

**IN THE HIGH COURT OF SINDH AT KARACHI***Present: Ahmed Ali M. Shaikh, CJ and Omar Sial, J*

Criminal Acq. Appeal No. 567 of 2019

Nisar Ahmed v. Ghulam Qasim &amp; others

Mr. Ali Gohar Masroof, Advocate for appellant.

Mr. Abrar Ali Khichi, DPG.

Date of hearing : 2<sup>nd</sup> February, 2021Date of order : 2<sup>nd</sup> February, 2021**ORDER**

Omar Sial, J: Nisar Ahmed has impugned a judgment dated 20-8-2019 passed by the learned 1<sup>st</sup> Additional Sessions Judge, Karachi West. In terms of the said judgment the learned trial court had acquitted Ghulam Qasim and Abdul Majeed (the respondents herein) in a case arising out of F.I.R. No. 195 of 2011 registered under sections 302 and 34 P.P.C. at the Shershah police station in Karachi.

2. A brief background to the case is that Ghulam Qasim (who was a brother of Nisar Ahmed) lodged the aforementioned F.I.R. narrating therein that on 3-10-2011 he dropped his children to their school and then went to buy some groceries. When he returned back home he found that the door to his house was locked from the inside and nobody was opening it. Qasim called his bothers-in-law who somehow entered the house and found the dead body of Musarat Shaheen (Qasim's wife) lying in a pool of blood. Qasim on account of suspicion nominated Khalid Javed, Zafar alias Tamba and Ghulam Shair alias Mota as the murderers of Shaheen. The 3 nominated accused were all let off by the police during investigation and instead the respondents (which included Ghulam Qasim, the complainant of the case) were charged on the basis of a purported confession made by Abdul Majeed in which he had also implicated Ghulam Qasim. After a full dress trial the learned trial court acquitted the 2 respondents.

3. At the outset we asked the learned counsel to point out to us the defect in the impugned order which he was aggrieved with. Learned counsel submitted in spite of a confession made by Abdul Majeed, the learned trial court had acquitted the respondents. We have gone through the judgment of the learned trial court with the assistance of the learned counsel for the appellant.

4. We have observed that the aspect of the judicial confession has been addressed by the learned trial court which has also given cogent reasons for disbelieving the same. The learned counsel for the appellant very rightly agreed that the confession was retracted at trial. He also agreed that a person cannot be convicted on a mere statement of a co-accused without any corroboratory evidence. In addition, we find that the learned magistrate made a number of lapses in recording the confession - the language used was not a language the accused was conversant in; the accused was not told that he will not be given in police custody irrespective of what he says; Ghulam Qasim was not present when the confession was recorded nor was he given an opportunity to cross examine Abdul Majeed. The learned trial court was in the best position to determine whether the confession made was voluntary and true or not. After examining the evidence it came to the conclusion that the same was not. We are not inclined to interfere with the judgment of the learned trial court in this regard.

5. The learned counsel has neither argued nor raised any mis-reading, non-reading or jurisdictional issues in the impugned judgment. Further, the judgment is not capricious, arbitrary or perverse. Accordingly, the appeal stands dismissed.

JUDGE

CHIEF JUSTICE