

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Appeal No.S-248 of 2019

Appellant: Jawaid Ali Son of Ghulam Nabi through Mr.
Wazeer Hussain Khoso, Advocate.

Respondent: The State, through Ms. Sana Memon, A.P.G for
the State.

Date of hearing: 11-04-2022.

Date of decision: 11-04-2022.

JUDGMENT

IRSHAD ALI SHAH, J: The appellant with one unknown culprit in furtherance of their common intention allegedly committed murder of Ghulam Qadir alias Qadro, by causing him fire shot injuries for that he was booked and reported upon. On due trial, the appellant was convicted under section 302(b) P.P.C and sentenced to undergo imprisonment for life and to pay compensation of Rs.200,000/- to the legal heirs of the said deceased and in default whereof to undergo simple imprisonment for six months by learned 1st Additional Sessions Judge/MCTC Mirpurkhas vide Judgment dated 20.08.2019, which is impugned by the appellant before this Court by preferring the instant criminal appeal.

2. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the complainant; the F.I.R of the incident has been lodged with delay of about nine days and evidence of

prosecution's witnesses has been believed by the learned Trial Court without lawful justification, therefore, the appellant is entitled to acquittal by extending him benefit of doubt.

3. None has come forward to advance arguments on behalf of the complainant. However, learned Assistant Prosecutor General, Sindh has sought for dismissal of instant criminal appeal by supporting the impugned judgment by contending that the prosecution has been able to prove its case against the appellant beyond shadow of doubt.

4. Heard arguments and perused the record.

5. Initially the incident was recorded in *Roznamcha* under entry No.26 dated 03.07.2015; it speaks that some unknown culprits have committed the murder of deceased by causing him fire shot injury. The name of the appellant was disclosed subsequently by complainant Umaid Ali by lodging his F.I.R, it was on 9th day of the incident; such disclosure with belated and unexplained delay obviously is reflecting consultation and deliberation. The evidence of the complainant is only to the extent that he lastly seen the appellant going inside of the place of incident. He however was fair enough to admit that he did not see the appellant making fires upon the deceased. In that situation, his evidence could hardly be relied upon to maintain conviction. PW Jawaid who has claimed to be eye witness of the incident was fair enough to admit that his 161 Cr.P.C statement was recorded on 03.08.2015, it was with delay of about one

month to the incident. No explanation to such long delay in recording his 161 Cr.P.C statement has been offered by the prosecution which has put him within the ambit of managed witness; therefore, no much reliance could be placed upon his evidence to maintain conviction. As per M.O Dr. Muhammad Moosa, he conducted post-mortem on the dead body of the deceased externally for the reason that it was taken away by his relative forcibly, which appears to be significant. As per I.O/SIP Bulando Khan, he apprehended the appellant and recovered from him T.T pistol which he allegedly used in commission of incident. Surprisingly in that case of recovery of weapon, the appellant has already been acquitted by learned 3rd Assistant Sessions Judge Mirpurkhas and such acquittal obviously has not been challenged. 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 and to such benefit he is found entitled.

6. In case of *Abdul Khaliq vs. the State* (1996 SCMR 1553), it has been held by Hon'ble Court that;

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

7. In case of *Mehmood Ahmed & others vs. the State & another* (1995 SCMR-127), it was observed by the Hon'ble Court that;

"Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and

calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.

8. In case of *Muhammad Mansha Vs. The State (2018 SCMR 772)*, it has been held by the Hon’ble Apex court 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".

9. In view of the facts and reasons discussed above, the appellant is acquitted of the offence, for which he was charged, tried and convicted by learned Trial Court in present case, he shall be released forthwith, if not required to be detained in any other custody case.

10. Above are the reasons of short order of even date whereby the instant criminal appeal was allowed.

JUDGE

Muhammad Danish*