

# **THE HIGH COURT OF SINDH AT KARACHI**

Criminal Jail Appeal No. 868 of 2019

Appellant: Raheem Dad @ Nadeem Dad through Mr. Abdul Latif Golo, advocate

The State: Mr. Khadim Hussain, Addl. P.G

Date of hearing: 15.09.2023

Date of judgment: 15.09.2023

## **J U D G M E N T**

**IRSHAD ALI SHAH, J-** The appellant is alleged to have committed murder of his wife Mst. Fozia by slitting her throat with knife, for that he was booked and reported upon by the police. The appellant denied the charge and prosecution to prove the same, examined complainant ASI Abdul Jalil and his witnesses and then closed its side. The appellant during course of his examination under section 342 Cr.P.C, denied the prosecution's allegations by pleading innocence; he did not examine anyone in his defence or himself on oath. On conclusion of trial, he was convicted under section 302 PPC, it obviously was under clause (b) and sentenced to undergo rigorous imprisonment for life and to pay compensation of Rs.300,000/- to the legal heirs of the deceased with benefit of section 382(b) Cr.P.C, by learned IX-Additional Sessions Judge, Karachi West vide judgment dated 27.08.2019, which he has impugned before this Court by preferring the instant criminal 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; there is no eye witness to the incident and evidence of the P.Ws being doubtful in its character has been believed by

learned trial Court without lawful justification, therefore, the appellant is entitled to be acquitted of the charge by extending him benefit of doubt. In support of his contention, he relied upon case of *Tariq Pervez vs. The State (1995 SCMR 1345)*.

3. Learned Additional P.G for the state by supporting the impugned judgment has sought for dismissal of the instant criminal jail appeal by contending that on arrest from the appellant has been secured the knife which he allegedly used in commission of incident and prosecution has been able to prove its case against him beyond shadow of reasonable doubt.

4. Heard arguments and perused the record.

5. It was stated by P.W Muhammad Jan that on the date of incident when he was available in his house, on hearing of commotions from the house of the appellant, who is his tenant, he and his neighbourers went at his house, knocked the door, on that he replied that he is going to open it, but did not open, therefore, he peeped therein from the bottom of the main door and found the appellant sitting on the chest of his wife, having knife in his hand; after while he opened the door, his hands and clothes were having blood marks, on inquiry he told them that he has done his job; he and his neighbourers then went inside of his house and found wife of the appellant lying dead with her throat cut. He intimated the police, on that ASI Abdul Jalil came at place of incident. It was stated by ASI Abdul Jalil that he on information communicated to him by P.W Muhammad Jan he went at the place of incident, apprehended the appellant, secured from him knife, he then referred the dead body of the deceased to Hospital for postmortem, it was conducted by Dr. Zakia Khursheed and then he lodged report of the incident with P.S Site on behalf of state and further investigation of the case was conducted by I.O/SIP Maqbool Ahmed. It was further stated by him that the appellant has also committed murder of his another

wife at Sukkur. It was stated by P.W Muhammad Raheem that on hearing of the commotion, he too went at the house of the appellant, there found him coming out from his house with knife, it was found stained with blood, the police came there and apprehended the appellant; the dead body of the deceased was found lying in the house of the appellant, it was then referred to hospital by the police for postmortem. They have stood by their version on all material points despite lengthy cross-examination. None of the witness so examined by the prosecution was having any enmity with the appellant to have involved him in this case falsely, therefore, their evidence could not be disbelieved on account of irrelevant and immaterial contradictions in their evidence, they indeed are natural witnesses to the incident. Learned counsel for the appellant has placed much force on the point that none has seen the appellant committing the actual death of the deceased. It is so, but there is no denial to the fact that it has come on record that the appellant was found sitting on the chest of his wife with knife, he was apprehended at the spot soon after incident, together with knife, which he allegedly used in commission of the incident, not only that knife but his hands were found stained with blood, which prima facie, suggests that it was the appellant who committed murder of his wife, in his house by slitting her throat with knife. Whatever the case of the prosecution was, it takes support from the evidence of I.O/SIP Maqbool Ahmed. In these circumstances, learned trial Court has committed no illegality or irregularity by convicting the appellant of the offence for which he was charged which may justify this Court to make interference with it.

6. In case of *Muhammad Akram vs. The State* (2003 SCMR 855), it has been held by Apex Court that;

*“.....The petitioner has neither denied his presence at his house on the fateful day nor offered any explanation that how and under what circumstances Mst. Salma while sleeping with him in a room*

*of his house sustained injuries with the sharp-edged weapon on the sensitive part of her body. The bare denial of the petitioner of knowledge of occurrence and not offering any explanation that how Mst. Salma sustained injuries would be a strong corroborative circumstance provided to the eye-witness account to prove the guilt of the petitioner.....”*

7. The case law which is relied upon by learned counsel for the appellant is on distinguishable facts and circumstances. It was relating to recovery of narcotics substance and acquittal of the accused was recorded by extending him benefit of doubt. In the instant case, no doubt is evident which may justify extending its benefit to the appellant.

8. In view of the facts and reasons discussed above, the instant jail appeal fails and it is dismissed accordingly.

JUDGE