

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Jail Appeal No. S-30 of 2022

Appellant: Sajjad @ Karo s/o Sadique Rind through Mr. J.K Jarwar advocate.

The complainant: Through Mr. Muhammad Qayyum Arain, advocate.

The State: Mr. Aftab Ahmed Shar, Additional Prosecutor General.

Date of hearing: 13-12-2023

Date of judgment: 13-12-2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellant committed murder of Mst. Zahida by causing her fire shot injury, for that he was booked and reported upon by the police. At trial he denied the charge and prosecution to prove the same, examined in all 07 witnesses and then closed its side. The appellant during course of his examination u/s 342 Cr.P.C, denied the prosecution's allegations against him by pleading innocence; he did not examine anyone in his defence or himself on oath in disproof of the prosecution's allegations. On conclusion of trial, he was convicted under section 302(b) PPC and sentenced to undergo rigorous imprisonment for life and to pay compensation of Rs.200,000/- to the legal heirs of the

deceased and in default whereof to undergo simple imprisonment for 06 months; he was further convicted under section 452 PPC and sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs. 20,000 and in default whereof to undergo simple imprisonment for three months; both the sentences were directed to run concurrently with benefit of section 382(b) Cr.P.C, by learned Ist Additional Sessions Judge, Naushahro Feroze vide judgment dated 21-03-2022, which he has impugned before this Court by preferring the instant criminal Jail 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 police at the instance of the complainant party; the investigation of the case has been conducted even prior to registration of formal FIR of the case and all the memos were prepared by PC Imdad Ali, who has not been examined by the prosecution; there is inconsistency with regard to the timing for bringing the dead body of the deceased at Hospital and arrival of the police there and moreso; the pistol has been foisted upon the appellant by the police at the instance of the complainant party, the evidence of the PWs being doubtful its character has been believed by learned trial Court without lawful

justification, therefore, the appellant is entitled to be acquitted of the charge by extending him benefit of doubt.

3. Learned Additional P.G for the state and learned counsel for the complainant by supporting the impugned judgment have sought for dismissal of the instant criminal jail appeal by contending that the pistol secured from the appellant has been matched with the empty secured from the place of incident, which prima-facie suggests his involvement in commission of the incident. In support of their contention, they relied upon the cases of (i) *Muhammad Iqbal Vs. The State (PLD 2001 Supreme Court 222)*, (ii) *Muhammad Ilyas and others Vs. The State (2011 SCMR 460)* and (iii) *Muhammad Afzal Vs. The State (2021 SCMR 289)*.

4. Heard arguments and perused the record.

5. It has *inter-alia* been stated by complainant Zahid Hussain that deceased Mst. Zahida was his sister, while the appellant is son of his cousin; Mst. Zahida exchanged harsh words with women folk of the appellant, which annoyed him and he was found saying that he would kill Mst. Zahida. On 11-07-2018, when he, his wife Mst. Azizan, PWs Imtiaz, Wazir Ali and Mst. Zahida were available in their house, there at about 2:30 pm, a knock was made at the door of his house; Mst. Zahida by responding to such knock opened the door. In the meanwhile,

the appellant and one unknown culprit made their entry in his house; the appellant said that Mst. Zahida has exchanged harsh words with his women folk; therefore she would be murdered; by saying so, he fired at Mst. Zahida, which hit on right side of her lumber region and crossed through her left thigh; after sustaining such fire shot injury she fell down on the ground and the appellant with unknown culprit made their escape good. Mst. Zahida died within his sight, he took her dead body to Civil Hospital Naushahro Feroze and then intimated the police about the incident. I.O/ASI Rajib Ali came at the Civil Hospital Naushahro Feroze, undertook usual formalities, the dead body of the deceased then was handed over to him after postmortem and then he lodged report of the incident with PS Naushahro Feroze. Whatever is stated by the complainant takes support from the evidence of PW Wazir Ali. They have stood by their version on all material points with regard to the death of the deceased at the hands of the appellant despite lengthy cross examination; therefore they could not be disbelieved only for the reason that PWs Mst. Azizan and Imtiaz have not been examined by the prosecution. It is the quality of the evidence which is to be taken into consideration and not its quantity. The death of the deceased being unnatural takes support from the evidence of Dr. Mst. Sughran; it corroborates the version of the

complainant and PW Wazir Ali. The evidence of Tapedar Muhammad Jameel is only to the extent of preparation of sketch of wardhat, it hardly needs to be discussed. The evidence of PW/PC Abdul Hafeez is to the extent that dead body of the deceased was given to him formally by I.O/ASI Rajib Ali, which he handed over to the Medical Officer at Civil Hospital Naushahro Feroze for the postmortem; it also corroborates the version of the complainant party. It was stated by I.O/ASI Rajib Ali that on investigation, he visited the place of incident, prepared such memo, recorded 161 Cr.P.C statements of the PWs and arrested the appellant and on inquiry he led him to recovery of unlicensed pistol of 30 bore, which he allegedly used in commission of incident, it was secured by him in presence of the mashirs; his version to that extent is supported by PW/mashir Ali Abbas. On forensic examination, the pistol secured from the appellant was found matched with empty secured from the place of incident, which excludes the possibility of its foistation upon the appellant. On asking, it was stated by I.O/ASI Rajib Ali that all the memos were prepared by PC Imdad Ali. By stating so, he clarified that those were prepared by him at his dictation. The preparation of the memos by someone else at the dictation of I.O of the case could hardly be treated to be fatal to the case like present one,

wherein the life of innocent lady has been taken on very pity matter. Of course, the investigation of the present case only to the extent of preparation of lash chakas form, danistnama and delivery of the dead body to the Medical Officer has been undertaken prior to registration of formal FIR of the case; it was natural act on the part of the police. It is not prejudicing the appellant in any way. There may be inconsistency with regard to bringing the dead body of the deceased at Hospital and preparation of the relevant memos with regard to its timing but such inconsistency being immaterial is not enough to make a conclusion that the appellant is innocent. The appellant has not been able to examine himself on oath or anyone in his defence; therefore, his simple plea of innocence deserved to be ignored as in afterthought.

6. Discussion involves a conclusion that the prosecution has been able to prove its case against the appellant beyond shadow of doubt and learned trial Court has committed no illegality or irregularity by convicting him of the offence for which he was charged by way of impugned judgment, which may justify this Court to make interference with the same.

7. In the case of *Muhammad Ismail v. The State* (2017 SCMR 713), it has been held by the Apex Court that;

“14. At the same time, we are not supposed to make a departure from the principle of law, consistently laid down that testimony of a solitary witness, if rings true, found reliable and is also corroborated by some other evidence as well then, it can be made basis for conviction on capital charge. As has been discussed above that, Mst. Bachi Mai (PW-6) was the inmate of the same house, being the widow of the deceased, her presence at the fateful time, cannot be doubted on any premises whatsoever. Thus, her testimony is sufficient for conviction of the appellant because the same is supported by the recovery of the crime weapons on the spot, stained with the human blood; besides, the medical evidence provides ample support to the same.”

8. In view of the facts and reasons discussed above, the instant CrI. Jail Appeal fails and it is dismissed accordingly.

JUDGE