

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Jail Appeal No. 309 of 2020

Appellant: Manzoor Ahmed through Mr. Wazeer Hussain Khoso, advocate

The State: Mr. Khadim Hussain Khuharo, Addl. PG for the State

Date of hearing: 12.10.2023

Date of judgment: 12.10.2023

J U D G M E N T

IRSHAD ALI SHAH, J- The appellant is alleged to have committed murder of Mst. Sajan, his wife, by strangulating her throat, for that he was booked and reported upon by the police. The appellant denied the charge and the 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.PC denied the prosecution's allegation by pleading innocence by stating that his judicial confession has been obtained by putting him under pressure; he did not examine anyone in his defence or himself on oath. On conclusion of trial, he was convicted u/s. 302(b) PPC and sentenced to undergo imprisonment for life as *Tazir* and to pay compensation of rupees one million 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 1st -Additional Sessions Judge/MCTC-I, Central at Karachi vide judgment dated 30.09.2019, 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 at the instance of complainant party on the basis of

his judicial confession which was recorded on 3rd day of his arrest, it was retracted and was in conflict with the medical evidence, therefore, the appellant is liable to be acquitted of the charge by extending him benefit of doubt. In support of his contention, he relied upon case of *Arshad Khan v. the State* (2017 SCMR 564).

3. Learned Addl. PG for the State by supporting the impugned judgment sought for dismissal of the instant Crl. Jail Appeal by contending that judicial confession made by the appellant was true and voluntarily and it is not in conflict with the medical evidence.

4. Heard arguments and perused the record.

5. It was, *inter-alia*, stated by complainant Miandad and PW Sadam Hussain, who happened to be father and brother of the deceased; that on 24.3.2017 on hearing about quarrel between the appellant and the deceased through a lady, they went at the house of the appellant, found it locked, it was unlocked and therein was found lying the deceased on bed in unconscious condition; the ambulance was arranged and then she was shifted to Abbasi Shaheed Hospital, she was declared dead and they reported the incident to the police. It was admitted by them that the appellant was already found at PS Ajmair Nagri, before their arrival. It was further stated by them that the appellant then admitted his guilt before them and the police officials. The evidence of P.W Khalid Hussain is in line to that of the complainant and P.W Sadam Hussain. No doubt, none of them have seen the appellant committing the alleged incident but there could be made no denial to the fact that they have supported the factum of the incident. As per Dr. Rohina Hassan the deceased was found sustaining seven injuries on her person

and her death occurred due to constriction of neck as a result of strangulation leading to cardio respiratory failure. Evidence of I.O/SIP Muhammad Saqlain is only to the extent of conducting the initial investigation of the present case. On asking, it was stated by him that when he came back at Police Station *Khawaja Ajmair Nagri* from Abbasi Shaheed Hospital, found the appellant available there with a complaint that his wife has committed suicide. By stating so, he also admitted that the appellant confessed his guilt before him. Evidence of I.O/Inspector Muhammad Ali is to the extent that the appellant by admitting his guilt before him produced *dopata*, which was allegedly used by him in commission of the incident. It was stated by I.O/SIP Muhammad Nawaz that on 27.3.2017 he produced the appellant before the Magistrate for recording his judicial confession, it was recorded, and after completing usual formalities he submitted challan of the case before the Court having jurisdiction. It was stated by Mr. Sajjad Ali Abbasi the Magistrate having jurisdiction that he recorded the judicial confession of the appellant; it obviously has been recorded after observing requisite formalities, whereby the appellant has admitted to have committed murder of his wife, the deceased by strangulating her throat with *dopata* being disobedient and suspecting her to be in contact with someone else at Ali Gohar Clinic. The judicial confession of the appellant is appearing to be true and voluntarily, it could not be disbelieved only for the reason that it has been retracted by the appellant during course of his examination u/s. 342 Cr.PC. by stating that it was obtained by putting him under pressure; it is not found to be in conflict with the medical evidence to the large extent, which may justify this Court to make a conclusion that the deceased was done to death in the manner other than the one disclosed by the

appellant in his judicial confession. It is true that request made by the police to the Magistrate for recording judicial confession of the appellant is signed by two police officials but this fact alone is not enough to make a conclusion it was not recorded at all. No time limit is prescribed by the law for recording a judicial confession, it could only be recorded when its maker is found ready to make it without coercion or compulsion, therefore, in such situation, the delay in recording judicial confession of the appellant, if any, may not be treated fatal to the case of prosecution. Neither any of the police officials who have conducted the investigation of the present case nor the Judicial Magistrate who has recorded the judicial confession of the appellant were having any enmity with the appellant to have involved him in this case falsely. In these circumstances, learned trial Court was right to make a conclusion that the prosecution has been able to prove its case against the appellant beyond shadow of reasonable doubt.

6. In the case of *Mst. Joygun Bibi v. The State* (PLD 1960 (SC (Pak) 313) it has been held by the Apex court that:

"We are unable to support the proposition of law laid down by the learned Judges in this regard. The retraction of a confession is a circumstance which has no bearing whatsoever upon the question whether in the first instance it was voluntarily made, and on the further question whether it is true. The fact that the maker of the confession later does not adhere to it cannot by itself have any effect upon the findings reached as to whether the confession was voluntary, and if so, whether it was true, for to withdraw from a self-accusing statement in direct face of the consequences of the accusation, is explicable fully by the proximity of those consequences and need have no connection whatsoever with either its voluntary nature, or the truth of the facts stated. The learned Judges were perfectly right in first deciding these two questions, and the answers being in the affirmative, in declaring that the confession by itself was sufficient, taken with the other facts and circumstances to support Abdul Majid's conviction. The retraction of the confession was wholly immaterial once it was found that it was voluntary as well as true."

7. The case law which is relied upon by learned counsel for the appellant is on distinguishable facts and circumstances. In that case there was no judicial confession of the accused. In the instant case, the accused has made judicial confession admitting his guilt which is found to be true and voluntarily.

8. In view of the facts and reasons discussed above, it is concluded safely that no illegality or irregularity has been committed by the trial Court which may justify this Court to make interference with the impugned judgment, consequently, instant Criminal Jail Appeal is dismissed.

JUDGE

Nadir*