

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No. 145 of 2020

Appellant: Muhammad Imran through Mr. Muhammad Ghaffar Khan Kakar, advocate

The State: Mr. Muhammad Anwar Mahar, DDPP for the State

Date of hearing: 11.09.2023

Date of judgment: 11.09.2023

J U D G M E N T

IRSHAD ALI SHAH, J- The appellant is alleged to have committed murder of Mst. Mariam, his ex-wife, by causing injuries to her with sharp cutting weapon, 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 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 six months with benefit of section 382(b) Cr.P.C by learned 1st Additional Sessions Judge, Karachi East vide judgment dated 23.01.2020, which he has impugned before this Court by way of instant Crl. 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 and he has been convicted and sentenced by learned trial Court virtually on the basis of no evidence, therefore, he is entitled to be acquitted of the charge by extending him benefit of doubt, which is opposed by learned DDPP for the State by supporting the impugned judgment by contending that on arrest from the appellant has been secured the dagger which he allegedly used in commission of the incident.

3. Heard arguments and perused the record.

4. It was stated by complainant Muhammad Saleem that on the date of incident he was intimidated by the police that his daughter Mst. Mariam has been murdered; her dead body has been found in a

house which is belonging to the appellant who happened to be her ex-husband; on such information, he intimated to his son in-law Imran son of Muhammad Iqbal and then both of them went at PS Karachi Industrial Area, there they were informed that the dead body of the deceased has been kept in Chhipa Cold Storage; thereafter he lodged FIR of the incident with the police. It was recorded by I.O/SIP Nisar Ahmed. Apparently, the complainant is not eye witness to the incident; therefore, his evidence hardly lends support to the case of prosecution. It was stated by P.W ASI Bashir Ahmed and PC Shahbaz Ali that on arrest, the appellant disclosed that he has committed the death of the deceased. If for the sake of arguments, it is believed that such disclosure was actually made by the appellant before the above named police officials, even then same in terms of Article 39 of Qanun-e-Shahadat Order, 1984, could not be used against him as evidence. P.W Imran son of Muhammad Iqbal, the person with whom the deceased married after seeking divorce from the appellant 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 prosecution. Nothing has been brought on record in shape of any document which may suggest that the place of incident was actually owned or possessed by the appellant at the time of incident. It was stated by I.O/SIP Yousif Naimat that on investigation he secured the dagger from the appellant allegedly used by him in commission of the incident. Such recovery, if any, could hardly be made enough to maintain the conviction against the appellant in absence of direct evidence. No finger prints even otherwise available on such dagger were obtained, which were necessary to connect the appellant with such recovery. The appellant during course of his examination has pleaded innocence; his plea of innocence as such could not be lost sight of. In these circumstances, it would be safe to conclude 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.

5. 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."

6. 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".

7. 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.

8. The instant Criminal Appeal is disposed of accordingly.

JUDGE

Nadir*