

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Appeal No.S-03 of 2024

Appellants: Muhammad Siddique and Inayatullah both by caste Soomro **through** M/s Ali Ahmed Khan and Bilal Ahmed Soomro, advocate.

The State: Through Syed Sardar Ali Shah Rizvi Additional Prosecutor General.

Date of hearing: 26-03-2024

Date of judgment: 26-03-2024

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellants with rest of the culprits in furtherance of their common intention, committed murder of Muharram Ali by causing him hatchet blows, for that they were booked and reported upon by the police. On conclusion of trial, co-accused Naimatullah was acquitted while the appellants were convicted under section 302 (b) r/w section 34 PPC and sentenced to undergo life imprisonment and to pay compensation of rupees one lac each to the legal heirs of the deceased with benefit of Section 382(b) Cr.P.C by learned IInd Additional Sessions Judge, Sukkur, vide judgment dated 17-05-2019, it was set aside only to the extent of the appellants by this Court vide judgment dated 12-12-2023 with direction to learned trial Court to record the statement of the appellant Muhammad Siddique on oath, it was recorded; consequently, both the appellants were again convicted u/s 302 (b) PPC and sentenced to undergo imprisonment for life and to pay fine of Rupees one lac each to the legal heirs of the deceased as compensation and in default in payment whereof to undergo simple imprisonment for one year with benefit of section 382 (b) Cr.P.C

by learned IInd Additional Sessions Judge/Gender Based Violence Court, Sukkur vide judgment dated 23-12-2023, which is impugned by the appellants before this Court by preferring the instant Criminal Appeal.

2. It is contended by learned counsel for the appellant that the appellants being innocent have been involved in this case falsely by the complainant party only to satisfy its matrimonial dispute with them; there is conflict between medical and ocular evidence and evidence of the PWs being doubtful in its character has been believed by learned trial Court without lawful justification; therefore, the appellants are entitled to their acquittal by extending them benefit of doubt, which is opposed by learned Additional P.G for the State by supporting the impugned judgment by contending that the prosecution has been able to prove its case against the appellants beyond shadow of reasonable doubt. In support of his contention, he relied upon case of *Rooh Ullah and others Vs. The State and others* (2022 SCMR 888).

3. Heard arguments and perused the record.

4. As per FIR the appellants, absconding accused Muhammad Mithal and one unknown culprit came at the place of incident and caused hatchet blows to Muharram Ali on his head and then they ran away. Subsequently complainant Gul Muhammad by way of further statement and PW Habibullah by way of his 164 Cr.P.C statement introduced name of unknown culprit to be Naimatullah. At trial, it was stated by complainant Gul Muhammad and PW Habibullah that on 30-07-2017 they, deceased Muharram Ali and PW Abdul Aziz were going towards Sabzi Mandi, when reached at labour colony adjacent to Qureshi Goth,

they were confronted by appellants, absconding accused Muhammad Mithal and acquitted accused Naimatullah. By saying that our days have been numbered; appellant Muhammad Siddique, Inayatullah and absconding accused Muhammad Mithal caused hatchet blows to Muharram Ali on his head and then ran away. Muharram Ali in injured condition was taken to Civil Hospital Sukkur, who died there. After post mortem, his dead body was given to them for burial purpose and then they lodged report of the incident with PS SITE Area Sukkur formally. It was stated by Dr. Shahid Iqbal that the deceased was found sustaining six injuries; five on his head and sixth on his chest, which were caused to him by sharp cutting and hard blunt substance. In that context it was stated by learned counsel for the appellants that there is conflict between medical and ocular evidence. Photogenic narration of the incident, which took place within minutes, is humanly impossible. The possibility of the hatchets might have been used by its blunt side, could not be ruled out. In that situation such a conflict between medical and ocular account of evidence could hardly be treated fatal to the case of prosecution. The complainant and PW Habibullah stood by their version on all material points; despite lengthy cross examination by learned counsel for the appellants; they could not be disbelieved only for the reason that they are related interse. They are natural witnesses to the incident. The availability of the complainant at the place of incident even otherwise is also indicated in sketch of place of incident prepared by PW/Tapedar Mumtaz Ali. Indeed they were having no reason to have involved the appellants in this case falsely at the costs of life of innocent persons by substituting them with real culprits. An impression was created by

learned counsel for the appellants that PW Abdul Aziz has not been examined by the prosecution as he was not going to support the case of the prosecution. Nothing has been brought on record by the appellants which may suggest that PW Abdul Aziz was not going to support the case of prosecution. In such situation, his non-examination is not appearing to be fatal to the case of the prosecution. It is the quality of the evidence, which prevails and not its quantity. PW/Mashir Moula Bux by supporting the case of the prosecution on asking stated that his signatures on all memos were obtained by the police at police station. It appears to be innocent reply on his part and it is not enough to conclude that the case of the prosecution against the appellants is doubtful. Evidence of PW Amjad Ali is only to the extent that he recorded 164 Cr.P.C statements of PWs Habibullah and Abdul Aziz, whereby they disclosed the name of unknown culprit as Naimatullah; his evidence hardly needs any discussion. It was stated by I.O/SIP Muhammad Ali that on investigation, he inspected the dead body of the deceased at Civil Hospital Sukkur, prepared such memo, delivered the same to medical officer formally for postmortem though HC Ghulam Muhammad, recorded FIR of the present case as per verbatim of the complainant; secured the clothe of the deceased under memo, visited the place of incident and collected the bloodstained earth under memo, dispatched the same to the chemical examiner; recorded further statement of the complainant whereby he disclosed the name of unknown culprit as Naimatullah, arrested the appellants under memo; secured the hatchet at the pointation of appellant Muhammad Siddique under memo, it was subjected to chemical examination and then submitted challan of the case

before the Court having jurisdiction. Despite lengthy cross examination he too has stood by his version. Even otherwise, he being independent person was having no reason to have conducted the dishonest investigation of the present case. Of course co-accused Naimatullah has been acquitted and his acquittal has not been challenged by the prosecution; but there could be no denial to the fact that his case is distinguishable to the appellants for the reason that his name was not disclosed in FIR; disclosed subsequently that too with no active participation in commission of incident. Therefore, his acquittal is not enough to earn acquittal of the appellants, who are fully implicated in commission of the incident by the prosecution by bringing on record sufficient evidence. The appellants during course of their examination u/s 342 Cr.P.C by denying the prosecutions' allegation have pleaded innocence and in order to prove their innocence have examined DWs Muhammad Ismail and Muhammad Sabir and on remand appellant Muhammad Siddique has also examined himself on oath. There is nothing in their defence evidence which may suggest that they are innocent; therefore, their plea of innocence as such deserves to be ignored as an afterthought.

5. The conclusion which could be drawn of above discussion would be that the prosecution has been able to prove its case against the appellant beyond shadow of reasonable doubt.

6. In case of *Allah Bux Vs. Shammi and others* (PLD 1980 SC-225), it has been held by the Apex Court that;

“Conviction, even in murder cases, held, can be based on testimony of a single witness if Court satisfied as to witness being reliable-Emphasis, held further, laid on quality of evidence and not on its quantity”.

7. In case of *Muhammad Raheel @ Shafique v. State* (PLD 2015 SC-145), it has been held by the 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”.

8. In case of *Muhammad Mansha Vs. the State* (2016 SCMR 958), it has been held by the Apex Court that;

“8.The case in hand is one in which the appellant was named in the promptly lodged FIR with a specific role, which role is established on record. The occurrence was of a day time and the appellant was known to the PWs, who have identified him to be the person who has committed cold-blooded murder of Haji Liaquat Ali, deceased, and there seems to be no reason as to why the appellant should not undergo the maximum punishment provided for the offence”.

9. In view of the facts and reasons discussed above, it is concluded that no misreading or non-reading of the evidence; illegality or infirmity is noticed in the impugned judgment, which may justify this Court to interfere with the same.

In view of above, the instant appeal fails and it is dismissed accordingly.

JUDGE

Nasim/P.A