

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Jail Appeal No.S – 158 of 2015

Appellant: Hajjan son of Misri Rind through Mr. Waqar Ahmed Memon, Advocate.

Respondent: The State, through Ms. Sana Memon, Assistant Prosecutor General Sindh for the State.

Complainant: Dost Ali son of Ali Khan Rind (in person).

Date of hearing: 24-02-2021.

Date of decision: 26-02-2021.

JUDGMENT

IRSHAD ALI SHAH, J-. The appellant by way of instant criminal appeal has impugned judgment dated 31.10.2015, passed by learned IV-Additional Sessions Judge, Hyderabad, whereby he for an offence punishable u/s 302 (b) PPC has been convicted and sentenced to undergo Imprisonment for life as “Tazir” with fine of rupees One Lac payable to legal heirs of deceased Abdul Ghafoor, as compensation, and in case of default to make payment of fine, to undergo Imprisonment for six months, with benefit of Section 382-B Cr.PC.

2. The facts in brief necessary for disposal of instant appeal are that the appellant allegedly committed Qatl-e-Amd of Abdul Ghafoor by causing him knife injury, for that he was booked and reported upon by the police.

3. At trial, the appellant denied the charge and prosecution to prove it, examined complainant Dost Ali and his witnesses and then closed the side.

4. The appellant in his statement recorded u/s 342 Cr.P.C denied the prosecution's allegation by pleading innocence by stating that;

"The houses of complainant are near the lands of his grandfather namely Ramzan. The cattle pond of complainant is also near their houses. The cattle of complainant used to trespass their lands. They restrained the complainant party not to allow their animals towards their lands. The deceased was used to keep pigeons with him at roof of his house. He slipped from roof of his house while taking the pigeons and expired. He fell down from shop side of Kaloo Rind. The deceased received injuries on his chest due to falling from roof over the cut trees/Jungle trees. The complainant party falsely cooked up prosecution story and get lodged his case against him due to enmity as stated above. The deceased Abdul Ghafoor was his friend".

5. The appellant did not examine anyone in his defence however, examined himself on oath in terms of section 340(2) Cr.P.C wherein it was inter alia stated by the appellant that the deceased has died on account of his fall from the roof by sustaining sharp branch of tree and he has been involved in this case falsely by the complainant party on account of their grudge with him over sale of landed property.

6. On conclusion of the trial, the appellant was convicted and sentenced by learned trial Court by way of impugned judgment as is detailed above.

7. It is contended by the learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the complainant party only to satisfy its grudge with him over sale of landed property; otherwise there was no motive for the incident; the FIR of the incident has been lodged with delay of about one day; the father and brother of the deceased have not come forward; taxi driver Leemon has not been examined by the prosecution; the knife has been foisted upon the appellant; no "Roznamcha" entry is produced by the Investigating officer whereby he gone for the investigation of the present case; cloth of the deceased has been subjected to chemical examination with delay and evidence of the prosecution being doubtful has been believed by learned trial Court without lawful justification. By contending so, he sought for acquittal of the appellant. In support of his contention, he relied upon cases of 1) *Zafar vs The State (2018 SCMR 326)*, 2) *Sajjan Solangi vs The State (2019 SCMR 872)*, 3). *Muhammad Asif vs The State (2017 SCMR 486)*, 4). *Nadeem alias Kala vs The State (2018 SCMR 153)* and 5). *Bashir Ahmed alias Mannu vs The State (1996 SCMR 308)*.

8. Learned A.P.G for the State, who is assisted by the complainant by rebutting the above contention sought for the

dismissal of the instant appeal by contending that the appellant is neither innocent nor is involved in this case falsely by the complainant party; the delay in lodgment of FIR has been explained properly; the evidence brought by prosecution was straight forward and the appellant has rightly been convicted and sentenced by learned trial Court.

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

10. It is inter alia stated by complainant Dost Ali and PW Liaquat that on the date of incident when they were sitting at the shop of Nawab Rind they found the appellant who by overpowering Abdul Ghafoor caused him knife blow, on left side of his chest and then made his escape good. They intimated the incident to police and then took the dead body of the deceased to hospital. They have stood by their version on all material points with regard to death of the deceased at the hands of the appellant, despite lengthy cross examination; therefore, they could not be disbelieved only for the reason that they are related inter se or otherwise.

11. In case of *Ali Bux v. State (2018 SCMR 354)*, it has been observed by 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-01) Ghulam Shabir, (PW-02) and Bilawal (PW-03) 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. It is true that Nawab the nearby shopkeeper, Taxi Driver Lemoon and PW Kando have not been examined by the prosecution, but their examination was hardly justified in the circumstances of the case. It is the quality of the evidence, which has to prevail and not the quantity.

13. In case of *Allah Bux Vs. Shammi and others (PLD 1980 SC-225)*, it has been held by the Honourable Court that;

“Conviction, even in murder cases, held, can be based on testimony of a single witness if Court satisfied as to witness being reliable-Emphasis, held further, laid on quality of evidence and not on its quantity”.

14. No doubt the FIR of the incident has been lodged with delay of about one day, but such delay have been explained plausibly by the complainant in his FIR; therefore, same could hardly be treated fatal to the case of prosecution. It was natural in the circumstances. No proof is brought on record by the appellant which may suggest that he was having a dispute with the

complainant party over landed property. Indeed, the complainant party was having no reason to have involved the appellant in a false case at the cost of life of an innocent person. The death of the deceased as per the narration made by the complainant in his FIR was on account of the dispute with the deceased over settlement of account with the appellant. If for the sake of arguments, it is believed that the motive of the incident is weak or prosecution has not able to prove it, even then it could not be made a reason to disbelieve the case of the prosecution.

15. In case of *Zulfiqar Ali vs. the State (2008 SCMR-796)*, it has been held by the Honourable Supreme Court of Pakistan that;

“Inadequacy or weakness of motive or failure to prove the motive is immaterial if accused is found guilty of causing the murder of the deceased and he does not deserve any leniency”.

16. No doubt the father and brother of the deceased have not come forward, but for this reason it would be unsafe to disbelieve the case of prosecution. The complainant is uncle of the deceased and father of the deceased as per the complainant is sick and infirm person and perhaps for this reason he has not come forward. If, for the sake of argument it is believed that the father and brother of the deceased were not going to involve the appellant in this case, then he ought to have examined them in his defence, which he has not done; therefore, this plea on part of appellant deserve to be ignored as an afterthought.

17. On arrest, from the appellant has been secured the knife, which he allegedly used in commission of incident. Such recovery is proved by the prosecution by examining SIO/SIP Ali Muhammad and PW/Mashir Aijaz Ali being transpiring confidence witnesses. In these circumstances, the learned Trial Court was right to make a conclusion that the prosecution has been able to prove its case against the appellant beyond shadow of doubt.

18. The delay in dispatching the cloth of the deceased to chemical examiner and non-production of "*Roznamcha*" entries by the investigating officer whereby he gone for the investigation of the present case could hardly be treated to be fatal to the case of prosecution.

19. The case law which is relied upon by learned counsel for the appellant is on distinguishable facts and circumstances. In case of *Zafar (supra)* on same evidence one accused was acquitted while other was convicted. In the instant case the appellant is the only accused. In case of *Muhammad Irshad (supra)* the investigating officer of the case was declared hostile and it resulted in failure of case of the prosecution. In the instant case no one is declared hostile. In case of *Sajjan Solangi (supra)* the case was registered on information of the father of the deceased, who was not examined by the prosecution. In the instant matter, case is not registered on information of the father of the deceased; therefore, his non-examination carries no weight. In case of *Muhammad Asif (supra)* it

was held that once the prosecution witnesses were disbelieved in respect of one accused then they could not be believed in respect of other accused. In the instant case there is no other accused. In case of *Nadeem alias Kala (supra)* there was three days delay in lodgment of FIR, which was not explained. In the instant case there is only one day delay in lodgment of FIR and it is explained. In case of *Bashir Ahmed alias Mannu (supra)* the recovery of Churri was affected from the accused on 5th day of his arrest. In the instant case the recovery of knife is made from the accused on the very first day of his arrest.

20. In view of the facts and reasons discussed above, it could be concluded safely that the conviction and sentence recorded against the appellant by learned trial Court by way of impugned judgment are not calling for any interference by this Court by way of instant appeal; it is dismissed accordingly.

Judge

Ahmed/Pa,