

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Jail Appeal No. 243 of 2021

Appellant: Abdul Rehman @ Lakhmeer through Ms. Sara Malkani, advocate

The State: Ms. Seema Zaidi, Addl. PG for the State

Complainant: Saif Ahmed present in person

Date of hearing: 09.10.2023

Date of judgment: 09.10.2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellant with rest of the culprits during course of robbery committed murder of Muhammad Mohsin by causing him fire shot injuries, for that the present case was registered. On conclusion of trial, the appellant was convicted u/s. 302(b) PPC and sentenced to undergo rigorous imprisonment for life as *Tazir* and to pay compensation of Rs.500,000/- to the legal heirs of the deceased; he was further convicted u/s. 397 PPC and sentenced to undergo rigorous imprisonment for 07 years; both the sentences were directed to run concurrently with benefit of section 382(b) Cr.P.C by learned Vth-Additional Sessions Judge, Karachi East vide judgment dated 04.03.2021, 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, in a blind FIR, on the basis of defective identification parade and the evidence of the PWs being doubtful in its character has been believed by the learned trial Court without lawful justification. By contending so, she sought for acquittal of the appellant by extending him benefit of doubt.

In support of her contention, she relied upon case of *Mian Sohail Ahmed and others v. the State and others* (2019 SCMR 956).

3. Learned Addl. PG for the State did not support the impugned judgment. However, the complainant by supporting the impugned judgment has sought for dismissal of the instant Criminal Jail Appeal.

4. Heard arguments and perused the record.

5. It was stated by the complainant that on 19.3.2019 on hearing about death of his nephew Muhammad Mohsin during course of robbery went at Jinnah Hospital Karachi; his statement 154 Cr.PC was recorded by I.O/SIP Muhammad Yousif, it was against the unknown culprits. The complainant admittedly is not an eyewitness to the incident; therefore, his evidence hardly lends support to the case of prosecution. It was stated by PW Imtiaz Hussain that he seen the appellant and others causing injuries to the deceased during course of robbery and then they fled away; he went over to the deceased, on cell phone of the deceased he attended the call made by one Huzaifa and asked him to intimate the relatives of the deceased about the incident. Huzaifa has not been examined by the prosecution; his non-examination could not be overlooked. It was further stated by him that on 27.3.2019 he identified the appellant and absconding accused Sadam Hussain to be the culprits responsible for the present incident. On asking, it was stated by him that his 161 Cr.PC statement was recorded by the police on 23.03.2019; it was on 4th day of the incident, which prima facie suggests that he was introduced in investigation by the police at latter stage only to use his services at the time of need. It was stated by Mr. Muhammad Ali that on 23.3.2019 the appellant and absconding accused Sadam Hussain were produced before him by the police

for conducting their identification parade through P.W Imtiaz Hussain; it was conducted on 27.3.2019. By postponing the identification proceedings without any justification, the identity of the appellant and co-accused Sadam Hussain was exposed. It was conducted on 7th day of the arrest of the appellant and absconding accused Sadam Hussain. It was stated by I.O/SIP Ali Muhammad that on 21.3.2019 he was intimated by ASI Tariq Shah of PS SIU Karachi that on arrest the appellant and absconding accused Sadam Hussain have admitted to have committed the present incident; on such information, he and ASI Mumtaz Ali went at PS SIU Karachi, obtained the custody of the appellant and absconding accused Sadam Hussain; they on interrogation also admitted before him and ASI Mumtaz Ali to have committed the present incident. If for the sake of arguments, it is believed that the appellant or absconding accused Sadam Hussain actually made such admission before the above named police officers, even then same in terms of Article 39 of Qanun-e-Shahadat Order, 1984, could not be used against them as evidence. It was stated by I.O/SIP Malik Ashraf that on arrest, he recovered from the appellant and absconding accused Sadam Hussain the pistols, the empty secured from the place of incident as per FSL report was found matched with one of the pistol secured from the appellant and absconding accused. The pistol is alleged by the appellant to have been foisted upon him. If for the sake of arguments, it is believed that such pistol has actually been secured from the appellant even then such recovery is not enough to maintain conviction when direct evidence against him has been found to be doubtful. The appellant during course of his examination under Section 342 Cr.PC has pleaded innocence; such plea on his part could not be overlooked in the circumstances of the case.

6. The discussion involved a conclusion 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.

7. In case of *Shafqat Mehmood and others vs. The State* (2011 SCMR 537), it has been held by the Apex Court that;

“Delay of seven days in holding the identification parade after the arrest of accused had made the same doubtful”.

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 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".

10. 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.

11. The instant Criminal Jail Appeal is disposed of accordingly.

JUDGE