

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No. 458 of 2019

Appellant: Sher Zaman through Ms. Faryal Alvi,
advocate

The State: Mr. Muhammad Anwar Mahar, DDPP

Date of hearing: 13.09.2023

Date of judgment: 13.09.2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellant with one more culprit in furtherance of their common intention caused fire shot injuries to Muhammad Counselor, a retired police officer and his son complainant Muhammad Umair Khan with intention to commit their murder; Muhammad Counselor died of such injuries, for that the present case was registered. On conclusion of trial, the appellant was convicted under Section 302(b) PPC and sentenced to undergo imprisonment for life and to pay compensation of Rs.50,000/- to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for 03 months; he was further convicted under Section 324 PPC and sentenced to undergo rigorous imprisonment for 10 years with fine of Rs.25,000/- and in default whereof to undergo simple imprisonment for 03 months; both the sentences were directed to run concurrently with benefit of section 382(b) Cr.P.C by learned VII-Additional Sessions Judge/MCTC-2, Karachi Central, vide judgment dated 03.08.2019 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 by the police in blind FIR and evidence of PWs being doubtful in its character has been believed by the learned trial Court without assigning cogent reasons, therefore, the appellant is entitled to be acquitted of the charge by extending him benefit of doubt, which is not opposed by learned DDPP for the state.

3. Heard arguments and perused the record.

4. It is stated by complainant Muhammad Umair Khan that on the date of incident he and his father Muhammad Counselor were going back to their house in their car when took break at Kamboh Colony there they were confronted by two persons on a motorcycle, they opened the fires which hit him and his father Muhammad Counselor; he and his father then were shifted to Abbasi Shaheed Hospital, his father died there; he, therefore, lodged report of the incident with the police, it was recorded in shape of his statement under Section 154 Cr.PC by I.O/SIP Aijaz Aslam and then it was incorporated into formal FIR. It was further stated by him that after one and half year, he was called by police at PS Pak Colony, the appellant was shown him there who confessed before him to have committed murder of his father. PW Muhammad Asif Khan by supporting the complainant on factum of the incident has stated that the appellant before the Court is same. The name and description of the appellant are not disclosed either by the complainant in his 154 Cr. PC statement or by PW Muhammad Asif Khan in his 161 Cr.PC statement, therefore, the identity of the appellant by them at police station and subsequently at trial could hardly be treated as a conclusive proof with regard to the involvement of the appellant in commission of the incident. It was stated by I.O/SIP Sarfraz Ali Khawaja that on arrest the appellant disclosed before him that he and co-accused Shakeel Katchi have committed the present incident. If for the sake of arguments, it is believed that such disclosure was actually made by the appellant before him even then same in terms of Article 39 of Qanun-e-Shahadat Order, 1984 cannot be used against him as evidence. There is no recovery of crime weapon from the appellant. The appellant during course of his examination under Section 342 Cr.PC has pleaded innocence. 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 *Asghar Ali @ Saba vs. the State and others* (1992 SCMR 2088), it has been held by the Apex Court that;

“The identification in Court of a person produced as an accused months after the event could not satisfy the requirements of law for proving the identity of the culprit.”

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 case.

8. The instant Criminal Appeal is disposed of accordingly.

JUDGE