

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Crl. Jail Appeal No.S – 219 of 2019

Appellant: Javed Iqbal alias Eido son of Muhammad Iqbal Rajput, through Mr. Ali Ahmed Palh, Advocate

Respondent: The State, through Ms. Rameshan Oad, A.P.G.

Date of hearing: 08-03-2021.

Date of decision:08-03-2021.

JUDGMENT

IRSHAD ALI SHAH, J: The facts in brief necessary for disposal of instant Criminal Jail Appeal are that the appellant allegedly after committing death of deceased Muhammad Akram alias Sufi Baba by way of smothering, take away his Car, mobile phone, cash and other belonging, for that he was booked and reported upon.

2. At trial, the appellant denied the charge and the prosecution to prove it, examined complainant Khalid Mahmoud and his witnesses and then closed its side.

3. The appellant in his statement recorded u/s 342 Cr.P.C denied the prosecution's allegation by pleading innocence. He did not examine anyone in his defence or himself on oath to disprove the prosecution allegation against him in terms of section 340(2) Cr.P.C.

4. On evaluation of evidence, so produced by the prosecution learned Ist Additional Sessions Judge/M.C.T.C, Tando Allahyar vide impugned judgment dated 09.08.2019 convicted and sentenced the appellant as under;

- i) *“U/s 302(b) PPC to undergo Imprisonment for life and to pay fine of rupees one million to the legal heirs of the deceased and in default in payment to undergo Simple imprisonment for six months.*
- ii) *U/s 392 PPC to undergo Rigorous Imprisonment for ten years and to pay fine of rupees five lac.”*

5. The conviction/sentence awarded to the appellant however was ordered to run concurrently with benefit of section 382-B Cr.P.C.

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; it was unseen incident; the Car has been foisted upon the appellant and very arrest of the appellant is disputed; therefore, the appellant is entitled to his acquittal on point of doubt. In support of his contention he has relied upon cases of *Muhammad Abid vs The State and others (PLD 2018 SC 813)* and *Fayaz Ahmed vs The State (2017 SCMR 2026)*.

7. Learned A.P.G for the State by supporting the impugned judgment has sought for dismissal of the instant Criminal Jail Appeal.

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

9. The FIR of the incident has been lodged with delay of about four days; such delay could not be overlooked. Complainant Khalid Mahmoud and his witnesses were fair enough to admit that none has seen the alleged incident. The appellant has been

involved in commission of the alleged incident on the basis of recovery of Car of the deceased, CDR report and his extra-judicial confession. Nothing has been brought on record which may suggest that the Sim Card, the CDR report whereof is obtained, was actually issued in the name of appellant or the deceased. In that situation, the appellant could hardly be connected with the CDR report. No conviction as per Article 38 of Qanun-e-Shahadat Order, 1984, could be maintained on the basis of extra-judicial confession allegedly made by the accused before the police. As per SIO/SIP Nizamuddin the appellant was apprehended by him at Mirpurkhas Hyderabad road together with the Car of the deceased. PW Latif Ahmed came with a different version. As per him, the appellant was apprehended by police at Punjab. By stating so, he has not only made the recovery of Car from the appellant but his very arrest to be doubtful. 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.

10. In case of *Muhammad Masha vs The State (2018 SCMR 772)*, it was observed by the Hon'ble Supreme Court of Pakistan that;

“4....Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a

matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".

11. 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, he 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 case, if not required in any other custody case.

12. The instant jail appeal is disposed of accordingly.

Judge

Ahmed/Pa,