

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Jail Appeal No.S-50 of 2013
Criminal Appeal No.S-53 of 2013

Date of hearing: 23.08.2019.

Date of decision: 23.08.2019

Appellants: Imam Bux and others
Through Mr. Wazeer Hussain Khoso, Advocate.

Mother of Deceased: Mst. Moomal
Through Ms. Shazia Paras Kandhro, Advocate.

The State Through Mr. Nazar Muhammad Memon, Addl.P.G.

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J U D G M E N T

MUHAMMAD IQBAL KALHORO J:- Appellants have impugned a judgment dated 09.02.2013, passed by learned 1st Additional Sessions Judge, Shaheed Benazirabad in a Sessions Case No.159/2002 emanating from Crime No.34/2002 of P.S Kazi Ahmed under section 302, 34 PPC, whereby they have been convicted u/s 302 read with section 34 PPC and sentenced to life imprisonment and to pay fine of Rs. 25,000/- each, in default thereof to undergo R.I for six months more and also to pay compensation of Rs.100000/- (one lac) each to the legal heirs of deceased Mst. Peerani, in default thereof to undergo R.I for six months more, with benefit of section 382-B, Cr.P.C.

2. Brief facts of the prosecution case are that complainant Gulzar Chandio lodged F.I.R. on 14.06.2019 alleging therein that Mst. Peerani was his niece and married with accused Imam Bux from whom she had a 04 years daughter. Her husband suspected her having illicit terms with someone. On the night of 13.06.2002 at 10:00 p.m. complainant heard cries of Mst. Peerani coming from her house, he along with PWs Rehman Gul, Imtiaz, Amir Bux went running there and saw on torch light accused Imam Bux with a hatchet causing its sharp side below to her while accused Naseer and Malhar were strangulating her. She died on the spot and accused seeing them ran away. They came over body of Mst. Peerani and saw strangulation marks with hatchet injuries on her neck and jaw.

3. It is to be noted that regarding same incident, Mst. Moomal, mother of deceased, later on filed a direct complaint alleging that deceased Mst. Peerani

was married with Imam Bux whose conduct and behavior was not proper with her as such the matter was placed before one elder namely Gulzar Ahmed. On 12.06.2002, Mst. Peerani left house of her husband because of danger to her life and took refuge at PS Daulatpur as accused Imam Bux had attempted to kill her by declaring her as 'Kari' at the instigation of his uncle Gulzar Ahmed (complainant in FIR case). DSP Manzoor Khaskheli had called both the parties along with their witnesses and resolved that Mst. Peerani should return to her husband but she refused saying she would be murdered. However, DSP Manzoor compelled her to go with him by saying that he had taken assurance from him. Thereafter PWs Shahmeer and Abdul Majeed followed her and accused persons to the village where they saw that accused Badal caught hold of Mst. Peerani from arms and accused Imam Bux strangulated her and caused her hatchet blows. They narrated such incident to the complainant. She approached DSP Manzoor Khaskheli and tried to lodge a report but in vain. She then came to know that accused Gulzar Ahmed in connivance with main accused and said DSP, who had intentionally handed over custody of Mst. Peerani to the accused persons, had a made conspiracy to kill Mst. Peerani.

4. The said direct complaint was brought on regular file of the court and meanwhile FIR case was also challaned. Before the trial court both the matters i.e. direct complaint and FIR case were amalgamated and charge was framed against the accused to which they pleaded not guilty and claimed trial. In order to prove the case, prosecution examined as many as 13 witnesses, who produced all necessary documents. Thereafter statements of accused u/s 342 Cr.PC were recorded wherein accused neither examined themselves on Oath, nor led any evidence in their defense. Finally, the appellants, accused in FIR case, were convicted vide impugned judgment in the terms as stated supra and the accused in the direct complaint were acquitted.

5. Mr. Wazeer Hussain Khoso, learned counsel for appellants argued that impugned judgment is contrary to law, facts, principles of criminal justice and material available on record; that the eye witnesses did not support the case respecting appellants and were declared hostile; that learned trial court has convicted the appellants on the basis of 164 CrPC statements of the witnesses ignoring that they have not supported the incident in their evidence; that such statements are not substitute of evidence and on the basis thereof conviction cannot be recorded; that there is a conflict in the story narrated in the prosecution case and in the direct complaint which will make the case against the appellants doubtful; that there are material discrepancies and lacunas in the prosecution.

Lastly learned counsel prayed for acquittal of the appellants and relied upon the cases reported in 2011 SCMR 941, 2014 MLD 980 (Sindh) and 2017 P.Cr.L.J 992 (Peshawar).

6. In contra, Mr. Nazar Muhammad Memon, Addl. PG supported the impugned judgment but could not deny that eye witnesses did not support the incident and were declared hostile in the trial. Whereas, learned Counsel for Mst. Moomal, who had filed direct complaint, supported defense counsel and submitted that the appellants are not the real culprits.

7. I have considered submissions of the parties and perused the material available on record. The accused shown in the direct complaint including Gulzar (the complainant in FIR case) have been acquitted by the trial court and against whom complainant Mst. Moomal has not filed any acquittal appeal. Insofar as the case set up against the appellants is concerned, the complainant and PWS namely Rehman Gul and Imtiaz have not implicated them in their deposition and therefore were declared hostile. The complainant has said that when he reached the spot he saw Mst. Peerani lying dead without any of the accused present there. The other eye witness namely Imtiaz Ali has not even admitted his presence at the spot. The specific role of the appellants otherwise mentioned in FIR is not supported by any other piece of evidence. The learned trial court however has proceeded to convict them on the basis of 164 CrPC statements of P.Ws Rehman Gul and Imtiaz Ali ignoring the fact that one of them has not supported the incident and was declared hostile, whereas the other one was not even examined by the prosecution in its support. It must be added here that statements u/s 164 CrPC are not a substitute of evidence and therefore in the event of a witnesses declared hostile in the trial and there being no other evidence connecting the accused with the offense, it would not be safe to convict him on the basis of 164 CrPC statements of hostile witnesses. Further, it is noteworthy that in the F.I.R. it is alleged that appellant Imam Bux had caused a sharp side hatchet blow to the deceased but the postmortem report does not reflect such injury on her person. Meaning thereby medical evidence is different from ocular account initially forwarded by the complainant side, hence presence of the witnesses at the spot doubtful.

8. The evidence of remaining witnesses i.e. I.O, Mashirs, doctor, etc. is formal in nature in that it does not establish identity or role of the appellants in the incident and therefore is insufficient for maintaining conviction against them.

9. In the given facts and circumstances, in my humble view, the prosecution has not succeeded in proving the case against the appellants beyond a reasonable doubt, and they are entitled to benefit thereof. Resultantly, the impugned judgment is set aside and they are acquitted of the charge on the basis of benefit of doubt. They shall be released forthwith if not required in any custody case. These are the reasons for my short order dated 23.08.2019 whereby these appeals were allowed.

JUDGE

Ali Haider

