

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No. 680 of 2019

Appellant: Muhammad Naseeruddin through Syed Mahmood Alam, advocate

The State: Mr. Khadim Hussain Khuharo, Additional Prosecutor General Sindh

Complainant: Maqsood Ali through Jamshed Iqbal, advocate

Date of hearing: 31.08.2023

Date of judgment: 07.09.2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of prosecution that the appellant with rest of the culprits, in furtherance of their common intention, committed murder of Muhammad Siddique by causing him fire shot injury, for that the present case was registered. The appellant and co-accused Mohsin @ Bhai Jan were charged for the said offence and prosecution to prove it, examined in all 08 witnesses and then closed its side. The appellant and co-accused in their statements recorded under Section 342 Cr.P.C denied the prosecution's allegation by pleading their innocence; they did not examine anyone in their defence or themselves on oath to prove their innocence. On conclusion of trial, co-accused Mohsin @ Bhai Jan was acquitted while the appellant was convicted under Section 302(b) PPC and sentenced to undergo life imprisonment and to pay compensation of Rs.3,00,000/- to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for six months, with benefit of section 382(b) Cr.P.C by learned 1st Additional Sessions Judge, (MCTC) Karachi, South, vide judgment dated 04.10.2019, which he has impugned before this Court by preferring the instant Criminal 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 complainant party in order to satisfy with him its dispute over matrimonial affairs; the complainant is not eye witness to the incident; the FIR of the incident is lodged with delay of about 05 hours; PW Abrar is not natural witness to the incident; there is no recovery of crime weapon from the appellant or anything from the place of incident; there is no independent witness to the incident and on basis of same evidence, co-accused Mohsin @ Bhai Jan has already been acquitted by the learned trial Court. By contending so, he sought for acquittal of the appellant by extending him benefit of doubt. In support of his contention, he relied upon cases of *Imran Ashraf and 7 others v. the State* (2001 SCMR 424) and *Mst. Rukhsana Begum and others v. Sajjad and others* (2017 SCMR 596).

3. Learned Addl. PG for the State and learned counsel for the complainant have sought for dismissal of the instant Criminal Appeal by contending that the appellant is neither innocent nor is involved in this case falsely by the complainant party; non recovery of crime weapon is not enough to disbelieve the case of prosecution; case of the appellant is distinguishable to that of acquitted co-accused Mohsin @ Bhai Jan and prosecution has been able to prove its case against him beyond shadow of doubt. In support of their contention, they relied upon cases of *Qasim Shahzad and another v. the State and others* (2023 SCMR 117), *Zulfiqar Ahmed and another v. the State* (2011 SCMR 492) and *Muhammad Sadiq v. the State* (2022 SCMR 690).

4. Heard arguments and perused the record.

5. Admittedly, complainant Maqsood Ali has not witnessed the incident with his own eyes but there could be made no denial to the fact that whatever he has stated in his 154 Cr.PC statement

before the police was based on narration of the incident made to him by PW Abrar Ahmed. Besides, being the complainant of the case he has also attested memo of arrest of the appellant. The delay of about 05 hours in lodgment of FIR of the incident is well explained by the complainant by stating that it has occurred as they were busy in hospital. It even otherwise was natural in the circumstances of the case; therefore, it would be unsafe to reject the evidence of the complainant as a whole out rightly on the basis of delay in lodgment of the FIR of the incident. It was stated by PW Abrar Ahmed that on 29.01.2013 at about 09/09.30 a.m. when he was standing in gallery of his house, he found three culprits to have arrived on two motorcycles at house of Muhammad Siddique, on knock he came out from his house and was fired at by the appellant; he threw a flower pot at them, which did not hit them, however, they managed to escape from the place of incident; he came down, rushed to the complainant at his shop and brought him at the place of incident; it was natural action on his part which could not be judged adversely. It was further stated by him that in the meanwhile the *mohalla* people, took Muhammad Siddique to hospital; they followed them, Muhammad Siddique died there; police came, prepared certain documents, his 154 Cr.PC statement was also recorded. His evidence takes support from the evidence of PW Sajjad Ali to large extent. In order to prove the motive of the incident PW Mst. Farheen was examined by the prosecution, who happened to be ex-wife of the appellant. As per her, she obtained *Khula* from the appellant as he was leveling false allegations against her, which annoyed him and he was found saying that he would kill Muhammad Siddique, being head of the family. The complainant and his witnesses have stood by their version on all material

points, despite lengthy cross-examination; they could not be disbelieved only for the reason that they are related inter-se and their evidence is not supported by any independent person of the locality. Indeed, they were having no reason to have involved the appellant in this case falsely, who too is their relatives. Independent person oftenly are found reluctant to involve themselves in Court proceedings in dispute of others. The evidence of the complainant to the extent of initial investigation of the case and recording his 154 Cr.PC statement, which subsequently was incorporated into formal FIR of the incident and arrest of the appellant takes support from the evidence of I.O./SIP Rao Dilshad Ali. It was stated by I.O./SIP Amanat Ali that on investigation he interrogated the appellant, recorded 161 Cr.PC statements of the PWs, arrested co-accused Mohsin @ Bhai Jan and after usual investigation submitted challan of the case. On asking, it was stated by him that no empty or blood was secured by him from the place of incident. It might have been lost because of intervening period. Even otherwise, non-recovery of blood or empty from the place of incident is not enough to conclude that the incident has taken place in a fashion other than the one, as is alleged by the prosecution. The appellant could be declared to be innocent only for the reason that no crime weapon has been secured from him ignoring the ocular account of evidence which fully implicate him in commission of the incident. Name of co-accused Mohsin @ Bhai Jan was not appearing in FIR, it was disclosed by the appellant which makes his case to be distinguishable to that of the appellant, therefore, his acquittal is not enough to earn acquittal for the appellant. Evidence brought on record by the prosecution is transpiring confidence; therefore, there appears no reason to disbelieve the same so far the case of

the appellant is concerned. The appellant in his statement recorded under Section 342 Cr.P.C has pleaded innocence but has failed to examine himself on oath or anyone in his defence to prove his innocence therefore; his plea of innocence deserved to be ignored as an afterthought. In these circumstances, it would be safe to conclude that the prosecution has been able to prove its case against the appellant beyond shadow of doubt and no illegality or irregularity has been committed by learned trial Court by convicting him for the offence for which he was charged.

6. In case of *Muhammad Raheel @ Shafique v. State* (PLD 2015 SC 145), it has been held by Apex Court that:

"5. Thus, their acquittal may not by itself be sufficient to cast a cloud of doubt upon the veracity of the prosecution's case against the appellant who was attributed the fatal injuries to both the deceased. Apart from that the principle of falsus in unofalsus in omnibus is not applicable in this country on account of various judgments rendered by this Court in the past and for this reason too acquittal of the five co-accused of the appellant has not been found by us to be having any bearing upon the case against the appellant".

7. In case of *Asfandiyar vs. The State and others* (2021 SCMR 2009), Apex Court has held that:

"Law does not require a particular number of witnesses to prove a criminal charge and statement of a solitary witness with a ring of truth is more than sufficient to drive home the charge; corroboration is a rule of prudence and not law and cannot be invariably insisted in every case. Belatedly taken plea of substitution by the petitioner that the deceased was done to death by one Ashfaq is nothing but a far cry; it is inconceivable that a father would substitute the assassin of his son with an innocent without rhyme or reason. Longstanding absconsion with arrest as late as on 2.5.2012 is yet another predicament bracing the petitioner. On an overall analysis of the evidence, we have not been able to find space to admit any hypothesis other than petitioner's guilt; view concurrently taken by the Courts below, being unexceptionable, calls for no interference. Petition fails. Leave declined."

8. In case of *Bashir Ahmed Leghari vs. The State* (2020 SCMR 595), Apex Court has held that:

"In this backdrop, prosecution's failure to recover the weapon, statedly used in the occurrence, fades into insignificance; he is certainly not expected to keep the gun for such a long period of time with him as a souvenir of his crime."

9. The case law relied upon by the learned counsel is on distinguishable circumstances. In case of *Imran Ashraf and 7 others* (supra) the delay in lodgment of FIR and recording of 161 Cr.PC statements of the PWs was not explained properly. In the instant case, delay in lodgment of FIR is explained properly and there was no delay in recording 161 Cr.PC statements of PWs. In case of *Mst. Rukhsana Begum and others* (supra) there was dishonest improvement on part of witnesses in their statements recorded by police and Court and investigation conducted by the police was found to be unfair. In the instant case, no dishonest improvement in statements of the witnesses before police and Court is noticed and no allegation of dishonest allegation is leveled against the police.

10. In view of the facts and reasons discussed above, it is concluded that the conviction and sentence awarded to the appellant by way of impugned judgment is not calling for any interference by this Court by way of instant Criminal Appeal. It is accordingly dismissed.

JUDGE