

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**  
**Criminal Appeal No.S-293 of 2010**

**Appellant:** Muhammad Ashraf son of Noor Muhammad Bhatti, Through Mr. Altaf Sachal Awan, Advocate

**State:** Mr. Shahzado Saleem Nahiyoon, DPG.

**Date of hearing: 02.11.2020**

**Date of decision: 06.11.2020**

**JUDGMENT**

**IRSHAD ALI SHAH, J.** The appellant by way of instant appeal has impugned judgment dated 28.07.2010, which has been rendered by learned 2nd Additional Sessions Judge, Badin, whereby the appellant for offence punishable u/s 302(b) PPC has been convicted and sentenced to undergo imprisonment for life and to pay fine of rupees one lac to the legal heirs of deceased Ayaz Ali as compensation.

2. It is the case of the prosecution that the appellant on account of the dispute with the deceased over outstanding of an amount of rupees five thousand, committed his murder by causing him knife injuries, for that he was booked and reported upon.

3. At trial, the appellant did not plead guilty to the charge and the prosecution to prove it, examined PW-01 complainant Mumtaz Ali at (Ex.05), he produced FIR of the present case; PW-02 Allah Bachayo at (Ex.06), he produced his 164 Cr.P.C statement; PW-03 Mashir Muhammad Hassan at (Ex.07), he produced memo of examination of dead body, inquest report, memo of place of incident, memo of recovery of the cloth

of the deceased, memo of arrest of the appellant and memo of recovery of knife from the appellant; PW-04 Muhammad Aslam at (Ex.08), he produced his 164 Cr.P.C statement; PW-05 PC Mushtaque Ali at (Ex.09); PW-06 Altaf Hussain at (Ex.10); PW-07 Tapedar Sain Bux at (Ex.11); PW-08 Dr. Muhammad Yousif at (Ex.12), he produced post mortem report on the dead body of the deceased; PW-09 SIO / SIP Qamar Zaman at (Ex.13), he produced report of Chemical examiner and other ancillary documents and thereafter prosecution closed its side.

4. The appellant in his statement recorded u/s. 342 Cr.PC denied the prosecution's allegation by stating that he has been involved in this case falsely by the complainant; he was fast friend of the deceased; the deceased was involved in a various cases by the police and the complainant was holding him responsible for those cases against the deceased. The appellant however, did not examine anyone in his defence or himself on oath to disprove the prosecution allegation against him.

5. On evaluation of evidence, so produced by the prosecution, the learned trial Court convicted and sentenced the appellant as is detailed above, by way of impugned judgment.

6. It is contended by learned counsel of the appellant that the appellant being innocent has been involved in this case falsely by the complainant party; the identity of the appellant under the light of bulb is a weak piece of evidence; there is no recovery of bulb; there is no independent witness to the incident; the knife has been foisted upon the

appellant and the evidence of the prosecution being doubtful has been believed by learned trial Court without lawful justification. By contending so, he sought for setting aside of impugned judgment with acquittal of the appellant being juvenile offender. In support of his contention he relied upon cases of *Mst Yasmeen vs Javed and another (2020 SCMR 505)* and *Muhammad Imran vs The State (2020 SCMR 857)*.

7. It is contended by learned D.P.G for the State that the appellant is neither innocent nor has been involved in this case falsely by the complainant party; the complainant and his witnesses were natural witness to the incident and they were having no reason to depose falsely against the appellant and on arrest from the appellant has been secured the incriminating knife by the police and the appellant has rightly been convicted and sentenced by learned trial Court on the basis of proper appraisal of evidence. By contending so, he sought for dismissal of the instant appeal as appellant according to him has already been dealt with leniently being juvenile offender by learned trial Court.

8. I have considered the above arguments and perused the record.

9. Complainant Mumtaz Ali, PWs Allah Bachayo and Muhammad Aslam have inter-alia stated that on the night of incident they and Ayaz Ali (deceased) went at Dargah of Ghafoor Shah adjacent to Matli town; outside of the Dargah they found the appellant to be standing; an amount of rupees five thousand of Ayaz Ali (deceased) was outstanding against the appellant, therefore, Ayaz Ali (deceased) and the appellant

indulged in talking with each other. After sometime they attracted to the cries, there they found the appellant causing injuries to Ayaz Ali (deceased) with knife. On *hakals* the appellant run away. On enquiry, Ayaz Ali (deceased) told to them that on demand of his money the appellant has caused him knife injuries. If, it was so, then it was a *dying declaration* which was allegedly made by the deceased before the complainant and his witnesses. Be that as it may, the Ayaz Ali (deceased) as per the complainant and his witnesses died on his way to Matli Hospital and matter then was reported to police. It was within shortest possible time. The complainant and his witnesses have stood by their version on all material points with regard to the death of the deceased in a manner alleged by the prosecution; therefore, they could not be disbelieved only for the reason that they are related inter-se. They indeed are appearing to be natural witness to the incident and they were having no reason to have involved the appellant in this case falsely . Admittedly, the appellant was well known to the complainant party, therefore, his identity by the complainant and his witnesses at night time could hardly be doubted. The recovery of the bulb the alleged source of identity as such was hardly required in the circumstances of the case.

10. On arrest, from the appellant as per SIO/SIP Qamar Zaman has been secured the knife which he allegedly used in commission of the incident and the same on chemical examination has been found to be stained with human blood, such recovery could not be doubted only for

the reason that it has been effected from the appellant on 4<sup>th</sup> day of his arrest by the police.

11. In case of ***Ali Bux and others vs. The State (2018 SCMR-354)***,

wherein it has been held by the Hon'ble Apex Court that;

*“3. The occurrence in this case had taken place in broad daylight and at a place where at the same could have been seen by many persons available around the place of occurrence. An information about the said occurrence had been provided to the police on telephone within fifteen minutes of the occurrence. In the FIR lodged in respect of the incident in question the present appellants had been nominated and specific roles had been attributed to them therein. The ocular account of the incident had been furnished before the trial court by three eye-witnesses namely Ali Akbar complainant (PW-1) Ghulam Shabir, (PW-2) and Bilawal (PW-3) who had made consistent statements and had pointed their accusing fingers towards the present appellants as the main perpetrators of the murder in issue. The said eye-witnesses had no reason to falsely implicate the appellants in a case of this nature and the medical evidence had provided sufficient support to the ocular account furnished by them.”*

12. The case law which is relied upon by learned counsel for the appellant is on distinguishable facts and circumstances. In case of *Mst. Yasmeen (supra)*, it was an appeal against acquittal. In the instant matter no question of acquittal is involved. In case of *Muhammad Imran (supra)*, it was held that benefit of single circumstances deducible from the record, intriguing upon the integrity of prosecution case, was to be extended to the accused without reservation. In the instant case, no circumstance is found available which may create doubt about the integrity of the prosecution case, which may justify extending benefit of doubt to the appellant.

13. The appellant has failed to establish any mis-reading or non-reading of evidence on record or failure on part of the learned trial Court in following the settled principle of law of appreciation of evidence. Thus, the learned trial Court has rightly found the appellant to be guilty for the above said offence.

14. In case of *Muhammad Mansha Vs. The State (2016 SCMR-958)*, it has been held by the Honourable Apex Court that;

*“8.The case in hand is the one in which the appellant was named in the promptly lodged FIR with a specific role, which role is established on record. The occurrence was of a day time and the appellant was known to the PWs, who have identified him to be the person who has committed cold-blooded murder of Haji Liaquat Ali, deceased, and there seems to be no reason as to why the appellant should not undergo the maximum punishment provided for the offence.”*

15. In view of the facts and reasons discussed above, the instant appeal fails and it is dismissed accordingly.

**JUDGE**