

Case of no evidence

631

CERTIFICATE OF THE COURT IN RECORDING

Sp AT Jail A 183/18

M. Shahid vs. The State

SINDH HIGH COURT

Composition of Bench.

Single/D.B.

Mr. J. Mohammad Karim Khan Azhar

Mr. J. Zulfqar Ali Sangi

Dates of hearing: 30-04-20

Decided on 11-5-20

(a) Judgment approved for reporting.

Yes
No

[Signature]

CERTIFICATE

Certified that the judgment */Order is based upon or enunciates a principle of law */decides a question of law which is of first impression/distinguishes/, over-rules/ reverses/ explains a previous decision.

*Strike out whichever is not applicable.

NOTE:—(i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

SGP., Kar.—L (iii) 1459—5,000—6-93—T.S.S.

IN THE HIGH COURT OF SINDH AT KARACHI.
(Criminal Appellate Jurisdiction)
Crl. Appeal No. 182 of 2018 632

Muhammad Shahid @ Jabani,
Riyasat Hussain,
Male, Muslim, Adult;
Presently Confined in
Central Prison,
Karachi.

Appellant in person

VERSUS

The State

Respondent
Case No. AJ-188/2015
FR No. 375/2013
U/S: 302/324/34 PPC
R/W Section 7 of ATA 1997
P.S.: Zaman Town
Karachi.

CRIMINAL APPEAL UNDER SECTION 410 Cr. P.C
R/W SECTION 25 OF ATA 1997

Being aggrieved by and dis-satisfied with the impugned judgement dated 26-05-2018 passed by the learned IInd Anti Terrorism Court Judge, Karachi, in special case No. AJ-188/2015 whereby the present Appellant was sentence to suffer Rigorous Imprisonment for life for the offence under Section 302/324/34 PPC read with Section 7 (H) of Anti Terrorism Act 1997, without benefit of Section 382-B Cr. P. C.

The Appellant respectfully refers the present Appeal on Consideration of the following Facts and Grounds.

Certified Copy of the impugned judgement dated 26-05-18 is enclosed herein.

where he was operated upon and his one kidney was damaged. He came to know that Abdul Jabbar Mangi has succumbed to injury, and he himself is under treatment in Ward No. 19, Bed No.11. He claim that

HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Jail Appeal No.183 of 2018

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi.Appellant Muhammad Shahid @ Japani through
Mr. Muhammed Imran Meo, Advocate.Respondent/State Through Mr. Muhammad Iqbal Awan, Deputy
Prosecutor General.

Date of hearing: 30.04.2020.

Date of Announcement 11.05.2020.

J U D G M E N T

MUHAMMAD KARIM KHAN AGHA, J:- Accused Muhammad Shahid @ Japani s/o Riyasat Hussain was tried by learned Judge, Anti-Terrorism Court No.II, Karachi, in Special Case No.AJ-188/2015 arising out of Crime No.375 of 2013, u/s. 302/324/34 PPC r/w Section 7 AIA, 1997, registered at PS Zaman Town, Karachi. After trial vide judgment dated 26.05.2018, the appellant named above was convicted and sentenced to suffer rigorous imprisonment for life under Section 7 (a) AIA, 1997.

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.II, Karachi, the aforesaid appeal has been preferred by the appellant against his conviction.

3. The brief facts of the prosecution case according to FIR No.375/2013 is that the FIR was registered on 01.10.2013 at 2015 hours and the incident occurred on 27.09.2013 at 1645 hours on the basis of the statement u/s 154 Cr.P.C. of complainant Naeem s/o Fazal Ahmed. The complainant in his statement u/s 154 Cr.P.C. had stated that he is driver of Abdul Jabbar Mangi who is an officer of KDA at Landhi, Korangi for the past four years. That on 27.09.2013 in the evening he had taken Abdul Jabbar Mangi in Suzuki Alto No.LAUB-756 from Korangi No.4 for Detence. He was driving the car whereas Abdul Jabbar Mangi was sitting on front seat next to driver seat. On the way he told him that the mother of his

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sister in law is ill and that he has to go to see her. As they reached at Bus Stop Korangi No.2 at about 04.45 pm two young riders on motorbike wearing helmet stopped their car, came in front of the car and both of them took out their pistols and fired upon them. Whereupon he got injured and Abdul Jabbar Mangi got seriously injured by bullet injuries and by such firing terrorism was created. He and Abdul Jabbar Mangi were brought to Jinnah Hospital in ambulance, where he was operated upon and his one kidney was damaged. He came to know that Abdul Jabbar Mangi has succumbed to injury and died. He claims that unknown terrorists had come and had killed Abdul Jabbar Mangi and also injured him. Thereafter action be taken against them.

4. After completion of usual investigation and obtaining permission he submitted challan against the accused before the concerned court.

5. Thereafter formal charge was framed and read over to the accused, to which he pleaded not guilty and claimed to be tried.

6. To prove its case the prosecution examined 09 prosecution witnesses and exhibited numerous documents and other items and thereafter the side of the prosecution was closed. Statement of the accused was recorded u/s 342 Cr.P.C. in which he denied all the allegations leveled against him and pleaded false implication. He also gave evidence under oath but did not call any witness in support of his defence case.

7. Learned Judge, Anti-Terrorism Court No.II, Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 26.05.2018, convicted and sentenced the appellant as stated above, hence this appeal has been filed by the appellant against his conviction.

8. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

9. Learned counsel for the appellant has contended that he is innocent and has been falsely implicated in this completely concocted case on

account of his political affiliation, that there is no evidence against him apart from the pistol which was foisted upon him in a case under S.13 (d) of the Arms Ordinance 18 months after the incident which matched with empties recovered from the scene and the appellant should be acquitted of the charge by this court extending to him the benefit of the doubt. In support of his contentions he placed reliance on the cases of **Ghulam Akbar and another vs. The State** (2008 SCMR 1064), **Ali Sher and others vs. The State** (2008 SCMR 707), **Abdul Latif Unar and another vs. The State** (2018 P. Cr.L.J. Note 49), **Syed Riffat Hussain and others vs. The State** (Special Cr. Anti-Terrorism Appeals No.98 & 99 of 2018-unreported dated 03.09.2019)

10. On the other hand learned Deputy Prosecutor General has fully supported the impugned judgment. He has contended that the prosecution has proved its case against the appellant beyond a reasonable doubt as the prosecution witnesses support each other in all material respects and no enmity has been suggested against them and as such their evidence can be safely relied upon, that appellant confessed his crime before the police and lead them to the place of the incident on his pointation, that the empties recovered from the scene of the incident matched with the pistol recovered from the accused on his arrest and as such his conviction and sentence should be upheld and the appeal dismissed.

11. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellant, the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

12. After our reassessment of the evidence based on the evidence of the PW's especially PW 1 Nacem who was shot and injured at the scene of the incident along with the deceased, PW MLO, post mortem report, PW police witnesses and IO, recovery of empties on the spot and positive chemical report we are satisfied that the prosecution has proved beyond a reasonable doubt that on 27.09.2013 at about 4.45pm persons had come on motorbike at bus stop Korangi No.2 and had fired at a car with registration No.ABU-756 which firearm shots injured Nacem and killed

Abdul Jabbar Mangi both of whom were sitting in the car and thereby caused the murder of Adbul Jabbar Mangi. This position is admitted by learned counsel for the appellant.

13. The only issue therefore, in our view, left before us is whether the appellant was one of the persons who shot the deceased Abdul Jabbar Mangi by firearm and thereby committed his murder.

14. In our view after our reassessment of the evidence we find that the prosecution has **NOT** been able to prove beyond a reasonable doubt that the appellant was one of the persons who murdered deceased Abdul Jabbar Mangi by firearm and hereby set aside the impugned judgment and allow the appeal for the following reasons;

- (a) There was an unexplained delay of 4 days in lodging the FIR which could have lead to the concoction of a false case against the accused or any other person in the future. The accused was not named in the FIR. It is well settled by now that delay in filing an FIR without explanation adversely impacts on the prosecution case.
- (b) The sole eye witness to the incident PW 1 Nacem admitted in his evidence that he could not recognize any of the culprits who fired at him and the deceased. This is understandable as the culprits were wearing motor cycle helmets at the time of the incident. Since there are no other eye witnesses to the incident the identification of the appellant as one of the persons who fired upon the deceased and the injured PW1 Nacem comes into question.
- (c) No one was arrested from the spot and no recovery of any pistol was made on the spot.
- (d) The appellant's alleged confession before the police which he later retracted is inadmissible in evidence. Even otherwise the appellant allegedly confessed to a murder whilst he was in police custody in a case under S.13 (d) of the Sindh Arms Ordinance and as such it does not appeal to reason, logic or commonsense that he would confess to a crime which carried the death penalty when there was absolutely no evidence in that case against him which had been disposed on in "A" class.
- (e) The appellant leading the police to the place where the crime was committed is irrelevant as the police already knew where the crime was committed.

(f) It appears that the only piece of evidence against the appellant is the positive FSL report which showed that the empties recovered from the scene matched with the pistol which was recovered from the appellant on his arrest **18 months after the incident** however there is no evidence where these empties were kept over that 18 month period and whether even they were the same empties and as such we cannot safely conclude that these were the empties which had been fired from the pistol recovered from the appellant 18 months later. In this respect reliance is placed on **Abdul Latif Unar's case** (Supra)

(g) The appellant is entitled to the benefit of the doubt and it appears that there are many doubts in the prosecution case as to who was the person who actually murdered the deceased Abdul Jabbar Mangi by firearm whilst sitting in his car.

15. Thus, based on the above discussion we find that the prosecution has failed to prove its case against the appellant beyond a reasonable doubt and we set aside the impugned judgment, acquit the appellant of the charge and allow his appeal and as such the appellant shall be released unless he is wanted in any other custody case.

16. The appeal is disposed of in the above terms.