

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Appeal No. S-67 of 2022

Appellant Dadan son of Abdul Haleem Sundrani Through Mr. Altaf Hussain Surahyo, Advocate
The State: Through Mr. Aitbar Ali Bullo, D.P.G.
Date of hearing: 16-01-2023
Date of decision: 16-01-2023

JUDGMENT

ZULFIQAR ALI SANGI, J:- The instant criminal appeal is directed against the judgment dated 05.12.2022, passed by learned Additional Sessions Judge, Kashmore, in Sessions Case No.144/2022 (Re. St. Vs. Dadan Sundrani), emanating from FIR bearing Crime No.05/2022, for offence punishable U/S. 302, 201, 311, 34 PPC registered with Police Station, Gublo Katcho, whereby the appellant has been convicted for an offence punishable U/S. 201 (1) PPC and sentenced to suffer rigorous imprisonment for five years with fine of Rs.10,000/- and in default whereof to suffer simple imprisonment for one week, with benefit of Section 382-B Cr.PC.

2. Brief facts of the prosecution case as depicted in the FIR lodged by complainant ASI Shad Muhammad on 08.04.2022, at 1530 hours are to the effect that he received spy information at about 1200 hours that accused Karam, Dadan and Mumtaz in prosecution of their common object strangled Mst. Azmat Khatoon w/o Karam Sundrani to death by leveling allegation of Karap with one Rehmat Sundrani and then caused disappearance of evidence by throwing her dead body in Indus River. On receipt of such information, he alongwith his subordinate staff left police station and then arrived at the house of accused Karam Sundrani at about 1240 hours and found their houses vacant but the co-villagers and womenfolk on query disclosed the same facts. Thereafter, he searched the dead body of the deceased and at about 1330 hours reached at Sundrani Pattan at Indus River but could not trace the dead body and simply found the motorbike-cart wheel marks. He after search of the accused came back at police station and later-on he came to know that the parties are busy in making private settlement over the matter of honour killing. As such, he lodged the FIR against the accused on behalf of the State.

3. On completion of usual investigation, the police submitted final report under section 173 Cr.PC against the accused before the Court of concerned Judicial Magistrate by showing the present appellant/accused in custody and rest of accused as absconders, where the case papers were supplied to the present appellant/accused under receipt. After observance of codal formalities against the absconding co-accused and declaring them absconders, the case was sent up before the Court of learned Sessions Judge, Kashmore @ Kandhkot, from where it was made over to learned trial Court for its disposal according to law where the charge was framed against the present appellant/accused, to which he pleaded not guilty and claimed trial.

4. In order to establish the accusation against the accused, the prosecution examined in all five witnesses i.e. PW-01 Tapedar Deepak Lal, PW-02 subsequent I.O/SIP Hamid Ali Bhatti, PW-03 first I.O/ASI Muhammad Ismail Jakhrani, PW-04 Complainant ASI Shad Muhammad and PW-05 Mashir PC Imdad Ali Bhangwar, they all produced relevant documents in support of their statements. Thereafter, the learned State Counsel closed the side of prosecution.

5. The present appellant/accused in his statement recorded in terms of Section 342 Cr.PC, denied the allegations leveled against him by pleading his innocence. However, he neither examined himself on oath in disproof of the charge nor led any evidence in his defence.

6. The learned trial on evaluation of the material and hearing counsel for the parties convicted and sentenced the present appellant/accused vide impugned judgment, as discussed above, which he has impugned before this Court by preferring the instant criminal appeal.

7. Per learned defence counsel, there are material contradictions in the evidence of prosecution witnesses which have shattered the veracity of their evidence; that this is an unseen incident therefore the ocular account is totally silent; that the complainant and PWs are police officials and no any inmate from the house of the deceased has acted as complainant; that there is no recovery of any incriminating article from the possession of the appellant/accused to show his involvement in the present case. Summing up his contentions, the learned defence counsel submitted that accused has falsely been arraigned in this case over pretext of honor killing. He lastly concluded that the case of prosecution is doubtful and the appellant/accused is entitled to his acquittal in the circumstances of the case.

8. On the other hand, learned D.P.G for the State submits that all the witnesses have fully supported the case of prosecution and no any major contradiction has been noticed in their evidence; that an innocent girl has been done to death at the hands of appellant/accused, in that situation, the learned trial Court finding the appellant guilty of the offence has rightly convicted and sentenced him by way of impugned judgment which does not call for any interference by this Court, hence, the appeal filed by him being meritless is liable to its dismissal.

9. I have given due consideration to the arguments advanced by learned counsel for the parties and have minutely gone through the material made available on the record with their able assistance.

10. The deeper analysis of the material brought on the record is entailing that though the prosecution witnesses have tried to support the case of prosecution but their evidence when scrutinized thoroughly was found coupled with material infirmities. In that the incident was not witnessed by the complainant party with their own eyes who are none but the police officials. Secondly, none from the inmates of house of the deceased or from the siblings and parents of the deceased have come forward to act as complainant of the case. Further, during course of investigation, the investigation officer has failed to record the statements of inhabitants of nearby houses or that of co-villagers and the womenfolk who informed about the murder of deceased Mst. Azmat Khatoon at the hands of accused by leveling allegation of Karap. It was quite incredible and do not attract the judicial conscience that a young girl was done to death over the pretext of honor killing by way of strangulation without any resistance or hue and cry by her in a katcha built house situated in a village surrounded by number of houses. Furthermore, there is no recovery of dead body of the deceased and the alleged motorbike loader nor was any independent piece of evidence collected by the investigation officer to justify the factum of the incident. In addition to this, the complainant as well as investigation officer have also failed to explain about the writhing footprint marks of the deceased available at the place of vardat which is totally in conflict with the sketch of vardat wherein it is mentioned that Point-A denotes the place where deceased Mst.Azmat Khatoon w/o Karam Sundrani was said to be lying. Moreover, there is no recovery of any sort of incriminating article from the possession of the present accused even on his arrest to connect him with the commission of the alleged offence. Over and above this, during course of investigation the investigation officer recovered Dupata/ Rao in folded condition lying in the western side at distance of 05/06 feet from the place of incident but it was neither sent for DNA purpose in order to show its connectivity with the deceased nor was such piece of evidence confronted from the appellant/accused while recording his statement U/S.342 Cr.PC. All these improbabilities, as discussed above, have demolished the entire case of prosecution and rendered it highly doubtful.

11. It is also an established principle of law that an accused person is presumed to be innocent until and unless he is proved guilty beyond a reasonable doubt and this presumption of his innocence continues until the prosecution succeeds in proving the charge against him beyond a reasonable doubt on the basis of legally admissible, confidence-inspiring, trustworthy and reliable evidence. It has also been held by the Superior Courts that conviction must be based upon unimpeachable evidence and certainty of guilt and any doubt arising in the prosecution case must be resolved in favour of the accused. The rule of giving the benefit of doubt to an accused person is essentially a rule of caution and prudence and is deep-rooted in our jurisprudence for the safe administration of criminal justice. In common law, it is based on the maxim, "It is better that ten guilty persons be acquitted rather than one innocent person be convicted". While in Islamic criminal law it is based on the high authority of sayings of the Holy Prophet of Islam (Peace Be Upon Him): "Avert punishments (hudood) when there are doubts" and "Drive off the ordained crimes from the Muslims as far as you can. If there is any place of refuge for him [accused], let him have his way, because the leader's mistake in pardon is better than his mistake in punishment." The Honourable Supreme Court has quoted probably the latter part of the last-mentioned saying of the Holy Prophet (PBUH) in the case of Ayub Masih v. State (PLD 2002 SC 1048) "Mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent." The same principle has also been followed by the Honourable Supreme Court of Pakistan in recent Judgment in the case of Naveed Asghar and 2 others v. The State (PLD 2021 SC-600). It is also settled principle of law that if a single circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to such benefit not as a matter of grace and concession, but as a matter of right, as has been held in the case of Tariq Pervez v. The State reported as (1995 SCMR-1345), wherein the Honourable Supreme Court of Pakistan has held as under:-

"The concept of benefit of doubt to an accused person is deep-rooted in our country for giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubt. If there is any circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right".

12. Having concluded above, the prosecution has miserably failed to establish the guilt against the present appellant beyond shadow of reasonable doubt. Consequently, the conviction and sentence awarded to the appellant by learned trial Court vide impugned judgment were set aside, the instant criminal appeal was **allowed** and the appellant was released forthwith, if his custody was not required in any other case.

13. Above are the reasons of my short order dated 16.01.2023.

JUDGE