

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Cr. J. A. 61/2018 also Conf. Case 1/18

Murshid vs. The State

HIGH COURT OF SINDH

Composition of Bench: S.B./D. B.

Mr. Justice Mohammad Karim Khan Agha,

Mr. Justice Zulfikar Ali Sangi

Date(s) of Hearing: 26-11-18

Decide on: 08-12-2019

(a) Judgment approved for reporting:

Yes



CERTIFICATE

Certified that the judgment\*/order is based upon or enunciates a principle of law \*/ decides a question of law which is of first impression / distinguishes / overrules / reverses / explains a previous decision.

\* Strike out whichever is not applicable.

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- NOTE:
- (i) This slip is only to be used when some action is to be taken.
  - (ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.
  - (iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.
  - (iv) Those directions which are not to be used should be deleted.

**IN THE HIGH COURT OF SINDH AT  
KARACHI**

Crl. Jail Appeal No. 61 Of 2018. 1A

Murshid son of Wasi Ahmed  
Muslim, adult, currently  
Confined in Central Prison,  
Karachi.....Appellant in person.

Versus

The state. ....Respondent.

Sessions Case NO.& Sections	1453/ 2014, 302 & 324 PPC.
FIR No.	51/2014.
P.S.	Iqbal Market, Karachi West.

**APPEAL UNDER SECTION 410 CR.P.C.**

1. Being aggrieved and dissatisfied with impugned judgement dated 18.01.2018, passed by Mr. Khalid Hussain Shahani, Honourable District Sessions Judge, District West Karachi, in Sessions Case No. 1453/2014,.Re: State Vs. Murshid son of Wasi Ahmed, being outcome of FIR number mentioned above , Police Station Iqbal Market, Karachi West, under section 302,324 PPC. Whereby convicting and sentencing the Appellant/ and awarding him death sentence as Tazir and fined Rs.500,000/- in default to undergo S.I. for six month under section 302 (b) PPC.



OFFICE OF THE DISTRICT & SESSIONS JUDGE, KARACHI-WEST  
No. OSJ/W/01/2018. Karachi, the 18<sup>th</sup> January, 2018

To

The Additional Registrar,  
Honourable High Court of Sindh,  
Karachi.

120  
C&L  
23/01/18

Subject:- REFERENCE UNDER SECTION 374 CR.P.C. IN SESSIONS CASE No. 1453/2014. RE: (THE STATE VERSUS MURSHID), U/S 302 & 324 PPC, CRIME No. 51/2014, P.S IQBAL MARKET, KARACHI-WEST.

Accused Murshid son of Wasi Ahmed has been convicted by this Court on 18<sup>th</sup> January, 2018 and sentenced to death in the above Sessions case as under;

1. For offence under section 302(b) P.P.C. to death as Tazir, he be hanged by neck till he is dead and under section 544-A Cr.P.C. fine of Rs.5,00,000/- (Rupees Five Lac Only), if the amount is deposited by the accused, the same be paid to the legal heirs of the deceased Mst. Minhas, as compensation. In default of payment of fine, the accused shall suffer S.I for Six Months.
2. For offence under section 324 P.P.C, to suffer rigorous imprisonment for 05 years, as well as for offence under section 337-F(i) PPC, rigorous imprisonment for 01 year and to pay Daman of Rs. 50,000/- to injured Mst. Shaheen. In case of default of payment, he shall suffer S.I for 01 month. The conviction and sentences shall run concurrently with benefit of section 382-B Cr.P.C.

The original record and proceedings in 02 parts are submitted herewith duly paged alongwith index in pursuance of section 374 Cr.P.C for confirmation of death sentence, awarded to the accused/convict Murshid.

(KHALID HUSSAIN SHAHANI)  
Sessions Judge Karachi-West



Enclosed.

R & P of Session case no: 1453/2014 with 2 parts.  
PART 1: DIARY SHEET: (A TO M) & (1 to 146).

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No.61 of 2018.  
Conf. Case No.01 of 2018.

Present:

Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Zulfiqar Ali Sangi.

Appellant: Murshid S/o. Wasi Ahmed through Mr. Irshad Ahmed Jatui, Advocate.

For State: Mr. Muhammad Iqbal Awan, Deputy Prosecutor General.

Date of hearing: 26.11.2019

Date of announcement: 09.12.2019

### J U D G M E N T

**Mohammad Karim Khan Agha, J.-** Appellant Murshid S/o. Wasi Ahmed has preferred this Criminal Jail Appeal against the impugned judgment dated 18.01.2017 passed by the learned Sessions Judge Karachi West in Sessions Case No.1453 of 2014, F.I.R. No.51/2014 U/s. 302 and 324 PPC registered at P.S. Iqbal Market, Karachi-West whereby the appellant has been convicted and sentenced to death for offence under section 302(b) PPC subject to confirmation by this court with fine of Rs.5,00,000/-, if the amount is deposited by the accused, the same to be paid to the legal heirs of the deceased Mst. Minhas as compensation. In default of payment of fine, the accused was ordered to suffer S.I. for six months more. The appellant was also sentenced to suffer R.I. for 05 years under section 324 PPC as well as R.I. for 01 year under S.337-F(i) PPC and to pay Daman of Rs.50,000/- to injured Mst. Shaheen. In case of default of payment he shall suffer S.I. for 01 month more. The conviction and sentences were ordered to run concurrently with the benefit of section 382-B Cr.P.C being given to the accused.

2. The brief facts arising from the FIR lodged by one Ejaz Ahmed Khan on 21<sup>st</sup> March, 2014 are that on 20<sup>th</sup> March, 2014 he was available at the house of his sister, at about 1200 noon, he heard loud shouting. He came out and noticed a rush of people at the outer door of his house. He



went there and found his wife Shaheen Bibi and younger sister Mehnaz lying in injured condition having sustained churri injuries caused by Murshid, the husband of his sister Mehnaz, besides Murshid having sustained self-suffered injury. As such he immediately shifted the injured through ambulances to hospital for medical assistance and reported the matter to police. The police arrived at his house and arrested the accused Murshid who had been hiding himself in an almirah and recovered the crime weapon viz. churri/knife from him. Consequently the case was registered inter alia on the above facts.

3. On receipt of call, ASI Ashif Ali Panhwar went to the venue of occurrence, arrested the accused along with crime weapon viz. knife/churri, shifted the injured to hospital and inspected the corpse of deceased Mst. Mehnaz. He prepared such memo and inquest report, lodged the FIR and subsequently the investigation was entrusted to SIP Muhammad Riaz. After usual investigation he submitted the report under section 173 Cr.P.C. against the accused.

4. The charge was framed against the accused to which the accused pleaded not guilty and claimed trial.

5. The prosecution to prove the charge examined 09 PW's who exhibited various documents and other items in support of the prosecution case where after the prosecution closed its side. The appellant/accused recorded his statement under section 342 Cr.PC whereby he claimed false implication in the case and blamed the murder on his brother Ayaz. He neither examined himself on Oath nor called any witness in support of his defense case.

6. Learned Sessions Judge Karachi-West after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 18.01.2017, convicted and sentenced the appellant as stated above, hence this appeal has been filed by the appellant against his conviction.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the

same are not reproduced here so as to avoid duplication and unnecessary repetition.

8. Learned counsel for the appellant has contended that the FIR was lodged after an unexplained delay of 26 hours which lead to the case being concocted against the appellant by the police and the complainant; that the PW eye witnesses are not reliable; that there are contradictions between the evidence of the PW's which also makes it unsafe to rely on their evidence; that the medical evidence does not accord with the oral evidence and for all of the above reasons the appellant be acquitted of the charge based on him being extended the benefit of the doubt. In support of his contentions he has placed reliance on **Saeed Ahmed Vs. The State** (2015 SCMR 710) and **Amin Ali and another Vs. The State** (2011 SCMR 323).

9. On the other hand learned DPG has contended that the delay in lodging the FIR has been explained; that the eye witnesses were trustworthy, reliable and confidence inspiring and that they are supported by the medical evidence and recovery of the murder weapon from the accused and as such the prosecution has proved its case beyond a reasonable doubt and that the impugned judgment should not be interfered with and the death sentence should be maintained. In support of his contentions he placed reliance on **Khalid Mahmood V State** (2017 SCMR 201) and **Ali Nawaz alias Baba V State** (2019 P.Cr.LJ 1775)

10. The complainant was served notice which was duly served and received by him however he did not put in an appearance and as such his interests have been protected by learned DPG

11. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellant and the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

12. In our view after our reassessment of the evidence based on the evidence of the PW's including the PW MLO, post mortem report and other evidence on record we are satisfied that the prosecution has proved beyond a reasonable doubt that on 20-03-2014 at about 12 noon at House No.KMC-780, Street 35, near Aslam Kiryana store Ms Mehnaz (the



deceased) was murdered by churri and Mst Shaheen Bibi was injured by churri.

13. The only issue therefore, in our view, left before us is whether the appellant was the person who murdered the deceased by churri and injured Mst Shaheen Bibi by churri which lead to their respective death and injury.

14. In our view after our reassessment of the evidence we find that the prosecution has proved its case against the appellant beyond a reasonable doubt for the following reasons;

(a) That although the FIR was lodged after a delay on 26 hours based on the particular facts and circumstances of this case we do not find such delay in lodging the FIR to be fatal to the prosecution case. This is because such delay in lodging the FIR has been adequately explained in the evidence by the need of the complainant to take his injured wife to hospital, attend the funeral of the deceased the next day who was also a close relative being his sister and his overall shock after the incident. Furthermore, since the accused was arrested on the spot by the police there was no question of any false case being cooked up by the police in collusion with the complainant.

(b) In this case there are two eye witnesses to the murder and stabbing of Ms Shaheen. In our view the case will mainly turn on whether we find the evidence of the eye witnesses to be reliable, trustworthy and confidence inspiring. Eye witness PW 2 is Shaheen who was also stabbed by the accused. She gives direct evidence of the accused coming into her house where her sister (the deceased) and her daughter PW 4 Urooj Ejaz were having breakfast and she witnessed the accused causing churri blows to the deceased which caused her death about five minutes later at the house. She tried to intervene in order to save her sister and also received churri blows from the deceased which caused her injury in front of her daughter PW 4 Urooj Ejaz. Due to their cries the accused hide himself in the cupboard where he was arrested by the police with the churri (murder weapon). Eye witnesses PW 4 Urooj Ejaz also witnessed the murder of the deceased by the accused with a churri at her house and saw the accused injure her mother with a churri and in her evidence corroborates eye witness PW 2 Shaheen in all material respects. Both of them are natural witnesses as opposed to chance witnesses as the incident happened in their house. Neither of them had any enmity or ill will towards the accused. Neither of them despite lengthy cross examination was damaged at all and we have no reason to disbelieve their evidence which we consider to be reliable, trustworthy and confidence inspiring and we can convict the accused based on this evidence provided it is corroborated by some supportive evidence. In this respect reliance is placed on **Muhammad Ehsan v. The State** (2006 SCMR 1857)



(c) PW 1 Ejaz who is the complainant who rushed to the house when he heard the cries also corroborates the evidence of the eye witnesses vis a vis the deceased being dead in the house and Mst Shaheen being injured by churri in the house and the accused being arrested on the spot by the police along with the churri. PW 3 Sarfraz who also arrived at the house fully corroborated the evidence of PW 1 Ejaz. PW 4 Ayaz Ahmed Khan also came to the house when he heard the commotion and also corroborates about the arrest of the accused on the spot by the police in the house. PW 6 Ashiq Ali who was ASI at PS Iqbal Market who also reached the house after being directed to go their via information received from "15" just after the incident in his evidence states that he saw PW 2 Mst Shaheen in injured condition and the deceased in critical condition and that he arrested the accused at the spot along with Churri and also corroborates PW 1 Ejaz, PW 3 Sarfraz, PW 4 Ayaz Ahmed Khan and the eye witness PW's in so far as their evidence relates to the injuries to the deceased and Mst Shaheen and the arrest of the accused and the recovery of the churri on the spot.

(d) That there is no question of any misidentification as this was a day time incident, the accused was known by the PW eye witnesses who were his close relatives and he was arrested on the spot.

(e) At the time of the arrest the murder weapon (churri) was recovered from the accused.

(f) The medical evidence supports the eye witness oral evidence in that the deceased died as a result of stab wound and the injured Mst Shaheen also received incised wounds.

(g) That the PW's are all corroborative of each other and that there are no major contradictions in their evidence which would adversely impact on the prosecution case. Admittedly most of the PW's are police witnesses or related to the deceased and the accused. However it is well settled by now that a police witness or a related witness is as good as any other witness provided that no ill will, enmity, malafide or personal interest is proven against him vis a vis the appellant. In this respect reliance is placed on **Riaz Ahmad V State** (2004 SCMR 988), **Zafar V State** (2008 SCMR 1254) and **Abbas V State** (2008 SCMR 108). In this case there was none and the eye witnesses and the police PW's had no reason to falsely implicate the appellant in this case. No such enmity, ill will, malafide or personal interest was even suggested to the police witnesses.

(h) Even if there are any contradictions in the evidence of the PW's we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to affect the prosecution case and the conviction of the appellant. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793)

(i) That the prosecution evidence provides a believable chain of evidence from the time of the accused entering the house, to him murdering the deceased and injuring Mst Shaheen and being arrested on the spot with the murder weapon (churri) which is corroborated by the eye witnesses and other PW's which is supported by the medical evidence.



(j) Although it is for the prosecution to prove its case beyond a reasonable doubt and it is not for the accused to prove his innocence we do not find the defense of the appellant believable and regard it as an after thought in an attempt to save his skin. Namely, according to his defense he blamed the murder on PW 5 Ayaz however when he cross examined him he put no such suggestion to him.

(k) We also consider that any churri wound which the accused received was self inflicted whilst he was attacking the deceased and Mst Shaheen and support for this can be drawn from PW 9 Dr. Srichand who examined the accused and noted that he had been brought to the hospital with a history of self inflicted wound as per police letter.

15. **The next issue is of sentencing.** In our view the crime lacks the essential brutality to justify the death sentence as it appears that the deceased and the injured did not receive many churri blows and PW 4 Urooj Ejaz who was also in the house at the time of the attack was spared whilst her mother was only injured because she went to intervene in an attempt to save the life of the deceased. In addition it has been accepted now by the superior court courts that if the prosecution has neither alleged any motive against the appellant nor has it proven any motive against the appellant for his murdering the deceased we are justified in exercising our sentencing discretion in imposing the alternate sentence of life imprisonment as opposed to the death sentence. Reliance in this respect is placed on the case of **Amjad Shah V State** (PLD SC 2017 P.152) where it was held as under at P.156 Para 9;

*"Notwithstanding that the participation of the appellant in the commission of offence is duly established, his intention, guilty mind or motive to commit the same remains shrouded in mystery and is therefore, unproven. In such like cases where the motive is not proved or is not alleged by the prosecution, the Court for the sake of safe administration of justice, adopts caution and treats the lack of motive as a mitigating circumstance for reducing the quantum of sentence awarded to a convict. Reference is made to Zeeshan Afzal v. The State (2013 SCMR 1602)." (bold added)*

16. Thus, we hereby uphold all the convictions in the impugned judgment against the appellant and all the other sentences in the impugned judgment in terms of imprisonment fines, penalties etc **except** that the sentence under S.302 (b) PPC for murder is reduced from the

death sentence to that of life imprisonment with the confirmation reference being answered in the negative. The sentences for imprisonment shall run concurrently and the appellant shall have the benefit of S.382 B Cr.PC. Apart from the above modification in sentence the appeals are dismissed.

17. The appeals and confirmation reference stand disposed of in the above terms.

Arif