

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

**Crl. Appeal No.S -184 of 2006**

Appellants: Abdul Wahid son of Muhammad Rafique Arain,  
Through Mr. Badal Gahoti Advocate

Complainant: Ghulam Mustafa Through Mr. Wali Muhammad  
Khosro, advocate.

Respondent: The State, through Mr. Shahzad Saleem Nahiyoan,  
D.P.G.

Date of hearing: 09-11-2020.

Date of decision: 09-11-2020.

**JUDGMENT**

**IRSHAD ALI SHAH, J:** The appellant by way of instant appeal has impugned judgment dated 26.08.2006 passed by learned 1<sup>st</sup> Additional Sessions Judge, Mirpukhas whereby he for an offence punishable u/s 302(b) PPC has been convicted and sentenced to undergo Imprisonment for 25 years and to pay *Diyat* of Rs.300,000/=to legal heirs of Mst. Nasreen. The benefit of section 382-B Cr.P.C is extended to the appellant.

2. The facts in brief necessary for disposal of instant Criminal Appeal are that the appellant, co-accused Mst. Fazal Bibi and Mst. Salma allegedly in furtherance of their common intention committed Qatl-e-amd of Mst. Nasreen by strangulating her throat, for that they were booked and reported upon by police.

3. At trial, the appellant and above named co-accused did not plead guilty to the charge and the prosecution to prove it examined complainant Ghulam Mustafa and his witnesses and then closed its side.

4. The appellant and above named co-accused in their statements recorded u/s 342 Cr.P.C denied the prosecutions' allegation by pleading innocence. It was specifically stated by the appellant in his statement on oath that the deceased has committed suicide. The appellant in order to prove his innocence examined DWs Abdul Majeed and Shahid Ali and then closed the side.

5. On conclusion of the trial, learned trial Court acquitted above named co-accused, while convicted and sentenced the appellant as is detailed above by way of impugned judgment.

6. 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 its matrimonial dispute with him. It was unseen incident; the appellant has been involved in this case by the police on the basis of his confessional statement which lacks credibility; and on the basis of same evidence co-accused have been acquitted while the appellant has been convicted. By contending so, he sought for acquittal of the appellant.

7. Learned DPG for the State and learned counsel for the complainant by supporting the impugned judgment have sought for dismissal of the instant appeal by contending that the appellant has committed the death of his wife Mst. Nasreen by strangulating her throat and then has confessed his guilt by making confessional statement before Magistrate.

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

9. Admittedly, the complainant and his witnesses have not seen the appellant committing the alleged incident. The FIR of the incident has been lodged with delay of about one day while 161 Cr.P.C statements of the PWs have been recorded with delay of 15 days even to FIR, such delay having not been explained plausibly could not be overlooked. Co-accused Mst. Fazal Bibi and Mst. Salma have been acquitted by learned trial Court and their acquittal has been maintained by this Court even. The confessional statement of the appellant has been recorded on 12<sup>th</sup> day of his arrest. No explanation to such delay is offered by the prosecution. The confessional statement of the appellant has not been recorded on prescribed proforma. No explanation to such omission is offered. The learned Magistrate who has recorded the confessional statement of the appellant was fair enough to admit that he did not disclose to the appellant that he is Magistrate 1<sup>st</sup> Class and statement which he is going to make would be used against him as evidence. Such omission on part of Magistrate has made the credibility of confessional statement of the appellant to be doubtful. Despite above, the alleged confessional statement of the appellant has been recorded on oath. It is contrary to provisions of Section-5 of the Oath Act. By such act the alleged confessional statement of the appellant has been made to be inadmissible.

10. In case of *Tariq Pervaiz vs The State (1992 P.Cr.L.J 955)*, it has been held by Hon'ble Court that;

*“Obviously no reliance can be placed on the judicial confession Exh.25 because the appellant was given oath in contravention of established practice and*

*contrary to the provisions of section 5 of the Oaths Act. On this point it was held in the case of Muhammad Bux v. State P L D 1956 SC 420 that administration of an oath to an accused person is an express statutory illegality by reason of section 5 of the Oaths Act A and it must make the confession inadmissible, having been obtained in an illegal manner and its rejection must follow as a matter of course."*

11. The conclusion which could be drawn of the above discussion would be that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt and appellant is found entitled to such benefit.

12. In case of *Tariq Pervaiz vs the State (1995 SCMR 1345)*. It has been held by the Hon'ble Supreme Court that:-

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

13. Pursuant to above discussion, the conviction and sentence recorded against the appellant are set-aside; consequently, the appellant is acquitted of the offence for which he has been charged, tried and convicted by learned trial Court, he is present on bail his bail bond is cancelled and surety is discharged.

14. Instant criminal appeal is disposed of accordingly.

**Judge**