

# IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Jail Appeal No. 25 of 2018

Appellant: Amjad Ali through Mr. Saifullah, advocate  
The State: Mr. Muhammad Anwar Mahar, DDPP for the State  
Complainant through Ms. Saima Shahreen Abbasi, advocate  
Date of hearing: 07.09.2023  
Date of judgment: 07.09.2023

## J U D G M E N T

**IRSHAD ALI SHAH, J-** The appellant is alleged to have committed murder of Mst. Kausar Parveen by way of strangulation, his own wife, said to be pregnant at the time of incident, for that he was booked and reported upon by the police. On conclusion of trial, he was convicted under Section 302 PPC without specifying the clause and sentenced to undergo rigorous imprisonment for life; he was further convicted under Section 338(c) PPC and sentenced to undergo rigorous imprisonment for 07 years; both the sentences were directed to run concurrently, with benefit of section 382(b) Cr.P.C by learned Jnd-Additional Sessions Judge, Karachi South vide judgment dated 11.11.2017, which he has impugned before this Court by preferring the instant 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 complainant party, in unseen incident and learned trial Court has convicted and sentenced the appellant on the basis of surmises and conjectures. By contending so, he sought for acquittal of the appellant by extending him benefit of doubt. In support of his contention, he relied upon the case of *Shaukat Hussain v. the State* (2022 SCMR 1358).

3. Learned DDPP for the State and learned counsel for the complainant by supporting the impugned judgment have sought for

dismissal of the instant jail appeal by contending that the appellant was having strained relations with his wife and it was the reason for which he has committed her murder, in his house and then has gone in absconsion for about 05 months.

4. Heard arguments and perused the record.

5. Initially, the appellant was charged under Section 302 PPC, after recording evidence of complainant Muhammad Hussain, PWs Muhammad Ayoub, Ajab Khan and HC Sabir Sultan; the charge was amended whereby Section 338(c) was added. Surprisingly, neither the complainant nor any of his above named witness was recalled to be examined on newly added penal section. No question even otherwise was put to the appellant during course of his examination under Section 342 Cr.P.C to answer the charge u/s. 338(c) PPC. As such, the conviction of the appellant under Section 338(c) PPC could not be justified legally. On merits of the case, it was stated by PW Ajab Khan that on noticing bad smell from house of the appellant, he went there and found its door locked, which he broke opened and therein was found lying the dead body of the deceased, he then intimated the incident to complainant Muhammad Husain and PW Muhammad Ayoub, they came at the place of incident. Such fact they have confirmed. If for the sake of arguments, the evidence of the complainant and his above named witnesses is believed to be true then it is the only to the extent of recovery of the dead body of the deceased from house of the appellant. Evidence of PW HC Sabir Sultan is only to the extent that he arranged for ambulance and shifted the dead body of the deceased to the hospital. His evidence is of little importance to be discussed. Evidence of PW I.O/SI Saleem Tanoli is to the extent that he conducted initial investigation of the present case and recorded 154 Cr.PC statement of the complainant. His evidence is not enough to improve the case of prosecution. Evidence of Medical Officer PW Dr. Sadat Fatima is to the extent that the deceased was done to death by way of strangulation and full term dead male baby was recovered from her body. The death of the

deceased being unnatural is not denied by anyone. The postmortem report does not identify the culprit of the incident. Evidence of PW I.O/SIP Saeed Alam is to the extent that he obtained the custody of the appellant, conducted further investigation of the case and then submitted its challan before the court having jurisdiction. On asking, he was fair enough to admit that there was no eye witness to the incident. In that situation, it would be hard to maintain the conviction against the appellant on the basis of his absconsion and/or for the reason that the dead body of the deceased being his wife was found lying in his house, particularly when he has pleaded innocence in his examination recorded under Section 342 Cr.PC by stating that he has been involved in this case falsely by his in-laws on account of an existing dispute with them.

6. The discussion involves 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 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".*

8. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellant under impugned judgment are 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.

9. The instant Criminal Jail Appeal is disposed of accordingly.

JUDGE