IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No.622 of 2022
Criminal Jail Appeal No. 700 of 2022

Appellants:	Arifa Ileen and Ileen Kabir through Habib-ure-Rehman Jiskani, advocate
The State:	Mr. Khadim Hussain Khuharo, Additional Prosecutor General for the State
Date of hearing:	21.09.2023
Date of judgment:	21.09.2023

J U D G M E N T

IRSHAD ALI SHAH, J- The appellants being wife and husband are alleged to have committed murder of Mst. Noor Jehan, an old lady of 85 years of age, by strangulating her throat after committing theft from her house, for that they were booked and reported upon by the police. On conclusion of trial, they were convicted under Section 302(b) PPC and sentenced to undergo imprisonment for life and to pay compensation of Rs.50,000/- each to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for one year with benefit of Section 382(b) Cr.P.C by learned VIIth- Additional Sessions Judge/MCTC-II, Karachi, Central, vide judgment dated 26.09.2022, which they have impugned before this Court by preferring two separate appeals.

2. It is contended by learned counsel for the appellants that the appellants being innocent have been involved in this case falsely by the police at the instance of complainant party; the FIR of the incident is lodged with delay of about 01 day and evidence of the PWs being doubtful in its character has been believed by the learned trial Court without lawful justification. By contending so, he sought for acquittal of the appellants by extending them benefit of doubt, which is opposed by learned

Addl. PG for the State by contending that the prosecution has been able to prove its case against the appellants beyond shadow of reasonable doubt.

3. Heard arguments and perused the record.

4. It was stated by complainant Asad Feroze that on 12.12.2020 when he woke up for Fajar prayer, found the lady appellant standing outside the room of her mother Mst. Noor Jehan who once was working as maid at the house of his brother Arjumand; he and his wife were called; they identified the lady appellant to be their ex-maid; they went inside room of their mother and found her lying dead; a bag containing her articles were also lying there, on inquiry the lady appellant disclosed that she and her husband entered into the room the deceased with intention to commit theft, she woke up and was killed by them by strangulating her neck and putting pillow on her face; the dead body of the deceased was referred to Abbasi Shaheed Hospital and then the incident was reported to police at PS Gulberg; his FIR was recorded by SIP Badar-uz-zaman. The initial investigation of the case then was conducted by ASI Rizwan Ahmed. On asking, the complainant was fair enough to admit that he is neither eye witness to the incident nor has seen the appellants committing the death of the deceased. In such situation, his evidence could hardly be relied upon to maintain conviction. Neither Arjumand nor his wife who came at the place of incident, on information and identified the lady appellant to be their maid has been examined by the prosecution. Their non-examination could not be overlooked. On asking, it was stated by Medical Officer Dr. Mehak Irfan that no clear mark of strangulation on the neck of the deceased was found. If it is so, then it is contrary to the case of prosecution that the deceased was done to death by strangulating her throat. It

was stated by I.O/SIP Sajid Hussain that on investigation the appellants admitted their guilt before him and then led to recovery of certain stolen articles. If for the sake of arguments, it is believed that such admission was actually made by the appellants before the said I.O/SIP or before the complainant party even then same in terms of Article 39 of Qanun-e-Shahadat Order, 1984, could not be used against them as evidence. By awarding no punishment to the appellants for recovery of stolen articles, they impliedly have been acquitted even by learned trial Court for allegation of theft. The appellants in their statements recorded under Section 342 Cr.PC have denied the prosecution's allegation against them by pleading innocence; such plea of innocence on their part could not be overlooked in the circumstances of the case.

5. The conclusion which could be drawn of above discussion would be that the prosecution has not been able to prove its case against the appellants beyond shadow of doubt and they are found entitled to such benefit.

6. 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".*

7. In case of Tahir Javed vs. the State (2009 SCMR-166), it has been held by Apex Court that;

> *"---Extra-judicial confession having been made by accused in the presence of a number of other persons appeared to be quite improbable, because confession of such a heinous offence like murder was not normally made in the public".*

8. 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."*

9. 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".*

10. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellants under impugned judgment are set aside, consequently, they are acquitted of the offence for which they were 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.

11. Above are the reasons of short order of even date, whereby the captioned appeals were allowed.

JUDGE

Nadir*