

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Jail Appeal No. 268 of 2020

Appellant: Abdullah through Mr. Qaim Ali Memon,
advocate

The State: Ms. Rubina Qadir, Deputy Prosecutor
General Sindh

Date of hearing: 23.04.2024

Date of judgment: 23.04.2024

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of prosecution that the appellant with rest of the culprits, in furtherance of their common intention, committed murder of Ramzan by causing him blows on his head with some hard blunt substance, for that the present case was registered. At trial, the appellant, co-accused Ramzan @ Ramoo and Abdul Aziz were charged for the said offence which they denied; subsequently co-accused Ramzan @ Ramoo and Abdul Aziz were acquitted by learned trial Court by way of compromise. The prosecution to prove its case against the appellant examined in all 07 witnesses and then closed its side. The appellant in his statement recorded under Section 342 Cr.P.C denied the prosecution's allegation by pleading innocence; he did not examine anyone in his defence or himself on oath to prove his innocence. On conclusion of trial, he was convicted under Section 302(b) PPC and sentenced to undergo rigorous 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 1st Additional Sessions Judge, (MCTC) Thatta, vide judgment dated 10.03.2020, 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 complainant party; the complainant is not eye witness to the incident and evidence of PWs being doubtful in its character has been believed by learned trial Court without lawful justification, therefore, the appellant is entitled to his acquittal by extending him benefit of doubt, which is opposed by learned DPG for the State by contending that the appellant is neither innocent nor is involved in this case falsely by the complainant party; on arrest from his has secured cot leg which was used by him in commission of incident and prosecution has been able to prove its case against him beyond shadow of doubt.

3. Heard arguments and perused the record.

4. It was stated by complainant Muhammad that his brother Ramzan on account of threats of murder being issued to him by the appellant and others shifted to village Fakir-jo-Goth there he was earning his livelihood by selling the sweets on push cart in

front of shop of Umar Jakhro. The appellant and others planned to commit his murder at his new place of shifting as was intimated to him by his son Suleman and Suleman son of Qadir Bux. On the basis of such intimation, he telephoned the deceased which was found off. On 07.11.2016, he was intimated by police officials of PS Ghora Bari that Ramzan has been killed and his dead body has been kept at Mortuary of Civil Hospital Thatta at Makli. On the basis of such information, he and his witness went there and found the dead body of his brother lying with a head injury. The police officials came there, they undertook usual investigation and then dead body of the deceased was handed over to him for burial purpose and then he lodged formal report of the incident with PS Thatta. It is true that the complainant is not eye witness to the actual death of the deceased but for this reason his evidence could not be brushed aside; the narration made by him is enough to prove the circumstances leading to the death of the deceased allegedly at the hands of the appellant. It was stated by PW Muhammad Hassan who was watchman of the area that on the night of incident he woke up at about 02:00 a.m., heard the cries and found the appellant causing blows to the deceased on his head with cot leg; PW Allah Dino also came there and the appellant then went away by threatening both of us to be killed, if they would go near to him; they then intimated the police about

incident through Nazim of Local Union Council, the police officials came at the spot, took the dead body of the deceased to Civil Hospital Thatta at Makli. His evidence takes support from the evidence of PW Allah Dino to large extent. Both of them are independent persons and were having no reason to have involved the appellant in this case falsely. The complainant and his witnesses despite lengthy cross-examination by learned counsel for the appellant have stood by their version on all material points; their evidence is transpiring confidence; same could not be brushed aside. The death of the deceased being unnatural takes support from the evidence of Dr. Ramesh Kumar. Evidence of Tapedar Muhammad Siddique is to only to the extent of preparation of sketch of *Wardat*. Even otherwise, there is no dispute with regard to the place of incident. PW/Mashir Muhammad Ali has supported the memos prepared in the present case; his evidence could not be disbelieved on the basis of simple allegation of his being interested witness. It was stated by I.O/SIP Raja Abdul Haque that on investigation he went at the Civil Hospital Thatta @ Makli prepared the *lash chakas form* and inquest report on the dead body of the deceased; handed over the dead body of the deceased to the complainant party for burial purpose after postmortem, recorded FIR of the present case at the instance of the complainant and also recorded 161 Cr.PC statements of the

PWs, apprehended the appellant and he then led him to the recovery of cot leg used by him in commission of incident, it was found stained with human blood as was certified by the Chemical Examiner and after usual investigation he submitted challan of the case against the appellant and others. He has also stood by his version on all material points despite lengthy cross-examination by learned counsel for the appellant. Apparently, he was having no ill-will to have favored the complainant party against the appellant, therefore, his evidence which is appearing to be transpiring confidence could not be overlooked. The material evidence connecting the appellant with the commission of the incident has been brought on record and there was hardly a need for the prosecution to have examined more witnesses. It is the quality of evidence which prevails over the quantity. The appellant in his statement recorded u/s 342 Cr.PC has denied the prosecution's allegations by pleading innocence. His simple plea of innocence is not enough to disbelieve the case of prosecution against him, particularly when he has failed to examine anyone in his defence or himself on oath to disprove the prosecution's allegations against him. The acquittal of co-accused by way of compromise is not enough to earn the acquittal for the appellant in the circumstances of the present case when he is fully found involved with the commission of the incident.

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 *Asfandiyar vs. The State and others* (2021 SCMR 2009), Apex Court has held that:

“Law does not require a particular number of witnesses to prove a criminal charge and statement of a solitary witness with a ring of truth is more than sufficient to drive home the charge; corroboration is a rule of prudence and not law and cannot be invariably insisted in every case. Belatedly taken plea of substitution by the petitioner that the deceased was done to death by one Ashfaq is nothing but a far cry; it is inconceivable that a father would substitute the assassin of his son with an innocent without rhyme or reason. Longstanding absconsion with arrest as late as on 2.5.2012 is yet another predicament bracing the petitioner. On an overall analysis of the evidence, we have not been able to find space to admit any hypothesis other than petitioner's guilt; view concurrently taken by the Courts below, being unexceptionable, calls for no interference. Petition fails. Leave declined.”

7. Consequent upon above discussion, it is concluded that no illegality/irregularity or misreading/non-reading of the evidence has been noticed in impugned judgment which may justify this court to interfere with the same by way of instant Criminal Jail Appeal, it is dismissed accordingly.

JUDGE