

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Jail Appeal No.D-92 of 2017**

Before:

Mr. Justice Irshad Ali Shah
Mr. Justice Amjad Ali Sahito

Appellant: Naveed son of Muhammad Solangi,
Through Ms. Ambreen Siyal, advocate.

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

Date of hearing: 20.11.2019

Date of decision: 20.11.2019

J U D G M E N T

The appellant by way of instant appeal has impugned judgment dated 24.08.2017, passed by learned Judge, Anti-Terrorism Court Mirpurkhas, whereby he has been convicted and sentenced as under;

“I sentence him to suffer R.I for life imprisonment and fine of Rs.1,00,000/- for each murder, to be paid to the legal heirs of deceased Ashok Kumar and Heera Lal, in case of default of payment in fine amount, accused further suffer R.I for 12 months for each murder. Prosecution has also proved that the above act of the accused persons created fear, terror and insecurity amongst complainant Suresh Kumar, PWs Rajesh Kumar and Ghansham Das so also in general public, therefore I convict him for the offence under sections 6(2)(1)(a) of Anti-Terrorism Act, 1997 and sentence him under section 7(1)(a) of Anti-Terrorism Act, 1997 to suffer R.I for life imprisonment and fine of Rs.1,00,000/- for each murder to be paid to the legal heirs of deceased Ashok Kumar and Heera Lal, in case of default in payment in fine amount, accused further suffer R.I for 12 months for each murder. It is also ordered that the moveable or immovable property in the name of accused if any be forfeited in favour of Government of Sindh.”

2. The facts in brief necessary for disposal of instant appeal are that the appellant with rest of the culprits during course of

robbery / dacoity of rupees eight lac, Q-mobile phone and cash memo book, committed murder of Heera Lal and Ashok Kumar by causing them fire shot injuries, thereby created sense of fear, terror and insecurity among the local public, for that he was booked and reported upon.

3. At trial, the appellant did not plead guilty to the charge and the prosecution to prove it examined complainant Suresh Kumar at (Ex.14), he produced FIR; PW-2 Rajoo alias Rajesh Kumar at (Ex.15; PW-3 Ghansham Das at (Ex.16) PW-4 mashir Pirshotam Das at (Ex.18), he produced dead body inspection form, Lash Chakas Form and inquest report of deceased Ashok Kumar, Lash Chakas Form and Inquest report of deceased Heera Lal, mahsirnama of place of wardat; PW-5 Dr. Shahnawaz at (Ex.20), he produced letter Cr.No.94/2014 dated 01.08.2014 of SHO for post mortem on dead bodies of deceased Ashok Kumar and Heera Lal; PW-6 SIP Ghulam Hussain at (Ex.21), he produced daily diary entry No.16 dated 31.7.2014 and receipt whereby he handed over last worn clothes of both of the deceased; PW-7 1st Investigating Officer SIP Lalu Mal at (Ex.22); PW-8 Tapedar Habibullah at (Ex.23), he produced police letter dated 02.8.2014 and four copies of sketch of place of wardat; PW-9 IO / SIP Atta Muhammad Leghari at (Ex.24), he produced daily diary entry No.6 dated 02.12.2014, mashirnama of arrest of accused Naveed, order dated 02.12.2014 of learned Sessions Judge, Umerkot, letter

dated 05.12.2016 addressed to Civil Judge & Judicial Magistrate No.II, Umerkot, Certified copy of letter No.94/2014 dated 06.12.2016, notice dated 09.12.2016 for appearance of witnesses and daily diary entries Nos.5 and 9 dated 10.12.2014; PW-10 Mr. Muhammad Ismail Meo, learned Incharge Ex-Civil Judge & Judicial Magistrate No.II, Umerkot at (Ex.25), he produced letter CR No.94/2014 dated 05.12.2016 of SHO for recording confessional statement under section 164 Cr.P.C of appellant Naveed and certified true copy of confessional statement of appellant Naveed, PW-11 2nd investigating officer Inspector Syed Imdad Ali Shah at (Ex.26), he produced letter No.PB/2150-55 dated 12.07.2016 of S.P. Umerkot and Chemical Examiner Report and then the prosecution 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 he was apprehended by the police from Matiari; his confessional statement has been recorded by putting him under torture and he has been involved in this Case falsely by the police at the instance of his opponents with whom his uncle is disputed over landed property. He did not examine anyone in his defence or himself on oath in disproof of the prosecution allegation against him. However, he produced certain documents to prove his innocence.

5. On conclusion of the trial, learned trial Court found the appellant guilty for the above said offence and then convicted and sentenced him as detailed above.

6. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the police; the FIR has been lodged with delay of one day, yet it does not contain the name and description of the appellant; the appellant has not been subjected to identification parade; the 161 Cr.P.C statements of the PWs have been recorded on 3rd day of the FIR; the confessional statement of the appellant has been recorded on 3rd day of his arrest and it is on oath, as such it could not be said to have been made voluntarily. By contending so, she prayed for acquittal of the appellant. In support of her contention she relied upon case of ***Azeem Khan and another vs Mujahid Khan and others (2016 SCMR 274) and Ali Akbar vs The State (1988 MLD Karachi 186)***.

7. Learned APG for the State by supporting the impugned judgment has prayed for dismissal of the instant appeal.

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

9. The FIR does not contain the name and description of the appellant though it is lodged with delay of one day, which appears to be significant. The 161 Cr.P.C statements of the PWs Rajoo, Mali and Lekhraj and Ghanshamdas, as per SIO /

SIP Lalomal have been recorded on 3rd and 6th day of the FIR, such delay could not be overlooked.

10. In case of **Abdul Khaliq vs. the State (1996 SCMR 1553)**, it was observed by Hon'ble Court that;

“----S.161---Late recording of statements of the prosecution witnesses under section 161 Cr.P.C. Reduces its value to nil unless delay is plausibly explained.”

11. Nothing has been secured from the appellant on his arrest. The confessional statement of the appellant has been recorded on 3rd day of his arrest. In confessional statement in its end, the narration made by the appellant was only to the extent that ***“he prays for mercy and to be kept in Central Prison Hyderabad as he is having minor children”***. In addition to the confessional statement, the 164 Cr.P.C statement of the appellant has been recorded. Surprisingly, it was on oath, which is against the requirement of law. Perhaps, in that context, it is being contended by learned counsel for the appellant that it is not voluntarily. In these circumstances, it would be hard to maintain the conviction on sole basis of confessional statement.

12. The discussion involved a conclusion, 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.

13. 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.”

14. In view of the facts and reasons 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. The appellant is in jail and shall be released forthwith in the present case.

15. Instant criminal appeal is disposed of in above terms.

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