case. It was stated by PW Zahoor Ahmed that he lent his house to the deceased, it was used by the appellants, on noticing some bad smell coming out from his house he went inside and found the dead body of the deceased lying therein; he intimated such incident to Mst. Aisha the wife of the deceased. She has not been

examined by the prosecution; her non-examination could not be overlooked. The complainant and PW Zahoor Ahmed, on asking, were fair enough to admit that they had not seen the appellants committing the death of the deceased with their own eyes. In that situation, their evidence if is believed to be true is of little help to the prosecution to maintain the conviction against the appellants. Evidence of PW Mr. Adil Hayat Sandhu is only to the extent that he recorded 164 Cr.PC statements of witnesses. It was stated by PW I.O./SIP Yousuf Naimat that on the investigation, he recorded 161 Cr.PC statements of the PWs; arrested the appellants; on interrogation, appellant Mst. Hira @ Muskan stated that the deceased attempted to commit rape with her; there came her husband appellant Sajjad Ahmed @ Shahzad who murdered the deceased by striking his head with a wall. The narration so made by appellant Hira @ Muskan, as per the said I.O./SIP, takes support from the statement made by appellant Sajjad Ahmed @ Shahzad. No injury on the head of the deceased is indicated in the postmortem report. It was further stated by the said I.O./SIP that the appellants then led him to the recovery of the cell phone of the deceased; it was recovered under a memo which was attested by PW/Mashir Ibrar Ahmed; he being the brother-in-law of the deceased was having a reason to support the case of the prosecution. Nothing has been brought on record which may prove that the cell phone so recovered at the instance of the appellants was owned by the deceased. Even otherwise, it is alleged by the appellants that it has been introduced in evidence by the said I.O./SIP at the instance of the complainant party after having purchased the same from market. If it is believed that the appellants confessed their guilt before the said I.O./SIP during interrogation, even then, such

confession being extra-judicial in nature in terms of Article 39 of Qanun-e-Shahadat Order, 1984, could not be used against them as evidence. The appellants, during their examination under Section 342 Cr.PC, have denied the prosecution's allegations by pleading innocence; such a plea on their part could not be overlooked in the circumstances of the present case.

5. The conclusion which could be drawn from the above discussion would be that the prosecution has not been able to prove its case against the appellants beyond a shadow of reasonable doubt and to such benefit, they are found entitled.

6. 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".

7. Under the given discussion, the conviction and sentence awarded to the appellants under impugned judgment are set aside; they are acquitted of the offence for which they were charged; tried, convicted and sentenced by learned trial Court; appellant Mst. Hira @ Muskan is present in Court on bail; her bail bond is cancelled and surety is discharged. Appellant Sajjad Ahmed @ Shahzad is in custody and to be released forthwith, if not required to be detained in any other custody case.

8. Both the appeals are disposed of accordingly.

JUDGE