

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

**Crl. Appeal No.S -227 of 2018**

Appellant: Sada Bux son of Lal Bux Laghari,  
Through Mr. Zubair Ahmed Khuhawar Advocate

Complainant: Farooq Ali son of Arz Muhammad Laghari,  
Through Mr. Abdul Jabbar Charan, Aadvocate.

Respondent: The State, through Ms. Sana Memon, A.P.G.

Date of hearing: 11-12-2020.

Date of decision: 11-12-2020.

**JUDGMENT**

**IRSHAD ALI SHAH, J:** The appellant by way of instant appeal has impugned judgment dated 17.09.2020 passed by learned Additional Sessions Judge-II, Mirpurkhas whereby he for an offence punishable u/s 302(b) PPC has been convicted and sentenced to undergo Rigorous Imprisonment for life with direction to pay Rs.1,00,000/- as compensation to the legal heirs of the deceased Muhammad Yousif and in case of default whereof to undergo simple imprisonment for one year with benefit of section 382-B Cr.P.C.

2. The facts in brief necessary for disposal of instant Criminal Appeal are that the appellant allegedly committed qatl-i-amd of Muhammad Yousif by causing him hatchet blow with its back side, for that he was booked and reported upon by the police.

3. At trial, the appellant did not plead guilty to the charge and the prosecution to prove it, examined complainant Farooq Ali and his witnesses and then closed its side.

4. The appellant in his statement recorded u/s 342 Cr.P.C denied the prosecutions' allegation by pleading innocence by inter-alia stating that the deceased was addicted to drugs and he died on account of fall from Motorcycle and he has been involved in this case falsely by the complainant party due to enmity. He however, did not examine anyone in his defence or himself on oath.

5. 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 FIR has been lodged with delay of about 26 days; the hatchet and cloth of the deceased were not found stained with the blood; the evidence which has been produced by the prosecution being doubtful has been believed by learned trial Court without lawful justification; therefore, the appellant is liable to his acquittal on point of doubt.

6. It is contended by learned APG for the State and learned counsel for the complainant that the appellant has committed qatl-i-amd of the deceased by causing him hatchet blow and on arrest from him has been secured the incriminating

hatchet, therefore he has rightly been convicted by learned trial Court. By contending so, they sought for dismissal of the instant appeal.

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

8. As per complainant Farooque Ali and PW Irshad Ali they, PW Karim Dad and deceased Muhammad Yousif on 15.08.2015 (as per FIR it was 14.05.2015) when were together at their lands there came the appellant who caused hatchet blow with its back side to the deceased on his head, who by sustaining that blow fell down on the ground, they took him to Civil Hospital Mirpurkhas, after obtaining the letter from the police. It was confirmed by SIO/ASI Pervaiz Lookas that he issued a letter for examination of the injuries of the injured, treatment and certificate, after recording Roznamcha entry No.10 dated 15.08.2015 at PP 10-mile of PS Kot Ghulam Muhammad. Such Roznamcha entry does not contain the name of the appellant, which appears to be surprising. It was further stated by the complainant and PW Irshad Ali that, deceased Muhammad Yousif in injured condition was referred from Civil Hospital Mirpurkhas to LUMHS at Hyderabad where he died on 07.09.2015. No record is produced at trial which may suggest that Muhammad Yousif in injured condition was actually admitted in LUMHS Hyderabad

and he died there. Such omission could not be overlooked. The deceased as per the complainant and PW Irshad Ali was taken back to Civil Hospital at Miripurkhas after post mortem he was buried and then on 09.09.2015 they lodged report of the incident with PS Kot Ghulam Muhammad. It was with delay of about 26 days to the actual incident, such delay having not been explained plausibly could not be overlooked. It smells of consultation and deliberation.

9. In case of *Muhammad Asif vs the State (2008 SCMR 1001)*, it has been held by Hon'ble apex Court that;

*“Delay of about two hours in lodging FIR had not been explained—FIRs which were not recorded at the Police Station, suffered from the inherent presumption that same were recorded after due deliberation.”*

10. PW Karim Dad has not been examined by the prosecution. The presumption which could be drawn of his non-examination would be that he was not going to support the case of prosecution. The hatchet has been recovered from the appellant on 3<sup>rd</sup> day of his arrest when it was lying in the cluster of “*Devi*” trees, it was the public place. Such hatchet has not been found to be stained with the blood. The defence which appellant has taken at trial was that the deceased has died on account of his fall from the motorcycle. As per medical Officer Dr.Ved Parkash such type of injury can be suffered by fall. If, that piece of evidence of medical officer Dr.Ved Parkash is taken into

consideration then it supports the plea of the appellant that the deceased has died on account of his fall from motorcycle. In these circumstances, it could be concluded safely that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt.

11. 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.”*

12. In view of the facts and reason discussed above, the conviction and sentence recorded against the appellant by way of impugned judgment 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 shall be released forthwith in the subject crime, if not required in any other custody case.

13. Instant criminal appeal is disposed of accordingly.

**Judge**