

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Crl. Appeal No.S – 366 of 2019

Appellant: Bashir Ahmed son of Meeral Nizamani ,
Through Syed Tarique Ahmed Shah Advocate

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

Date of hearing: 23-11-2020.

Date of decision: 23-11-2020.

JUDGMENT

IRSHAD ALI SHAH, J: The appellant by way of instant appeal has impugned judgment dated 30.10.2019, passed by learned Model Criminal Trial Court-II/IVth Additional Sessions Judge, Hyderabad, whereby he has been convicted and sentenced for an offence punishable u/s 302(b) PPC to suffer rigorous imprisonment for life and to pay compensation of Rs.500,000/-to the legal heirs of deceased Dildar and in case of default whereof he shall suffer simple imprisonment for six months.

2. The facts in brief necessary for disposal of instant appeal are that the appellant with rest of the culprits in furtherance of their common intention have allegedly committed Qatl-e-Amd of Dildar by causing him gunshot injuries, for that the present case was registered.

3. At trial, the appellant did not plead guilty to the charge and the prosecution to prove it, examined in all six witnesses and then closed the side.

4. The appellant in his statement recorded u/s.342 Cr.P.C denied the prosecution allegation by pleading innocence. He did not examine anyone in his defence or himself on oath.

5. On conclusion of the trial, learned trial Court 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 old enmity with him; the complainant of the case has not been examined by the prosecution; ocular evidence is in conflict with the medical evidence and role attributed to the appellant in commission of incident is only to the extent of instigation therefore, the involvement of the appellant in commission of the incident was not free from doubt. By contending so, he sought for acquittal of the appellant.

7. Learned D.P.G for the State by supporting the impugned judgment has sought for dismissal of the instant appeal.

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

9. Initially the incident was recorded in Roznamcha under entry No.14 dated 16.12.2016. It does not contain the name of appellant, which appears to be significant. Subsequently, the formal FIR of the incident was lodged by the complainant, wherein the appellant was attributed role of instigation. Parties admittedly are inimical with each other therefore, the involvement of the appellant in this case on the basis of vicarious liability is appearing to be doubtful. Be that as it may, the prosecution has not been able to examine the complainant; his non-examination has prejudiced the appellant in his defence seriously. As per the medical officer Dr. Syed Muhammad Saleem the deceased was found sustaining was bullet wound. If it was so, that then it belies the contents of FIR wherein it is stated that; the deceased was done to death by causing him gunshot injuries. 161 Cr.P.C statement of PWs Muhammad Azam and Sultan as per SIO Inspector Asad-un-Nabi were written by WPC Ashraf. If it was so, then WPC Ashraf being material witness was to have been examined by the prosecution. His non-examination could not be overlooked. The appellant on investigation even otherwise as per SIO Inspector Asad-un-Nabi was found to be innocent. In these circumstances, it would be unjustified to maintain the conviction / sentence against the appellant on point

of vicarious liability.

10. In case of *Faheem Ahmed Farooqui vs. The State (2008 SCMR-1572)*, it is held that;

“single infirmity creating reasonable doubt regarding truth of the charge makes the whole case doubtful.

11. In view of the facts and reasons discussed above, the conviction and sentence recorded against the appellant together with the impugned judgment are set-aside. Consequently, the appellant is acquitted of the offence for which he was charged, tried and convicted by learned trial Court. The appellant shall be released forthwith in present case, if not required in any other custody case.

12. The instant appeal is disposed of accordingly.

Judge

Ahmed/Pa,