

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Jail Appeal No. 768 of 2019

[Najeeb Pathanv..... The State]

Date of Hearing : 01.08.2023
Appellant through : Mr. Muhammad Yousif Narejo,
Advocate.
Respondents through : Mr. Hussain Bux Baloch, Addl. P.G.

ORDER

Zulfiqar Ahmad Khan, J:- Through instant Criminal Appeal, the appellant has impugned the judgment dated 05.10.2019, passed by the learned Additional Sessions Judge-I Karachi South, in Sessions Case No. 736 of 2014, arising out of FIR No.379/2013, under section 302, 324, 34 PPC at Police Station Kharadar, Karachi, whereby appellant was convicted and sentenced to suffer life imprisonment and fine of Rs.300,000/- for commission of offence punishable under Section 302(b) PPC. In default, the appellant has to undergo S.I. for 6 months. The Appellant was also convicted and sentenced to suffer RI for 5 years and fine of Rs. 50,000/- for commission of offence punishable under Section 324 PPC. Both sentences were ordered to run concurrently. The benefit provided under Section 382-B Cr.P.C was also extended to the appellant.

2. The allegation against the appellant is that on 13.10.2013 at 1245 hours the appellant in conjunction with his absconding accused made firing upon Huzaifa and Muhammad owing to which Huzaifa died while Muhammad received fire arm injuries.

3. After framing of charge, the prosecution has examined as many as twelve (12) witnesses. PW-01 Tahir Ali at Exh. 5, PW-02,

Khalid Mehmood at Exh. 6, PW-03 Habib Ahmed at Exh. 7, PW-04 Abdul Wahab at Exh. 8, PW-05 Zaryab Ahmed at Exh. 9, P.W.-6 Muhammad Sajid at Exh. 10, PW. 7 Basheer Ahmed at Exh.12, P.W. 8 Akbar Hussain at Exh. 13, PW-9 Moiz Fakhruddin at Exh. 14, P.W. 9 Muhammad at Exh. 15, PW-10 Zulfiqar Ali Shah at Exh. 16, PW-11 Ali Azhar at Exh. 18, PW 12 Aziz ur Rehman at Exh. 19 and PW-12 Shah Muhammad at Exh. 20. Thereafter prosecution side was closed vide Ex:21 and statements of appellant under section 342, Cr.P.C. was recorded at Exh. 22, who claimed his innocence, however, neither examined himself on oath nor led defense witnesses in support of their claim.

4. After observing all formalities and hearing the parties, the learned trial Court convicted the appellant through impugned judgment in the manner described in the operative part of this edict.

5. Learned counsel for the appellant, at the very outset, submits that though the appellant has a good case on merit but since he is aged about 49 years and is suffering from multiple diseases which are not curable inside jail so also is a lone bread earner of his family. He further submits that appellant has already served out major portion of his sentence; therefore, under the circumstances he would be satisfied and shall not press this Criminal Appeal if the sentence awarded to the appellant is reduced to one as already undergone.

6. Learned Addl. P.G. has opposed this appeal on merit. Learned counsel for the complainant argued that the prosecution witnesses deposed the factum of incident in their examination in chief and no major contradiction introduced on record in their cross examination.

In these circumstances, he opposed for the grant of appeal rather requested for enhancement of the sentence awarded by the learned trial Court.

7. I have heard the arguments of learned counsel for the parties and perused the record. It is an admitted position that the prosecution witnesses during course of their deposition deposed the factum of alleged incident in their examination-in-chief and that the learned defense counsel exercised his all abilities to shake the confidence of the prosecution witnesses but they are (private witness but relatives of the deceased) firm on one point that “the appellant is the person who fired upon the deceased”.

8. These prosecution witnesses were subjected to lengthy cross-examination by the defence but nothing favourable to the appellant/convict or adverse to the prosecution could be brought on record. All the PWs remained consistent on each and every material point and successfully advanced the prosecution case so far as it relates to the homicidal death of deceased is concerned, the witnesses have given a reasonable explanation for their presence at the place of occurrence at the relevant time and have made consistent statements before the trial court which statements have inspired confidence. As far as the question that the private witnesses being relatives of the deceased, therefore, his testimony cannot be believed to sustain conviction of the appellant/convict is concerned, this Court has time and again held that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses unless previous enmity or ill will is established on the record to falsely implicate the accused in

the case. The medical evidence available on the record corroborates the ocular account so far as the nature, time, locale and impact of the injury on the person of the deceased is concerned¹.

9. It is noted that appellant was convicted and sentenced to suffer life imprisonment with fine of Rs.300,000/-. Perusal of record reveals that the appellant is behind the bar since 18.11.2013 and has served 19 years, 3 months and 23 days out of 25 years of sentence. Nothing has come on record as to whether the appellant has ever remained involved in such type of cases or he was convicted. Moreover, the appellant/convict is behind the bars since 18.11.2013 no adverse complaint has been introduced on record from the jail authorities. It is expedient to mention here that the sentence awarded by the learned trial Court would not meet the ends of justice reasoning that injured P.W. Muhammad could not identify the appellant to be the perpetrator of making firing upon him and the deceased, therefore, keeping in view the mitigating circumstances while this Criminal Appeal is hereby dismissed, and the impugned judgment dated 05.10.2019 is maintained but the conviction and sentence awarded to the appellant is reduced to one as already undergone. Resultantly, the appellant Najeeb Pathan son of Abdul Ali, who is confined in Central Prison, is directed to be released forthwith, if not required in any other case.

Karachi
Dated: 01.08.2023.

JUDGE

Aadil Arab.

¹ Per Sayyed Mazahar Ali Akbar Naqvi in Sabtain Haider v. The State (2022 SCMR 2012)