

**IN THE HIGH COURT OF SINDH, BENCH AT
SUKKUR**

Criminal Jail Appeal No.S-34 of 2022

Crl. Appeal No.S-36 of 2022

Appellants	Mst. Shakeela daughter of Imam Dino Lashari, Hatim Ali son of Ali Gulab Shaikh and Raja son of Imam Dino Lashari through M/s Ghulam Mujtaba Jakhar, Illahi Bux Jamali and Saeed Jamal Lund advocates.
The State	Through Mr. Shafi Muhammad Mahar, Deputy Prosecutor General for the State. Complainant Riaz Hussain in person.
Date of hearing	24-10-2023
Date of decision	24-10-2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of the prosecution that the appellants in furtherance of their common intention committed death of Fayyaz Hussain by administering him some poisonous substance and causing him injuries on his head and other parts of the body with some hard blunt impact, for that they were booked and reported upon by the police. At trial, the appellants denied the charge and prosecution to prove the same examined in all six witnesses and then closed its side. The appellants in their statements recorded u/s 342 Cr.P.C denied the prosecution's allegation by pleading innocence by stating that the complainant party have involved them in this case falsely only to deprive appellant Mst. Shakeela from lawful inheritance to the property left by the deceased, who was

her husband. However, none of them examined themselves on oath or anyone in their defence to prove their innocence. On conclusion of trial the appellants were convicted u/s 302 (b) r/w 34 PPC and sentenced to undergo imprisonment for life and to pay compensation of Rs. 100,000/- (one lac) each to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for six months with benefit of section 382 (b) Cr.P.C by learned Additional Sessions Judge Gambat vide judgment dated 07-04-2022, which the appellants have impugned before this Court by preferring two separate Crl. Appeals.

2. It is contended by learned counsel for the appellants that the appellants being innocent have been involved in this case falsely by the complainant party in order to deprive one of them from lawful inheritance; the FIR of the incident has been lodged with delay of about 17 days, that too after having a recourse u/s 22 A/B Cr.P.C; the very case on final investigation was recommended by the police to be cancelled under "C" class and evidence of the witnesses being doubtful in its character has been believed by learned trial Court without assigning cogent reasons; therefore, the appellants are entitled to their acquittal by extending them benefit of doubt. In support of their contention they relied upon cases of *Ghulam Abbas and another Vs. The State and another* (2021 SCMR 23) and *Mst. Shazia Parveen Vs. The State* (2014 SCMR 1197)

3. Learned Deputy Prosecutor General for the State who is assisted by the complainant by supporting the impugned judgment has sought for dismissal of instant Crl. Appeals

by contending that the prosecution has been able to prove its case against the appellants beyond shadow of doubt by producing reliable evidence.

4. Heard arguments and perused the record.

5. It was stated by PW Aftab Ahmed that on 30-08-2015 when he and Fayyaz Hussain were available in their house at Juneja colony Ranipur, there at about 1700 hours came the appellants with three unknown culprits having pistols, who locked him in a room of the house then started to have quarrel with Fayyaz Hussain, he therefore, intimated complainant Riaz Hussain about the happening by making him a call on cell phone, he and PW Mehtab came at the place of incident through their motorcycle, they saw appellant Hatim Ali holding his brother while appellant Mst. Shakeela forcibly administered him poisonous substance and then they fled away; the complainant and PW Mehtab Hussain then unlocked him; Fayyaz Hussain was also found sustaining injuries on his head and other parts of his body; they related the incident to the police. It was actually related by PW Mehtab Hussain by making narration, without disclosing the name of any culprit that he suspecting that his brother Fayyaz Hussain has died of taking poison. It was recorded by I.O/HC Ghulam Shabbir under roznamcha entry No. 35 dated 30-08-2015. PW Mehtab Hussain has not been examined by the prosecution. The inference which could be drawn of his non-examination in terms of Article 129(g) of Qanun-e-Shahadat Order, 1984 would be that he was not going to support the case of the prosecution. It was stated by

I.O/HC Ghulam Shabbir that after recording the entry in roznamcha at the instance of PW Mehtab Hussain with regard to the incident, he went at the place of incident, prepared *lash-chakas* form and inquest report on the dead body of the deceased. It is expressly written in both these documents that there was no injury on the person of the deceased and his death has occurred on administering some poisonous substance to him. It was further stated by him that he then dispatched the dead body of the deceased to RHC Ranipur for postmortem. As per final postmortem report, death of the deceased occurred due to natural cause. It was stated by Dr. Hala Ram that, the final postmortem report on challenge, a medical board was constituted, the dead body of the deceased was exhumed and medical board was of the opinion that death of the deceased has occurred due to intra cranial hemorrhage leading to shock and death caused by hard blunt impact. No member of such medical board has been examined by the prosecution. By such omission, the appellants have been denied right of legal defence on this very important document. It was stated by complainant Riaz Hussain that on receipt of information on cell phone communicated to him PW Aftab Hussain, he and PW Mehtab Hussain went at the place of incident on their motorcycle, there they found the appellants Raja and Mst. Shakeela administering some poisonous substance to Fayyaz Hussain and on resistance he was caused butt blows on his head by appellant Raja; on *hakal* all the culprits fled away by pointing their pistols. It was further stated by him that on

account of refusal of the police to record his FIR, he approached Ex-Officio Justice of Peace having jurisdiction for such direction, which was issued and he then on the basis of such direction lodged the report of the incident with PS Ranipur. It was recorded by ASI Allah Bachayo; he too has not been examined by the prosecution. It was further stated by the complainant that subsequently by way of further statement he disclosed the name of appellant Hatim Ali as he was having illicit relations with appellant Mst. Shakeela. The further statement could hardly be treated as part of the FIR. The FIR so lodged by the complainant was with delay of about 17 days to the actual incident; such delay could not be over looked. Under any circumstances, the FIR of the incident was to have been lodged by PW Mehtab Hussain being first informant of the incident. The lodgment of the FIR by complainant Riaz Hussain other than PW Mehtab Hussain being first informant prima-facie suggests that he was intending to involve the appellants in present case with ulterior motives, who otherwise were not involved and/or named by PW Mehtab Hussain in his report, which initially was recorded in roznamcha by I.O/HC Ghulam Shabbir on very date of the incident. As per report of chemical examiner, no poisonous substance was detected in viscera's of the deceased. It belies the complainant party that the deceased was administered some poisonous substance allegedly by the appellants before his death. It was stated by I.O/SIP Allah Rakhio that on investigation he recorded 161 Cr.P.C statements of PWs, arrested appellant Mst.

Shakeela, obtained her CDR report, secured her clothes and then submitted interim challan of the case before the Magistrate having jurisdiction and further investigation of the case was conducted by SHO PS Ranipur. It is also admitted by the complainant that very case once was cancelled by the police. The perusal of the record reveals that on further investigation, the present case was recommended by I.O/SIP Abdul Karim to be cancelled under "C" class, such recommendation of the police was not accepted by learned trial Magistrate who took the cognizance of the offence vide order dated 20-10-2016 and case was sent up by him to Court of Sessions for further proceedings. I.O/SIP Abdul Karim has not been examined by the prosecution, perhaps purposefully only to deprive the appellants of the benefit which they were going to take from his evidence, which is against the mandate contained by Article 10-A of the Islamic Republic of Pakistan, 1973, which prescribes right of fair trial to everyone. The evidence of the complainant and his witnesses as is discussed above is not appearing to be transpiring confidence to maintain conviction in the circumstances of the case.

6. 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 appellants beyond shadow of reasonable doubt and to such benefit they are found entitled.

7. In case of *Imran Ashraf and others vs. the State* (2001 SCMR-424), it was observed by Hon'ble Court that;

“Section 154, Cr.P.C. lays down procedure for registration of an information in cognizable cases and it also indeed gives mandatory direction for registration of the case as per the procedure. Therefore, police enjoys no jurisdiction to cause delay in registration of the case and under the law is bound to act accordingly enabling the machinery of law to come into play as soon as it is possible and if first information report is registered without any delay it can help the investigating agency in completing the process of investigation expeditiously”.

8. In the case of *Muhammad Mansha vs. The State* (2018 SCMR 772), it was held by the 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 conviction and sentence awarded to the appellants under impugned judgment are set aside, consequently, they are acquitted of the offence for which they were charged; tried, convicted and sentenced by learned trial Court and shall be released forthwith, if not required to be detained in any other custody case.

10. The instant Criminal Appeals are disposed of accordingly.

J U D G E