

THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No. 293 of 2020

Appellant: Fayyaz Ahmed through Mr. Moula Bux Bhutto, advocate

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

Complainant: Riaz Ahmed through Mr. Qadir Hussain and Ms. Shehla Anjum, advocates

Date of hearing: 07.05.2024

Date of judgment: 09.05.2024

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged by the prosecution that the appellant and co-accused Ayaz Ahmed Ahmed in furtherance of their common intention murdered Mst. Ayesha by inflicting injuries to her with scissors, for which the present case was registered. The appellant and co-accused Ayaz Ahmed denied the charge and the prosecution to prove the same, examined seven witnesses and then closed its side. The appellant and co-accused Ayaz Ahmed in their statements recorded u/s 342 Cr.P.C, denied the prosecution's allegations by pleading innocence. They did not examine anyone in their defence, however, the appellant examined himself on oath in disproof of the prosecution's allegations. At conclusion of trial, co-accused Ayaz Ahmed was acquitted while the appellant was convicted u/s 302(b) PPC and sentenced to undergo imprisonment for life and to pay compensation of Rs.1,00,000/- to the legal heirs of the

deceased and in default in payment whereof to undergo simple imprisonment for six months with benefit of section 382(b) Cr.P.C, by learned VIIIth-Additional Sessions Judge/MCTC-II, Karachi Central vide judgment dated 20.12.2019, which the appellant 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 complainant party only to satisfy with him its matrimonial dispute; the deceased was already divorced by the appellant; there is no eyewitness to the incident and the appellant has been convicted and sentenced by learned trial Court mainly on his judicial confession which was obtained by maltreating him and more-so based on same evidence co-accused Ayaz Ahmed has already been acquitted by learned trial Court. By contending so, he sought acquittal of the appellant by extending him the benefit of the doubt.

3. Learned DDPP for the state and learned counsel for the complainant by supporting the impugned judgment have sought dismissal of the instant criminal jail appeal by contending that the judicial confession made by the appellant was true and voluntarily; there is the recovery of scissor on the instance of the appellant and his case is distinguishable to that of the acquitted accused Ayaz Ahmed. In support of their contention, they relied

upon the cases of *Miss Najiba and another v. Ahmed Sultan alias Sattar and 2 others* (2001 SCMR 988) and *Arshad Mehmood v. the State* (2005 SCMR 1524).

4. Heard arguments and perused the record.

5. It was inter-alia stated by complainant Riaz Ahmed that deceased Mst. Ayesha was his daughter; she was married to the appellant who was intending to marry another lady within the family, therefore, there arose some dispute between the appellant and his wife Mst. Ayesha; consequently she took Mst. Ayesha to his house then she was allowed to join the appellant on the intervention of elders of the family and he was also supporting them financially. On 28.4.2018 the appellant came to him and told that he had finished his wife. On such information, he rushed to the house of the appellant; his daughter Mst. Ayesha was found dead; he hired a rickshaw and shifted the dead body of the deceased ultimately to Abbasi Shaheed Hospital there; she was declared dead. The police party of PS New Karachi Industrial Area came; it undertook a necessary investigation and then recorded his statement u/s 154 Cr.PC; it was recorded by I.O/SIP Mohib Ali Chandio who then incorporated the same into FIR. His evidence is to such effect. The death of the deceased being unnatural was confirmed by Dr Samia Seehar who conducted the postmortem on the dead body of the deceased. Of course the complainant is not eyewitness to

the actual death of the deceased but such fact alone is not enough to brush aside his evidence as a whole. He has been able to narrate the circumstances leading to the death of the deceased at the hands of the appellant. It was stated by I.O/SIP Muhammad Rafaqat that the appellant was apprehended by I.O/SIP Muhammad Saleem under a memo and was brought before him for interrogation. I.O/SIP Muhammad Saleem could not be examined by the prosecution being untraceable after his retirement. His evidence even otherwise is of little importance. The arrest of the appellant under memo is proved by the prosecution by examining P.W Mashir HC Danish Kamal; it was further stated by I.O/SIP Muhammad Rafaqat that on interrogation the appellant confessed his guilt before him and then led to the recovery of scissor allegedly used by him in the commission of the incident from his house; it was secured under memo on forensic examination, it was found matched with the thumb impressions of the appellant; the appellant then became ready to make a judicial confession; it was recorded by Mr Khaleeq-uz-Zaman the Magistrate having jurisdiction and after usual investigation he submitted challan of the case before the Court having jurisdiction. It was stated by Mr. Khaleeq uz Zaman that after observing the usual formalities, the judicial confession of the appellant was recorded by him. It is stated by the appellant in his judicial confession that he and his wife Mst. Ayesha exchanged hot words with each other at 06:00 a.m. which

continued till 09:00 a.m. which annoyed him, he took scissor caused injuries to her with the same and then went away by taking with him to his daughter baby Anabia. The deceased as per the inquest report was found sustaining twelve injuries on her person, which suggests the brutality on the part of the appellant. The appellant on his examination on oath had stated that the deceased was divorced by him; she came to his house to meet with her daughter baby Anabia, and insisted him to keep her. The deceased killed herself and he voluntarily surrendered before the police and his judicial confession was obtained by putting him under threat by in-laws. The statement so made by the appellant on oath prima facie suggests that the deceased died at the house of the appellant, as such, he has to shoulder the liability of her death. No person could commit suicide by causing twelve injuries to herself. Nothing has been brought on record which may prove that the deceased was divorced by the appellant before the incident. The judicial confession of the appellant has been recorded by a Magistrate, an independent person, who had no enmity with the appellant to have deposed against him by supporting the complainant party, therefore, such a judicial confession which appears to be true and voluntarily could not be rejected under the deception that it has been obtained by putting the appellant under threat. No doubt, the appellant was found sustaining a simple injury on his little finger; this could hardly suggest that he was maltreated by the

police before making his judicial confession. It might have been sustained by the appellant at the time of the incident. All the witnesses have successfully stood by their version on all material points and there is nothing in their cross-examination, which could be helpful to the appellant. None has been examined by the appellant to prove his innocence, therefore, his simple plea of innocence deserves to be ignored as an afterthought. No active role in the commission of the incident was attributed to co-accused Ayaz Ahmed and it was the reason for his acquittal; his acquittal is not enough to earn acquittal for the appellant who is fully implicated in the commission of the incident by the prosecution.

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

7. In the 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 *Manjeet Singh v. the State* (PLD 2006 SC 30), it has been held by the Apex Court that;

“23. There is no rule of criminal administration of justice that the Court having found the retracted confession voluntary and true, must also look for the corroboration and in absence of corroborative evidence conviction cannot be maintained. The retraction of a judicial or extra-judicial confession itself is not an infirmity to be considered sufficient to withhold the conviction because the evidentiary value of a confession is not diminished by mere fact that it was retracted by the maker at the trial and thus the independent corroboration from other source direct or circumstantial, cannot be insisted in every case as a mandatory rule rather the rule of corroboration is applied as abundant caution and in a case depending entirely on the confessional statement of a person or only of the circumstantial evidence, this rule is applied more cautiously. In the present case it stands proved from the testimony of the Magistrate, who recorded the confessional statement of the petitioner and Major Abbas of Intelligence Battalion, who after initial interrogation, produced him before the Magistrate that the confessional statement of the petitioner based on truth and he willingly and voluntarily made the confession without any outside pressure, influence or coercion therefore, by mere reason that he subsequently retracted the confession at the trial would not be sufficient to disbelieve the confession or doubt its truthfulness to exclude it from consideration.”

9. In the case of *Muhammad Raheel @ Shafique v. State (PLD 2015 SC-145)*, it has been held by Apex Court that:-

“5. thus, their acquittal may not by itself be sufficient to cast a cloud of doubt upon the veracity of the prosecution’s case against the appellant who was attributed the fatal injuries to both the deceased. Apart from that the principle of falsus in unofalsus in omnibus is not applicable in this country on account of various judgments rendered by this Court in the past and for this reason too acquittal of the five co-accused of the appellant has not been found by us to be having any bearing upon the case against the appellant”.

10. Under the given circumstances, it is concluded safely that no illegality/ irregularity/ misreading or non-reading of evidence has been committed by the learned trial Court while convicting the appellant for the offence for which he was charged, which may justify this Court to interfere with the same. Consequently, instant Crl. Jail Appeal fails and it is dismissed accordingly.

JUDGE

Nadir*