

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No. 363 of 2019

Appellant: Ali Hassan Brohi through Mr. Habib-ur-Rehman Jiskani, advocate
The State: Mr. Muhammad Anwar Mahar, DDPP
Date of hearing: 16.08.2023
Date of judgment: 16.08.2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellant with rest of the culprits in furtherance of their intention committed murder of Abdul Aziz by causing him fire shot injuries, for that he was booked and reported upon by the police. On conclusion of trial, he was convicted under Section 302(b) PPC and sentenced to undergo life imprisonment and to pay compensation of Rs.10,00,000/- to the legal heirs of the deceased with benefit of section 382(b) Cr.P.C by learned Ist -Additional Sessions Judge (MCTC) Karachi Malir vide judgment dated 25.05.2019, which he has impugned before this Court by preferring the instant Criminal Appeal.

2. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely; the FIR of the incident has been lodged with delay of about two days and evidence of the PWs being doubtful in its character has been believed by the learned trial Court without assigning cogent reasons, therefore, the appellant is entitled to acquittal by extending him benefit of doubt.

3. None has come forward to advance arguments on behalf of the complainant. However, learned DDPP for the State by supporting the impugned judgment has sought for dismissal of the instant appeal by contending that on arrest from the appellant has been secured the crime weapon and it has been found matched with the empties secured from the place of incident.

4. Heard arguments and perused the record.

5. It was stated by complainant Abdul Karim that on the date of incident he went outside of his house on a knock and found the appellant and two unknown culprits standing there who demanded water to be drunk, which his son Abdul Aziz went to give them, in the meanwhile he heard fire shot report, went outside of his house with PWs Abdul Haque and Muhammad Ali and found the appellant causing another fire shot injury to his son Abdul Aziz and then fled away, the police party came at the place of incident, conducted usual *Karwai* and then referred the dead body of the deceased to Jinnah Hospital for postmortem and he then lodged report of the incident formally with the police after two days of the incident. As per PW PW Abdul Haque the FIR of the incident was lodged with delay, after consultation with relatives. FIR of the incident lodged with delay and after due consultation with relatives could reasonably be judged with doubt. ASI Ghulam Mustafa who conducted initial investigation of the case, on asking was fair enough to admit that inquest report contains a note that the deceased was killed by unknown culprits. Surprisingly, such inquest report was attested by the complainant himself which prima facie suggests that the name of the appellant was disclosed by the complainant in his FIR after due consultation by consuming two days. It was further stated by ASI Ghulam Mustafa that he was intimated that the deceased was killed in a river/canal. If it is believed to be so, then it prima facie suggests that the deceased was killed in a fashion other than the one which is setup by the complainant. ASI Malik Rifat Zaheer who allegedly arrested the appellant has not been examined by the prosecution. His non examination could not be lost sight of. I.O/SIP Zahid Hussain Shah who has conducted further investigation of the case too has not been examined by the prosecution. His non examination, as per ASI Ghulam Mustafa was for the reason that he was not able to speak on account of throat cancer. Nothing has been brought on record which may suggests that I.O/SIP Zahid Hussain Shah was actually suffering from throat

cancer and was unable to make statement. His non examination too could not be overlooked. PW Muslim besides the complainant has also attested the inquest report, has not been examined by the prosecution for the reason that he has been won over by the appellant. His non examination too could not be overlooked. In such circumstances, it would be hard to maintain conviction against the appellant on the basis of recovery of crime weapon, which is alleged by him to have been foisted upon him by the police.

6. The discussion involved in a conclusion that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt and to such benefit he is found entitled.

7. In case of *Muhammad Jamil vs. Muhammad Akram and others (2009 SCMR 120)*, it has been held by the Apex Court that;

"When the direct evidence is disbelieved, then it would not be safe to base conviction on corroborative or confirmatory evidence."

8. In case of *Imran Ashraf and others vs. the State (2001 SCMR-424)*, it has been held by Apex 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. Any slackness or lukewarm attitude by the registering authority of F.I.R. in fact intend to help the accused involved in the commission of the offence. Thus, it is advisable that the provision's of section 154 Cr.P.C. read with Rule 24.5 (c) of the Police Rules, 1934 be adhered to strictly. There should not be any negligence in recording the of F.I.R. and supplying copies to concerned quarters because departure from the mandatory provision of law creates a room to doubt the truthfulness of the allegation against the accused incorporated in F.I.R. As it has been observed hereinabove that in instant case the prosecution remained under serious criticism by the defence even on the question of promptly lodging of F.I.R."

9. In the case of *Muhammad Mansha vs. The State (2018 SCMR 772)*, it has been 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".

10. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellant is set aside, consequently, he is acquitted of the offence for which he was 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.

11. The instant Criminal Appeal is disposed of accordingly.

JUDGE

Nadir*