

THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No. 233 of 2022

Appellant: Mehboob through Mr. Nadeem Ahmed Azar
advocate

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

Complainant: Noor Hassan through Mr. Muhammad
Shafique advocate

Date of hearing: 25.09.2023

Date of judgment: 25.09.2023

J U D G M E N T

IRSHAD ALI SHAH, J- The appellant is alleged to have committed murder of his wife Mst. Zubeda by causing her dagger injuries, for that he was booked and reported upon by the police. The appellant denied the charge and prosecution to prove the same, examined in all 08 witnesses and then closed its side. The appellant in his statement recorded u/s 342 Cr.P.C, denied the prosecution's allegations against him by pleading innocence; he did not examine anyone in his defence, however he examined himself on oath in disproof of the prosecution's allegations. 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 06 months with benefit of section 382(b) Cr.P.C, by learned I-Additional Sessions Judge, Karachi East vide judgment dated 03.12.2019, 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 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 cases of *Muhammad Irshad and another vs. The State (1999 SCMR 1030)* and *Muhammad Akram vs. The State (2009 SCMR 230)*.

3. Learned Additional P.G for the state and learned counsel for the complainant by supporting the impugned judgment have sought for dismissal of the instant criminal jail appeal by contending that the deceased had made dying declaration implicating the appellant in commission of incident. In support of their contentions, they relied upon case of *Hafiz Obaidullah vs. The State (2022 YLR 2070)*.

4. Heard arguments and perused the record.

5. It was stated by P.W Mst. Sidra, who happened to be daughter of the appellant and the deceased that on the date of incident, she woke up and found her mother Mst. Zubeda restless and crying, his father was standing there with dagger, he thrown the dagger on the spot and then made his escape good. Her mother intimated her that she has been assaulted by the appellant. No doubt on asking it was admitted by her that she has not seen the appellant causing dagger injuries to her mother Mst. Zubeda but such admission on her part is not enough to declare the appellant to be innocent for the reason that the deceased being injured made a dying declaration before PW Mst. Sidra, it appears to be true as no person on death bed would speak lie. Beside this, PW Mst. Sidra has also seen the appellant with dagger standing by the side of her mother. The circumstances prima facie suggest that it was the appellant, who

caused dagger injuries to the deceased being his wife on being annoyed on birth of baby girl. Mst. Sidra is a natural witness to the incident and she was having no reason to have involved the appellant being his father in a false murder case of her mother. Evidence of Mst. Sidra also takes support from evidence of P.W Dr. Ejaz Ahmed who was fair enough to say that on inquiry Mst. Zubeda told him that her husband has stabbed her. It was second dying declaration by the deceased before her death. Dr. Ejaz Ahmed being an independent person was having no reason to have deposed falsely only to favour the complainant party. On investigation, as per I.O/SIP Saleem Khan, he secured the dagger from the place of incident and shirt of the deceased, those on chemical examination were found to be stained with human blood. No doubt, the complainant and PW Mst. Maryam are not eye witnesses to the incident but this fact alone is not enough to extend any benefit to the appellant. None has been examined by the appellant to prove his innocence. On the contrary, his statement on oath prima facie suggests the availability of P.W Sidra at the place of incident with put her within the ambit of natural witness to the incident.

6. Discussion involved a conclusion that the prosecution has been able to prove its case against the appellant beyond shadow of doubt and 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.

7. 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.....”

8. In the case of *Muhammad Ismail v. The State* (2017 SCMR 713), it has been held by the Apex Court that;

“14. At the same time, we are not supposed to make a departure from the principle of law, consistently laid down that testimony of a solitary witness, if rings true, found reliable and is also corroborated by some other evidence as well then, it can be made basis for conviction on capital charge. As has been discussed above that, Mst. Bachi Mai (PW-6) was the inmate of the same house, being the widow of the deceased, her presence at the fateful time, cannot be doubted on any premises whatsoever. Thus, her testimony is sufficient for conviction of the appellant because the same is supported by the recovery of the crime weapons on the spot, stained with the human blood; besides, the medical evidence provides ample support to the same.”

9. The case law which is relied upon by learned counsel for the appellant is on distinguishable facts and circumstances. In case of *Muhammad Akram (supra)* the FIR of the incident was lodged with an inordinate of delay of six months. In the instant case FIR of the incident is prompt one. In case of *Muhammad Irshad (supra)* an independent corroboration was lacking. In the instant case, independent corroboration is there in shape of evidence of P.W/Dr. Ejaz Ahmed.

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

JUDGE