

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Appeal No.S- 21 of 2009**

Appellant: Naeem alias Kana son of Lal Muhammad
Brohi,
Through Mr. Raja Hansraj, Advocate

State: Ms. Rameshan Oad, A.P.G

Date of hearing: 08.11.2019

Date of decision: 08.11.2019

J U D G M E N T

IRSHAD ALI SHAH, J. The appellant by preferring the instant appeal has impugned judgment dated 30.12.2008 passed by learned Sessions Judge, Hyderabad, whereby the appellant for an offence punishable u/s 302(b) PPC has been convicted and sentenced to undergo Rigorous Imprisonment for life with fine of Rs.100,000/- payable to the legal heirs of the deceased as compensation, in case of non-payment of fine to undergo Imprisonment for six months, with benefit of section 382-B Cr.P.C.

2. It is the case of the prosecution that the appellant together with co-accused Rasheed Ahmed and Naeem alias Chotta, in furtherance of their common intention committed Qatl-e-amd of Naeem Abbasi by causing him injuries on his abdomen with piece of glass, for that they were booked and reported upon by the police.

3. At trial, the appellant and (said) co-accused did not plead guilty to the charge and the prosecution to prove it, examined PW-1 Dr. Abdul Waheed at (Ex.13), he produced post mortem report on the dead body of the deceased; PW-2 complainant Muhammad Yousif at (Ex.14), he produced FIR of the present case; PW-3 Abdul Qadoos at (Ex.15); PW-4 Iftikhar Ahmed at (Ex.16); PW-5 ASI Muhammad Ashraf at (Ex.17), he produced Danishnama on dead body of the deceased, memo of recovery of clothes of the deceased and memo of arrest of appellant and co-accused Rasheed Ahmed; PW-6 Muhammad Rasheed at (Ex.18), he produced memo of recovery; PW-7 Muhammad Tariq at (Ex.19), he produced memo of place of incident and memo of recovery of blood stained clothes of the deceased; PW-8 Muhammad Kashir at (Ex.20), he produced his 164 Cr.P.C statement; PW-9 Islamuddin at (Ex.22), he produced his 164 Cr.P.C statement; PW-10 Tapedar Hassan Ali at (Ex.24), he produced sketch of wardat, PW-11 Abdul Jaleel at (Ex.25); PW-12 Muhammad Ali to identify the signatures of late SIO / SIP Atta Hussain Samoon at (Ex.29), PW-13 Meer Ghulam Hussain the then Judicial Magistrate Hyderabad at (Ex.43), he produced confessional statement of the appellant and then closed the side.

4. The appellant and co-accused Rasheed Ahmed and Naeem alias Chota in their statement recorded under Section 342 Cr.P.C denied the prosecution allegation by pleading innocence. They

examined Dr. Bhawani Shankar and Muhammad Sajjid in their defence.

5. It was stated by DW Dr. Bhawani Shankar that deceased was brought by Mohallah people to him in injured condition after sustaining injuries with the glass, on account of fall. He was referred to hospital. DW Muhammad Sajjid supported Dr. Bhawani Shankar in his version.

6. In addition to above, co-accused Rasheed Ahmed examined himself in his defence, while appellant and co-accused Naeem alias Chota did not examine themselves on oath.

7. On evaluation of evidence, so produced by the prosecution, the learned trial Court acquitted co-accused Rasheed Ahmed and Naeem alias Chota while convicted and sentenced the appellant as is detailed above, such conviction and sentence the appellant has impugned before this Court by preferring the instant Appeal.

8. It is contended by the learned counsel for the appellant that the appellant being innocent has falsely been involved in this case by the complainant party; the FIR of the incident has been lodged with un-plausible delay of nine hours; PWs Abdul Qadoos and Muhammad Younis are not eye witness of the incident; the recovery of the glass piece from appellant is doubtful; SIO/ SIP Atta Hussain who has conducted much of the investigation of the case; the prosecution has not been able to examine on account of

his death; the confessional statement of the appellant having been recorded by putting the appellant under duress, same could not be used against the appellant; the evidence of the DWs ought to have been considered in juxta position with the evidence of the PWs, such exercise has not been taken by learned trial Court. By contending so, he sought for acquittal of the appellant as according to him the prosecution has not been able to prove its case against the appellant beyond shadow of doubt.

9. Learned A.P.G for the State by rebutting the above contention has sought for dismissal of the instant appeal by contending that the prosecution has been able to prove its case against the appellant beyond shadow of doubt.

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

11. Un-natural death of deceased Naeem Abbasi, the prosecution has been able to prove by examining medical officer Dr. Abdul Waheed. The death of the deceased being un-natural even otherwise is not disputed by the appellant. Only dispute with the appellant is to the extent that he being innocent has been involved in this case falsely by the complainant party. It was stated by complainant Muhammad Younis that on the date of incident, he and the deceased went at the place of incident, there the appellant and co-accused had scuffled with the deceased and then the appellant committed death of the

deceased by causing him injuries on his abdomen with piece of glass and then appellant and co-accused made their escape good. He took his son to hospital where he died. The delay in lodgment of the FIR in the circumstances was natural and it has been explained plausibly, therefore, it could not be treated to be fatal to the case of prosecution. The complainant has stood by his version on all material points despite lengthy cross examination and he in that respect is supported by PWs Muhammad Kashif and Islamuddin. Whatever, they have stated takes support from the confessional statement of the appellant, which he has made before Judicial Magistrate at Hyderabad, which is appearing to be true and voluntarily and learned Magistrate, who recorded the same was having no reason to support either to the prosecution or to the appellant. The confessional statement of the appellant, therefore, could not be disbelieved only to favour of the appellant under the pretext that it was recorded under duress. It is true that PWs Abdul Qadoos and Iftikhar Ahmed are not eye witness of the incident, but there could be made no denial to the fact that they have supported the complainant in all subsequent events. On arrest from the appellant, on his pointation has been secured the glass pieces allegedly used by him in commission of incident, those as per report of chemical examiner were found stained with the blood. The participation of the appellant in commission of incident even otherwise is proved by the medical officer Dr. Abdul Waheed, as per him, on the date of incident the

appellant too came to him for treatment and he on examination was found sustaining injuries on his person. Non examination of SIO/SIP Atta Hussain on account of his death being act of nature could hardly be made a reason to disbelieve the entire case of the prosecution, which otherwise is proved beyond doubt against the appellant. It is settled by now that it is the quality of the evidence, which has to prevail and not its quantity. The evidence brought in defence by the appellant being weak in the circumstances has rightly been ignored (as an afterthought) by learned trial Court.

12. In case of *Allah Bakhsh vs Shammi and others (PLD 1980 Supreme Court 225)*, it has been observed by Hon'ble apex 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.”

13. In view of the facts and reasons discussed above, no justification is found by this Court to make interference with the impugned judgment by way of instant appeal. It is dismissed accordingly.

J U D G E