

# IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Jail Appeal No. 799 of 2019

Appellant: Saleh Muhammad through Ms. Sara Malkani, advocate

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

Date of hearing: 20.09.2023

Date of judgment: 20.09.2023

## J U D G M E N T

**IRSHAD ALI SHAH, J-** The appellant is alleged to have committed murder of his wife Mst. Asia by causing blows to her with some hard blunt substance, for that he was booked and reported upon by the police. On conclusion of trial, he was sentenced to undergo imprisonment for life and to pay compensation of rupees two millions to the legal heirs of the deceased, without passing any order under Section 382(b) Cr.P.C or specifying the penal section for which the appellant was convicted by learned 1<sup>st</sup> Additional Sessions Judge/MCTC, Malir, Karachi vide judgment dated 02.10.2019, 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 and has been convicted and sentenced by learned trial Court on the basis of misappraisal of evidence. By contending so, she sought for acquittal of the appellant by extending him benefit of doubt, which is opposed by learned DDPP for the State by contending that the prosecution has been able to prove its case against the appellant beyond shadow of reasonable doubt.

3. Heard arguments and perused the record.

4. It was stated by complainant Asmatullah that the deceased was her daughter and was married with the appellant; he was intimated by the appellant that the deceased has died on account of her fall on the ground and her dead body is lying at Jinnah Hospital; on such information he went there, obtained the dead body of the deceased, after postmortem and then lodged report of the incident with police. It was lodged with delay of about 01 day to the actual death of the deceased. It was recorded by ASI Mukhtiar Ali Shah; he also conducted the initial investigation of the case. It was stated by PW Amjad that he went at Jinnah Hospital on hearing about the death of the deceased. It was stated by PW Mst. Nargis that on ablution she found the deceased sustaining certain injuries on her person; obtained her photographs. By producing such photographs an impression was given by her that the deceased has died of unnatural death on account of torture. Contrary to her, on asking, it was stated by Medical Officer Dr. Zakia Khursheed that the injuries on the dead body of the deceased could possibly be on account of her fall on the ground and there was no bony fracture on her person. Be that as it may, neither the complainant nor any of his witnesses has actually seen the appellant committing the death of the deceased; therefore, their evidence is not appearing to be enough to base conviction. It was stated by I.O/SIP Ali Anwar that on arrest, the appellant admitted his guilt before him and then led to recovery of *roti* roller which he allegedly used in commission of the incident. It was found broken. If for the sake of arguments, it is believed that such admission was actually made by the appellant before him even then same in terms of Article 39 of Qanun-e-Shahadat Order, 1984, could not be used against him as evidence. On asking, the said I.O/SIP was fair

enough to admit that it is disclosed in his report under Section 173 Cr.P.C that the appellant has taken the deceased to different hospitals. If it was so then the contention of the learned counsel for the appellant that deceased sustained injuries on account of her fall on the ground and the appellant attempted to save her life could not be lost sight of. It will not be out of place to mention here that it is also disclosed in report under Section 173 Cr.P.C that the complainant and his witnesses declared the appellant to be innocent by filing such statements on stamp papers. Such piece of evidence has been withheld by the prosecution, which obviously has prejudiced the appellant in his defence seriously. In these circumstances, it would be unsafe to maintain the conviction on the basis of sole recovery of *roti* roller. Obviously 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 *Mehmood Ahmed & others vs. the State & another* (1995 SCMR127), it has been observed by the Apex Court that;

*“Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.*

6. In case of *Muhammad Jamil vs. Muhammad Akram and others* (2009 SCMR 120), it has been observed 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.”*

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

Nadir\*