

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

Criminal Appeal No.S-228 of 2011

Appellant: Abdul Karim Son of Ali Muhammad, through
Muhammad Jameel Ahmed, Advocate.

Respondent: The State, through Ms. Safa Hisbani, Assistant
Prosecutor General, Sindh for the State.

Date of hearing: 25-04-2022.

Date of decision: 13-04-2022.

JUDGMENT

IRSHAD ALI SHAH, J:- The facts in brief necessary for disposal of instant criminal appeal are that Mst. Qamrunnisa lodged an F.I.R with P.S Johi District Dadu alleging therein that appellants Ali Muhammad (now has died), Abdul Karim and co-accused Zameer in furtherance of their common intention have committed murder of her husband Abdul Sattar by causing him fire shot injuries in order to satisfy their grudge with him over abduction of their lady. On investigation, all three accused named in the F.I.R involved by the complainant in said incident were challaned. Co-accused Zamir being juvenile offender was tried separately and on conclusion of trial, was convicted for offence punishable u/s: 302 (c) P.P.C and was sentenced to undergo rigorous imprisonment for 14 years and to pay compensation of Rs.50,000/- to the legal heirs of the said deceased and in default whereof to undergo simple imprisonment for four months with benefit of section 382(b) Cr.P.C. by learned IIIrd Additional Sessions Judge Dadu vide Judgment dated 9th January 2013 which he impugned before this Court by preferring a separate appeal; the sentence which was awarded to him, it is said he has undergone and his appeal has also been disposed of accordingly by this Court. Appellants Ali Muhammad (now has died) and Abdul

Karim were convicted for an offence punishable u/s: 302(b) P.P.C and sentenced to undergo rigorous imprisonment for life and to pay compensation of Rs.25,000/- each to the legal heirs of the said deceased and in default whereof to undergo simple imprisonment for six months with benefit of section 382(b) P.P.C by learned IIIrd Additional Sessions Judge, Dadu vide Judgment dated 14th July 2011 which they impugned before this Court by preferring the instant criminal appeal.

2. It is contended by the learned counsel for appellant Abdul Karim that he being innocent has been involved in this case falsely by the complainant party in order to satisfy its grudge with him over abduction of their lady; the evidence of the prosecution's witnesses being doubtful in its character has been believed by the Trial Court without justification and the appellant has almost undergone the sentence awarded to him barring two years. By contending so, he sought for acquittal of the appellant by extending him benefit of doubt.

3. Learned Assistant Prosecutor General, Sindh by supporting the impugned judgment has sought for dismissal of instant appeal by contending that he has actively participated in commission of incident by causing fire shot injuries to the deceased and prosecution has been able to prove its case against him beyond shadow of reasonable doubt.

4. Heard arguments and perused the record.

5. The F.I.R of the incident has been lodged with delay of about five hours; the reason for such delay as is explained by the complainant was that she attempted to contact her brother-in-law Ali Akbar at Saudi Arabia. Nothing been brought on record which may suggest that the complainant actually attempted to contact her brother-in-law Ali Akbar at Saudi Arabia prior to lodgment of F.I.R, therefore, the delay in lodgment of F.I.R for about five hours being unexplained could not be overlooked, it is reflecting consultation and deliberation. As per

I.O/SIP Ghulam Akbar Lund he recorded 161 Cr.P.C statements of the witnesses on 21.04.2005. It was on 3rd day of the incident. No explanation to such delay in recording 161 Cr.P.C statements of witnesses is offered. In that situation, no much reliance could be placed upon evidence of PWs Hajan and Khadim Hussain, they are appearing to be managed witnesses. PWs Mst. Hurmat and Muhammad Hassan have not been examined by the prosecution under the pretext that their evidence is on same line to that of evidence of PWs Hajan and Khadim Hussain. The inference which could be drawn of their non-examination under Article 129 of the Qanoon-e-Shahdat Order 1984 would be that they were not going to support the case of the prosecution. Co-accused Zameer has already undergone the sentence which was awarded to him by learned Trial Court and his appeal has been disposed of accordingly by this Court. Co-appellant Ali Muhammad has died while in custody and instant appeal in his respect has been abated. Even otherwise no specific injury to the deceased is attributed to the present appellant. As per mashirnama, from the present appellant was recovered unlicensed SBBL Gun of 12 bore. No such question was put to him during course of his examination u/s: 342 Cr.P.C to have his explanation on that recovery. The question put to him was with regard to the recovery of unlicensed T.T Pistol from him. It was contrary to the record. In these circumstances, the present appellant could not be connected with the recovery so made already from him. No forensic report is produced. The conclusion which could be drawn of the above discussion would be 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 *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”.

7. 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.”

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

10. The instant appeal is disposed of accordingly.

JUDGE

Muhammad Danish*