

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Jail Appeal No. D-78 of 2019

Present:

Mr. Justice Omar Sial,
Mr. Justice Zulfiqar Ali Sangi,

Appellants Tarique Ali s/o Muhammad Yousif Jatoi,
Through Mr. Habibullah Ghouri,
advocate

The State: Through Mr. Muhammad Noonari,
Deputy Prosecutor General.

Date of hearing: 19-05-2021.
Date of Decision: 19-05-2021.
Date of reasons. 19-06-2021.

J U D G M E N T

Zulfiqar Ali Sangi, J. Through instant criminal jail appeal, appellant Tarique Ali s/o Muhammad Yousif Jatoi has assailed the Judgment dated 18.11.2019, passed by the learned Judge, Anti-Terrorism, Larkana in Special Case No.05/2018 (**Re: State V/s Tariq Ali Jatoi and another**), Crime No.02/2018 of P.S. Kanga, for the offence U/S 302,338-B, 337-H(2), 386, 114, 34 P.P.C r/w S-7(a) & (h) of Anti-Terrorism Act, 1997 and Special Case No.05-A/2018 (**Re: State V/s Tariq Ali Jatoi**), for the offence U/S 24 Sindh Arms Act, 2013, whereby in both the cases, the trial court has convicted the appellant U/S 265-H (ii) Cr.P.C, and sentenced him as under:-

- a) Accused Tarique Ali was convicted for the offence U/S 302(b) PPC and sentenced for life imprisonment, with fine of Rs.25,000/- (twenty five thousands). In default of payment, he shall suffer further S.I for two months more.

b) Accused Tarique Ali was also convicted for an offence punishable U/S 7 (a) of Anti-Terrorism Act 1997, and was sentenced to suffer R.I for imprisonment for life and to pay fine of Rs.25,000/- (twenty five thousands) and in case of default in payment of fine, he shall suffer further S.I for two months more.

c) Accused Tarique Ali was further convicted for an offence punishable U/S 24 of Sindh Arms Act 2013 and sentenced to suffer R.I for five years and ordered to pay fine of Rs.10,000/- (ten thousands) and in case of default in payment of fine, he shall suffer further S.I for one month more.

All the aforesaid sentences awarded to the accused Tarique Ali were directed to run concurrently. However, the benefit U/S 382-B Cr.P.C was extended to accused.

2. The brief facts of prosecution case as per F.I.R No.02/2018, lodged by complainant Ashiq Ali on 11.04.2018 at 1300 hours at P.S Kanga, are that Mst. Samina daughter of Iqbal by caste Samo resident of Ayoub Colony, Larkana, aged about 20/22 years was his wife, she was signer/artist. At the time of incident she was pregnant of eight months. On account of circumcision ceremony of sons of Niaz Hussain Junejo, the complainant, his wife Mst. Samina, and his friend Mumtaz Ali s/o Samandar Ali Magsi went at Village Kanga through their driver Barkat Ali S/O Hout Khan Samo. The program was arranged at plot of Irshad Ali Jatoi in Village Kanga. His wife Mst. Samina as usual was singing a song at stage, while they were sitting on front chairs. The bulbs were glowing. At about 10.30 p.m, there came accused Tarique Ali S/O Muhammad Yousif by caste Jatoi, R/O Village Kanga, Taluka Larkana, with two unknown culprits, whose faces were open and could be identified, if seen again, they were armed with Pistols, they by pointing their Pistols asked his wife Mst. Samina that she may sing a song in standing position. On that his wife Mst. Samina told to them that she was running pregnancy as such she could not sing a song in standing position. On hearing so, they asked my wife Mst. Samina that if she would not sing a song in standing position, then she may be ready for death. At

the instigation of unknown culprits, accused Tarique Ali Jatoi fired at his wife Mst. Samina, when she was giving instructions to her co-artist/associates. His wife Mst. Samina sustained fire shot injury on her back which crossed through her chest and she by raising cries fell down. They raised cries and then accused went away by making aerial firing. They could not do anything being empty handed. Mst. Samina was found unconscious and was taken to Causality Hospital at Larkana through car where she died at 11.15 p.m. The complainant informed the incident to SHO, P.S, Kanga on phone and arranged for post mortem of Mst. Samina through the police. It was told by the lady doctor that baby in womb of Mst. Samina had also died. Thereafter the complainant went at police station to lodge report that accused Tarique Ali Jatoi with two unknown culprits have killed his wife as she was not singing a song in standing position as per his choice and baby in her womb had also died his FIR was registered with this effect.

3. Another F.I.R bearing No. 03/2018 was lodged by D.S.P Liaquat Ali Abbasi, S.D.P.O Civil Lines, Larkana on behalf of state U/S 24 of Sindh Arms Act, 2013, stating therein that during investigation of Crime No.02/2018, the accused accepted the guilt and told the police party that he has hidden the pistol at his house in big iron box in his verandah of his house. The complainant left the police station and proceeded to the place of incident at village Kanga at the house of accused in presence of private mashirs Muhammad Khan Brohi and Adam Khan Samo, vide entry No.15 dated 13.04.2018 at 1630 hours. The appellant Tariq Ali Jatoi voluntarily produced the pistol bearing No.45661 used in the commission of offence. The pistol was loaded with magazine of three live bullets of 30 bore and was unlicensed. The complainant sealed the pistol in

presence of private mashirs; thereafter the complainant lodged the above F.I.R.

4. After usual investigation, Challan of the case was submitted on 25.4.2018 showing accused Tarique Ali Jatoi in custody, whereas the name of accused Soorat Ali Shar was shown in the column of absconders. Process was issued against him in accordance with law, however, during the course of trial, accused Soorat Ali Shar voluntarily appeared to face the trial before the trial court.

5. In compliance of Section 241-A Cr.P.C, the case papers were supplied to the accused. Formal charge was also framed against accused Tarique Ali Jatoi and Soorat Ali Shar, to which they pleaded not guilty and claimed to be tried.

6. The prosecution in order to prove its case examined P.W.No.1MaqsoodIllahiWagganTapedar at Ex.15; he produced carbon copy of Police letter at Ex.15-A and sketch of place of incident at Ex.15-B. P.W.No.2 PC Rustam Ali Bhutto Corpse bearer was examined at Ex.16, he produced carbon copy of receipt at Ex.16-A and receipt obtained from Ashique Ali Samo at Ex.16-B. P.W.No.3 ASI Inayatullah Lashari SIO was examined at Ex.17, he produced attested carbon copy of entry No.21 at Ex.17-A, memo of inspection of dead body at Ex.17-B, memo of place of vardat at Ex.17-C, attested carbon copy of entry No.8 at Ex.17-D and FIR No.02/2018 of P.S, Kanga at Ex.17-E. P.W.No.4 Ashique Ali Samo complainant was examined at Ex.18. P.W.No.5 Mumtaz Ali Magsi eyewitness was examined at Ex.19. P.W.No.6 Dr. Pooja Kumari WMO was examined at Ex.21, she produced carbon copy of Lash Chakas Form at Ex.21-A and post mortem report at Ex.21-B. P.W.No.7HamidullahKhilji, Civil Judge/Judicial Magistrate was examined at Ex.22, he produced

application of SDPO of P.S Civil Line Larkana at Ex.22-A, statement U/S 164 Cr.P.C of PW Mumtaz Ali at Ex.22-B and statement U/S 164 Cr.P.C of PW Barkat Ali at Ex.22-C. P.W.No.8Barkat Ali Samo eyewitness was examined at Ex.23. P.W.No.9 Muhammad Khan Brohi mashir was examined at Ex.24, he produced memo of arrest of accused at Ex.24-A and memo of recovery at Ex.24-B. P.W.No.10 SDPO Liaquat Ali Abbasi was examined at Ex.25, he produced letter of SSP at Ex.25-A, Provisional Medical Certificate of accused Tarique Ali Jatoi at Ex.25-B, final medical certificate at Ex.25-C, memo of production of D.V.D Disk at Ex.25-D, D.V.D Disk at Ex.25-E, FIR No.03/2018 of P.S, Kanga at Ex.25-F, carbon copy of roznamcha entry No.19 at Ex.25-G, chemical reports of blood stained cloths of deceased, Chadar and report of Chemical Laboratory at Ex.25-H to 25-J, report of weapon and empties at Ex.25-K and order of Magistrate at Ex.25-L. Then learned APG for the state closed the side of prosecution vide statement at Ex.26.

7. The trial Court recorded statements of accused under section 342 Cr.P.C, wherein he claimed his innocence. The accused neither examined himself on oath nor produced any evidence in his defence.

8. After assessment of evidence and hearing the parties learned trial court has passed the above impugned judgment and awarded sentence to the present appellant/accused Tariq Ali Jatoi as mentioned above and acquitted the co-accused Soorat Ali Shar. Being aggrieved by and dissatisfied with the said judgment, appellant/accused Tariq Ali Jatoi, above named has preferred this criminal jail appeal.

9. Learned counsel for the appellant has contended that the appellant is innocent and has falsely been implicated in this case; that there is no any convincing evidence against appellant; that the

prosecution has failed to establish its case against appellant; that the appellant was sleeping in his house, when the police came to him in the odd hours and demanded bribe of Rs.500,000/-, on refusal, police arrested the appellant and foisted fake case. He further submits that the appellant was apprehended falsely on enmity basis. He has, therefore, prayed for acquittal of the appellant/accused.

10. Learned Additional Prosecutor General has submitted that prosecution has proved the case. In this unfortunate incident, a singer was murdered while she was performing on stage before public in a ceremony. At the time of death, the deceased was with pregnancy of eight months and her baby also died prior to birth; that appellant Tarique Ali committed murder causing bullet injury with Pistol and also the P.Ws have implicated the accused in their statements U/S 164 Cr.P.C. He has prayed for dismissal of the criminal jail appeal.

11. We have heard learned counsel for the appellant and learned Additional Prosecutor General and have gone through the material available on the record with their able assistance.

12. On reassessment of the entire evidence produced by the prosecution It is established that the prosecution had **not** proved the case against the appellant beyond a reasonable doubt by producing reliable, trustworthy and confidence inspiring evidence.

13. The complainant who is the husband of the deceased had changed his entire version given by him in the FIR at the time of recoding his evidence. He completely exonerated the appellant. In the FIR he shows himself as an eye witness while during his examination-in-chief he deposed that he was informed through phone that his wife sustained firearm injury on such he rushed at hospital where he came to know that his wife has already died. He further

deposed that he thereafter took the dead body and buried. He deposed that he was called by DSP on next day and in his office thumb impression was obtained on the FIR and the contents of FIR were not read over to him. Complainant was declared hostile on the request of APG for the state and he negated all the suggestions made by APG.

14. After the complainant being eyewitness who exonerated the appellant the prosecution examined two more eyewitnesses Mumtaz Ali and Barkat Ali who were shown in the FIR as eye witnesses. They also not supported the case of prosecution. Both the witnesses exonerated the appellant and not supported their statement recorded under section 161 Cr.P.C and under section 164 Cr.P.C during the investigation. They were also declared hostile on the request of APG and during the cross-examination both of them denied that their statements under section 164 were recorded before the magistrate. PW Barkat Ali also denied that his statement under section 202 Cr.P.C was recorded in the direct complaint.

15. The prosecution examined PW Muhammad Khan (mashir) of the case he had also not supported the case of prosecution, even the recovery of pistol (crime weapon) and deposed that he called by the DSP who obtained his signature and the signature of co-mashir Adam Khan were also obtained by the police.

16. After the above ocular evidence which is not supportive to the prosecution case, the prosecution examined Judicial Magistrate Hamidullah who recorded the statements under section 164 Cr.P.C of the eyewitnesses and had produced the same. Since the eyewitnesses who's statements were recorded by the magistrate had not supported the case and had denied that their statements were recorded by the magistrate. **The magistrate during cross-**

examination admitted that he had gone through the contents of FIR at the time of recording the statements of witnesses and stated that witnesses in their statements are in contradiction with FIR. In the circumstances the evidence of the magistrate had no any substance to belief that he appellant had committed the murder.

17. The medical evidence produced by the prosecution is also not helpful to the prosecution as the same is only to be used for corroboration of ocular evidence; the medical evidence only speaks about the nature of injuries, duration and seat of injuries, kind of weapon used in the commission of offence including cause of death etc but could not identify the accused. In the present case the medical evidence is also in conflict with the ocular evidence produced by the complainant party before the investigation officer but latter on complainant party changed the same during recoding their evidence before the trial court. As per FIR the appellant was armed with pistol and he fired upon the deceased and as per the memo of recovery (recovery not supported by the mashir in his evidence) police recovered one TT pistol and live bullets while the doctor Pooja Kumari in her cross-examination stated that **“I am of the view that the same was caused by palette emitting weapon like shot gun.”** Therefore the medical evidence produced by the prosecution in our view is not of such slandered to maintain the conviction in case of the capital sentence.

18. The evidence of police officials including the investigation officer was recorded but in or view the same required independent corroboration, which is lacking in the case in hand. In these circumstances and after an independent evaluation of evidence available on record, we are of the view that the prosecution has not been able to prove its case against the

appellant beyond reasonable doubt. It is settled by now that the benefit of all the favorable circumstances shall be extended to the accused not as a matter of grace or concession but as a matter of right. Reliance is placed on the case of **Abdul Jabbar and another v. The State (2019 SCMR 129)** and **Tariq Pervez v. The State (1995 SCMR 1345)**.

19. The above criminal jail appeal was allowed vide short order dated 19.05.2021. Impugned judgment dated 18.11.2019, passed by learned Anti-Terrorism Court, Larkana in Sp. Case No.5 and 5-A/2018, re: State V/S Tarique Ali Jatoi and another was set-aside. Appellant Tarique Ali Jatoi was acquitted of the charge in F.I.R No.02 of 2018 of P.S. Kanga, U/s 302, 338-B, 337-H(ii), 386, 114 and 34 PPC r/w S. 7(a) & (h) of ATA, 1997 and FIR No. 03 of 2018 of P.S Kangi, U/S 24 SSA 2013. He was ordered to be released forthwith if not required in any other custody case.

20. These are the reasons of the above said short order.

JUDGE

JUDGE