JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Jail Appeal No.S-275-A of 2017

Date of hearing:	17.10.2022.
Date of Decision:	17.10.2022.
Appellants:	Salman and Imran through Mr.Bilawal Ali Ghunio, Advocate.
Respondent:	The State through Mr. Nazar Muhammad Memon A.P.G. Sindh.

J U D G M E N T

MUHAMMAD IQBAL KALHORO, J: - Appellant Salman for murdering his wife Mst. Tanveer Akbar @ Aisha inside house situated in Qasimabad Hyderabad on 23.03.2013 at 1100 hours, and appellant Imran for facilitating him to murder his wife by holding her, stood a trial as S.C No.271 of 2013, have been convicted under section 302 (b), 34 PPC and sentenced to life imprisonment as Tazir with compensation of Rs.200,000.00 [rupees two hundred thousand only] to be paid by each of them to the legal heirs of deceased under section 544-A Cr.P.C. by way of impugned judgment rendered by learned IIIrd Additional Sessions Judge, Hyderabad, have challenged the same by means of appeal in hand.

2. Complainant in FIR has stated that he had married two daughters to appellants, brothers interse, out of nine daughters he has. But appellant Imran after some time had divorced his daughter, whereas appellant Salman used to maltreat her daughter namely Mst. Tanveer Akbar @ Aisha. At one point in time, she had left his house but on intervention of elders she was sent back to live with him. On the day of incident, appellant Salman informed him that his daughter was murdered in the house by firearm injuries. On such information, complainant set out for house of appellant in Qasimabad Hyderabad but on his way was informed that the police after postmortem of the deceased had handed over her body to his relative Azizullah. After hearing it, complainant appeared at Police Station Qasimabad, Hyderabad and gave such information, reduced as FIR No.68/2013, against both the appellants.

3. The record shows that in the investigation, at the time of inspection of place of incident i.e. a room, situated inside the house on the same date viz. 23.03.2013, appellant Salman was arrested, and dead body of the deceased retrieved by the police for postmortem. At the time of his arrest, appellant Salman disclosed to the police, duly recorded in the memo, that his wife Mst.Tanveer @ Aisha was taking out his clothes from almirah where his licensed pistol was available, which, due to her fiddling, fell down on the ground resulting in an accidental fire from it, hitting her foot, and she out of shock and fear had died. From the place of incident, two empties and licensed pistol of appellant Salman were recovered and sealed accordingly for sending to Forensic Science Laboratory [FSL] for a report, while appellant Imran was arrested on 24.03.2013 from infornt of his house. After usual investigation the challan was submitted and the trial commenced.

4. Prosecution in order to prove the charge has examined six witnesses and has produced all necessary documents comprising FIR, postmortem report, relevant memos etc. The prosecution evidence, then was put to the appellants under section 342 Cr.P.C. They have simply denied it and pleaded innocence. They however, did not examine themselves on oath or led any evidence in defense. The trial Court, after hearing the parties has decided the case vide impugned judgment dated 07.11.2017 in the terms as stated in para No.1 of the judgment.

5. Learned defense counsel in his arguments has submitted that appellants are innocent, falsely implicated in this case, there is no direct evidence against the appellants, so called eyewitnesses namely Muhammad Riaz and Shabbir were introduced later on in the prosecution case. They are originally resident of Mirpurkhas and their presence at the spot at the relevant time is not without a doubt. They are chance witnesses and their evidence cannot be relied upon. Prosecution has miserably failed to prove the case against appellants.

6. Learned Additional Prosecutor General Sindh has supported the impugned judgment to the extent of appellant Salman. He submits that the case against appellant Imran is not without a doubt.

7. I have considered submissions of the parties and perused material available on record. Prosecution has examined complainant as PW-01. He is not the eyewitness and has stated in his deposition that he was informed by appellant Salman himself on phone that he had committed murder of his daughter by firing at her. After hearing it, he set out from his village in District Mirpurkhas for Police Station Qasimabad Hyderabad and registered an FIR against both the appellants. At about 11.00 p.m., on the same day, his relatives Muhammad Riaz and Shabbir had informed him that they were the eyewitnesses and had seen the incident. Muhammad Riaz (PW-02) narrates in evidence that on the day of incident after leaving Mirpurkhas in the morning for Hyderabad to do some shopping, he and his relative Shabbir Ahmed had reached Hyderabad at about 10.30 a.m. but since the shops were still closed they went to the house of appellants, their relatives, for spending some time there. As soon as they reached there, they heard cries coming from the house. They went inside and saw appellant Salman firing at his wife, and appellant Imran, his brother, holding her by her hair. They, however, did not intervene and came out of the house immediately. After some time, they saw appellants taking away dead body of the deceased in a white color car to some unknown place. The other eyewitness namely Shabbir however could not be examined due to his alleged departure for Saudi Arabia. Apart from him, there is no eyewitness of the incident, the other witnesses examined by the prosecution are formal and marginal in nature like PW-03 Muhammad Yaqoob, the witness of place of incident, arrest of appellant Salman and recovery of pistol/crime weapon from him, recovery of clothes, dead body, which documents he has produced in his evidence as Ex.11/A to Ex:11/C.

8. Medico-legal officer has been examined as PW-04. He in his postmortem report has recorded injuries on the person of deceased. One injury he found is at left lumber region at mid axillary line 1 cm in diameter with inverted margins i.e. wound of entry blackening around wound present, and wound of exit at right lumber region at mid axillary line 1 cm in diameter. The other injury he found is on left foot of deceased near lat mallelus size 1 cm in diameter i.e. wound of entry and wound of exit at left heel medially 1 cm in diameter.

9. Tapedar Abdul Majid has been examined as PW-05. He in his evidence has produced sketch of place of incident as Ex.16/B. Meanwhile, during pendency of the trial, the original I.O. of the case died and hence LNK Akhtar Hussain was examined as PW-06, because he was conversant with his signature and handwriting, the claim, not shattered in defense. He has produced all the relevant papers including memo of arrest of appellant Imran, FSL report, (Ex.20/A) confirming that the two empties recovered from the place of incident were fired from the pistol licensed in the name of Salman and recovered from him.

10. The prosecution has examined one eyewitness namely Muhammad Riaz but his evidence and his presence at the spot are not without a question. He is originally resident of a village in District Mirpurkhas far away from Hyderabad. Although, he has pleaded in his evidence that on the day of incident he had come to Hyderabad to do some shopping but has not clarified necessary details in this regard. His conduct: leaving the place after seeing the incident without making any mark of his presence is not normal. He has admitted that he did not inform complainant immediately after the incident although he is his son-in-law. He and his relative Shabbir both according to him went inside the house but strangely no family member inside was able to see them or note their presence, nor strangely in the face of such tragedy they did anything to intervene and ensure if the lady was injured or had died and take her to hospital for first aid if she was injured. Moreover, he in his evidence claims that afterwards they kept waiting outside of the house and saw appellants after some time removing the dead body on a car to some unknown place. This piece of evidence in fact is in clash with the prosecution story, which shows that the dead body of the lady was found inside the house on the very day when the police reached there after having received information. Normally, if a person witnesses such tragedy happening with his sister-in-law, would not sneak out of the house and would rather inform her relatives and try to reach out to the police for action against the accused. But this witness instead, as per his own evidence, preferred to return to his village without raising alarm and only after registration of FIR, in late hours, informed the complainant of the incident. His evidence is not worthy of credence, and therefore, is discarded.

11. Notwithstanding, there is sufficient circumstantial evidence against appellant Salman. The deceased was his wife, she was living with him at the time of incident, she died unnatural death in his room on account of firearm injuries caused to her from the pistol licensed in his name, and which was also recovered from him at the time of his arrest. He at the time of his arrest put up a story before the police that the pistol was accidently fired when his wife was taking out his clothes from the almirah where it was kept. To support such story, the defense has asked questions from the complainant in his cross-examination. It is well settled that burden of proof lies on the prosecution to prove its case but when the accused takes a particular plea to establish his innocence, burden shifts upon him. Appellant has miserably failed to prove such plea by examining any of his family members from the house to support it.

12. Even otherwise, such plea does not appear to appeal to the prudent mind because the weapon without a self-lock is not kept in an open cupboard/almirah along with the clothes, a place easily accessible to everyone in a house full of children as it is informed that the deceased had two minor daughters. Then, if the fire was made by accident, there would have been only one fire and not the two fires. In this case, the deceased lady had received two firearm injuries at different parts of her body, and from the place of incident two empties were recovered. The lady had not died by shock or fear as claimed by the appellant but by damage to vital organ of her body including her both kidneys causing heavy bleeding resulting in her death, as described by the medico-legal officer in his evidence at Ex.13. Police on arrival, after the incident, found appellant Salman with the dead body and recovered crime weapon from him and two empties from there. The pistol and empties were sent to laboratory for a report. The report has come in positive stating that the two empties were fired from the same pistol. No one has disputed that this pistol is licensed one and was recovered from possession of appellant. The case against him from such pieces of evidence has been established beyond a reasonable doubt.

13. In spite of what has been stated above, the prosecution case against appellant Imran is not without a doubt. The evidence of eyewitness who had seen appellant Imran holding the deceased lady by her hair has already been discarded. Complainant is not the

eyewitness and his evidence qua appellant Imran is, at the best, hearsay. In FIR, although he has taken name of appellant Imran to have facilitated main accused in committing murder of his daughter but he has not given any detail nor such fact has been established from any other evidence. When police arrived in the house after the incident, they only found appellant Salman present there and not appellant Imran, who was arrested on next date without any incriminating article found in his possession. Even otherwise, it is not believable that from a distance of 4/5 feet a brother would fire at his wife while his brother, standing close to her, is holding her hair without risk of hitting him. These factors imbue the mind with streaks of doubt qua role of appellant Imran. Learned Additional Prosecutor General Sindh has not supported the impugned judgment to the extent of appellant Imran, apparently because of these reasons.

14. For foregoing discussion keeping in view the entire prosecution case, I tend to agree with learned Additional Prosecutor General and hold that although the prosecution has succeeded in bringing home the charge against appellant Salman beyond a reasonable doubt, as discussed above, but has not proved the case against appellant Imran without a doubt. Consequent to such conclusion, this appeal is partly allowed and partly dismissed. Appeal against appellant Salman is dismissed and conviction and sentence awarded to him vide impugned judgment are upheld. However, the conviction and sentence awarded to appellant Imran in the impugned judgment are set-aside. Appellant Imran is acquitted of the charge. He shall be released forthwith if not required in any other custody case.

The appeal stands disposed of above in above terms.

JUDGE

Abdullah Channa/PS