

IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD

Cr. Appeal No. S- 12 of 2018

Date of hearing: 14.02.2020.

Date of Judgment: 14.02.2020.

Mir Shakir Ali Talpur, Advocate for appellants.

Ms. Rameshan Oad, A.P.G. for the State.

None present for complainant.

JUDGEMENT

ABDUL MAALIK GADDI, J- Through this appeal, appellants have assailed the legality and propriety of judgment dated 12.12.2017 passed by learned First Additional Sessions Judge, Mirpurkhas in Sessions Case No.70/2013 (Re-The State v. Pirdino alias Moledino and another) arising out of Crime No.01/2013 u/s 302, 324, 34 PPC registered at P.S. Sindhri, whereby the learned trial court after full dressed trial convicted and sentenced the appellants as stated in Point No.4 of the impugned judgment. For the sake of convenience, it would be proper to reproduce the Point No.4 of the impugned judgment which reads as under:-

“POINT No.4

30. In pursuance of my above discussion and circumstances of this case, it is my humble opinion that the prosecution has succeeded to prove its case against the present accused persons for committing murder/qatl-i-amd of deceased Mst. Alma with fire arm injury as well as hatchet injury at day time at public place for the offence punishable under section-302, 34 PPC through confidence inspiring corroborative as well as medical evidence. The extreme sentence is capital sentence but the mitigated sentence is the exception, hence, keeping in view the young age of the present accused persons as mitigating circumstances, sentence of death would not be appropriated, therefore, the accused persons namely Pirdino alias Moledino and Sultan are convicted under section-265-H(2) Cr.P.C and awarded sentence as under;-

For the offence punishable under section-302(b) read with section-34 PPC each to suffer R.I Imprisonment for life as Tazir. They shall also pay Rs.1,00,000/- each as compensation under section-544-A Cr.P.C to the legal heirs of deceased and in case of default they shall also suffer R.I for Four (04) months more.

They are also given the benefit of section-382(B) Cr.P.C. They are produced in custody by the Superintendent District Prison Mirpurkhas and sent back to the Superintendent District Prison, Mirpurkhas to serve out their sentence according to law, whereas the case against the proclaimed offender accused Manjhi Shar be kept on dormant file till his arrest and will be re-opened when he appeared or produced before this Court by the police. Issue whole life NBW against him in order to arrest him and be sent to the police concerned for it's compliance.

2. Concisely, the complainant Natho Shar lodged FIR at Police Station Sindhri on 13-01-2013 at 2200 hours alleging therein that his daughter Mst. Alma was married with Moledino Shar. Due to matrimonial dispute Moledino Shar had not given the hands of his daughter to complainant party, hence due to said dispute the complainant restrained his daughter Mst. Alma in his house, who has one minor son namely Sanaullah aged about 06-07 years. On 12-01-2013 there was marriage ceremony of relatives of complainant party in village Chakar Shar near Shadi Pali and in order to attend the said marriage ceremony the complainant alongwith his son Abdul Ghafoor, brother Sarang and his daughter Mst. Alma alongwith her minor son namely Sanaullah were going to Shadi Pali ridding in a bus. At about 4-00 P.M when the said bus reached at Moula Bux Mor near Atna Mori, where four persons ridding on two motorcycles arrived there, and stopped the bus on the curve. The complainant party identified them as Moledino armed with pistol, Sultan armed with hatchet, Manjhi armed with hatchet and one un-known person, who was empty handed. Moledino entered into the bus and dragged out Mst. Alma from the bus, in order to commit her murder. Then accused Moledino opened three straight fires with his pistol upon Mst. Alma. Then she fell down on the ground. Thereafter accused Sultan caused sharp side hatchet blow to Mst. Alma. The complainant party raised cries and complainant's son namely Abdul Ghafoor tried to rescue his sister, whereupon accused Manjhi caused sharp side hatchet blow upon the head of Abdul Ghafoor with intention to kill him and thereafter due to cries of complainant party as well as cries of passengers of the bus, the accused persons fled away from the spot alongwith their respective

weapons on their motorcycles. Thereafter the complainant took his injured son Abdul Ghafoor and injured daughter Mst. Alma at RHC Phullahdiyoon, but in the way his injured daughter Mst. Alam succumbed to the injuries and expired due to injuries. Then the complainant alongwith deadbody of his daughter Mst. Alma and injured son Abdul Ghafoor reached at RHC Phullahdiyoon, where police party of P.S Sindhri also arrived, issued letter for medical treatment of injured Abdul Ghafoor. Thereafter the deadbody of Mst. Alma after completion of all legal formalities was brought at Civil Hospital Mirpurkhas for postmortem purpose, where postmortem was conducted. Thereafter the complainant brought the deadbody of his daughter Mst. Alma at his village for funeral purpose and after funeral ceremony the complainant went to P.S Sindhri and lodged the report against the accused persons.

3. After completion of investigation, challan was submitted against the above named accused persons showing the accused Manjhi as absconder. After completion of all codal and legal formalities he was declared as proclaimed offender and thereafter proceedings u/s 87 & 88 Cr.P.C were also carried out against him.

4. A formal charge was framed by the trial Court on 19.7.2013 at Ex:07, to which accused pleaded not guilty and claimed trial vide their pleas recorded at Ex:07-A & Ex:07-B respectively.

5. In support of its case, the prosecution examined the following witnesses:-

P.W No.1 Complainant Natho examined vide Ex:08, who produced the copy of FIR as Ex:08-A and copy receipt as Ex:08-B respectively.

P.W No.2 Eye witness/injured Abdul Ghafoor examined vide Ex:09.

P.W No.3 Eye witness Sarang examined vide Ex11.

P.W No.4 Mashir Sadique examined vide Ex:12, who produced the mashirnama of injuries of injured Abdul Ghafoor as Ex:12-A, mashirnama of inspection of deadbody as Ex:12-B, Danistnama as Ex:12-C, Lash Chakas Form as Ex:12-D, mashirnama of securing clothes of deceased from WMO as Ex:12-E, mashirnama of place of incident as Ex:12-F, mashirnama of arrest of accused persons and recovery as

Ex:12-G and case property marked as Articles-01 to 16, respectively.

P.W No.5 I.O of this case namely SIP Abdul Rehman examined vide Ex:13, who produced the Chemical Examiner's report as Ex:13-A, Ballistic Expert report as Ex:13-B, copy of departure and arrival entries of Roznamcha of P.S as Ex:13-C copy of letter for examination of injured as Ex:13-D and copy of letter for conducting postmortem as Ex:13-E respectively.

P.W No.6 Dr. Farzana Shah examined vide Ex:14, who produced police letter for postmortem as Ex:14-A, Postmortem report of the deceased Mst. Alma as Ex:14-B and receipt as Ex:14-C respectively. She being WMO only supported the case of prosecution in respect of postmortem of deceased Mst. Alma at Civil Hospital Mirpurkhas.

P.W No.7 Dr. Nabi Bux examined vide Ex:17, who produced provisional and final medicolegal certificates of injured Abdul Ghafoor as Ex:17-A & Ex:17-B respectively. He being MO only supported the case of prosecution in respect of examination of injured Abdul Ghafoor at RHC Phullahdiyoan.

P.W No.8 Tapedar Muhammad Sajjan examined vide Ex:18, who produced four copies of Sketch as Ex:18-A to Ex:18-D respectively. He being Tapedar only supported the case of prosecution in respect of inspection of site and preparation of its sketch.

6. Thereafter, learned ADPP for the State closed the side of prosecution vide his statement at Ex:20.

7. The statements of accused persons were recorded u/s 342 Cr.P.C at Ex:21 & Ex:22 respectively, wherein they denied the allegations leveled against them by the prosecution and stated that they are innocent and falsely implicated in this case and pray for justice. However they declined to examine any witness in their defence and also declined to examine themselves on oath.

8. It is contended by learned counsel for the appellants that the appellants are innocent and they have been falsely involved in the case in hand on account of matrimonial dispute; that the judgment passed by trial court is against the law and facts; that learned trial court has erred in not appreciating the evidence on record; that the learned trial court in findings about the Point No.3 did not mention as in affirmative or proved but only mentioned "as discussed" which is opposed to the requirement of passing of the judgment; that complainant Natho, PWs Abdul Ghafoor (injured) and Sarang are the

alleged eye witnesses of the incident but none of them have implicated the appellants in this case to be the culprits even they have not identified the appellants during the course of their evidence and then complainant and PW Sarang were declared hostile by the prosecution itself; that the statements of accused required to be recorded u/s 342 Cr.P.C. are also defective with legal aspect of the case. Lastly he contended that no case for conviction is made out hence the appellants may be acquitted of the charge by extending them benefit of doubt. In support of his contentions, he has placed reliance on the case law reported as Muhammad Sarfraz v. The State through P.G. Punjab and another (PLD 2013 Supreme Court 386).

9. On the other hand, learned A.P.G. appearing on behalf of the State did not support the impugned judgment of the trial court on the ground that main eye witnesses of the incident have not supported the case of prosecution by not identifying them in the court.

10. I have heard the learned counsel for the parties and perused the entire evidence available on record.

11. As per contents of F.I.R. there was matrimonial dispute between the complainant and accused party. The Complainant Natho has alleged that on 12.01.2013 at about 04:00 p.m. he along with his daughter Mst. Alma, his son Abdul Ghafoor and his brother Sarang and minor son of his daughter Mst. Alma namely Sanaullah were going to Shadi Pali for attending a marriage ceremony in a bus. In the way, four accused persons namely Pir Dino alias Moledino (husband of his daughter Mst. Alma) armed with pistol, Sultan Shar armed with hatchet, Manjhi with hatchet and one unknown person empty handed came on motorcycles, intercepted them and accused Pirdino alias Moledino got down Mst. Alma from the bus and made three fires from his pistol upon Mst. Alma (his wife). It is further alleged that PW Abdul Ghafoor tried to save her sister but accused Manjhi caused hatchet injuries to him. Mst. Alma died at the spot.

However, in his evidence recorded before the trial Court this complainant Natho has contradicted his own version of F.I.R by stating that "when they reached at Moula Bux bus stop / turn near Attna Mori, meanwhile four persons riding on motorcycle arrived there and stopped

our bus. The said persons were muffled faces”. In the bottom of his examination in chief he deposed that “I do not know whether the accused present in Court are same culprits, who committed the murder of my daughter or otherwise”. He was declared hostile by learned ADPP.

12. PW Abdul Ghafoor who is injured in this case has also narrated the same story but in the bottom of his deposition has deposed that “police officer has not recorded my statement. I have narrated the facts to police officer about the incident. I had not identified the accused persons at the time of incident as I became unconscious”.

13. PW Sarang who is also the eye witness of the incident during his examination in chief has deposed that “I cannot say whether the accused present in the Court are real culprit of the incident or otherwise”. He was also declared hostile by learned ADPP. But in the cross examination to learned counsel for accused, he replied that “it is correct to suggest that I had not witnessed the incident on my own eyes.

14. It also appears that PW Sadiq who happens to be mashir of this case in all respects, in his cross examination has deposed that “it is correct that all the mashirnamas were prepared by the police at the house of complainant. It is correct to suggest that no any property was recovered from the accused persons in my presence and no any accused was arrested by the police in my presence. It is correct to suggest that no any mashirnama was prepared in my presence and I have only put my LTIs on some blank papers.

15. The evidence of other PWs viz. Investigating Officer, Medical Officers and Tapedar is formal in nature. No doubt in this case as mentioned by the trial Court in its judgment, that on 16.04.2016 these both PWs / eye witnesses appeared in the Court along with their counsel and submitted application u/s 540 Cr.P.C through learned ADPP stating therein that at the time of recording their statements before the court, they were under threats extending by the accused persons. But it is surprising to note that on 09.10.2017 this application was also disposed of being not pressed by the learned ADPP on behalf of the State hence, in my humble view, the said application when it

itself was dismissed as not pressed, carries no weight in the eyes of law and no conviction on this score could be maintained as the complainant and both eye witnesses of the case including mashir namely Sadiq have resiled from their earlier statements and did not support the case of prosecution and were also declared hostile by the prosecution.

16. Under these circumstances, false implication of appellants in this case with due deliberations and consultations on account of admitted enmity on matrimonial dispute cannot be ruled out. All these things create reasonable doubts in a prudent mind that the incident as alleged by the complainant in his FIR has not occurred and it is well settled principle of law that even a single circumstance creating a reasonable doubt, the benefit of which, always goes in favour of accused, however, in the instant case there are material discrepancies and lacunas in the prosecution evidence and even they have not supported the case of prosecution. In this regard, reliance can be placed upon case of 'Tariq Pervez v. The State' [1995 SCMR 1345] wherein it has been held by Honourable Supreme Court of Pakistan that:

"For giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubts. If a simple circumstance creates reasonable doubt in a prudent mind about the guilt of accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right".

17. For what has been discussed herein above, I am of the considered view that the prosecution has failed to discharge its liability of proving the guilt of appellants beyond any shadow of doubt. Therefore, while extending the benefit of doubt in favour of appellants, I hereby allow this appeal and set-aside the conviction and sentence recorded by the learned trial court through impugned judgment dated 12.12.2017 passed in Sessions Case No.70/2013 (Re-The State v. Pirdino alias Moledino and another) arising out of crime No.01/2013 u/s 302, 324, 34 PPC of P.S. Sindhri and acquit

the appellants of the charge. The appellants are in custody. They shall be released forthwith if they are not required in any other custody case.

18. These are the reasons of my short order dated 14.02.2020, whereby this appeal was allowed, impugned judgment was set aside and the appellants were acquitted of the charge.

JUDGE

Tufail