

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT HYDERABAD**

Cr. Jail Appeal No. S- 297 of 2019

Appellant: Rehmatullah @ Kaloo through M/S Meer Muhammad Buriro and Azizzullah M. Buriro, Advocates.

Complainant: Nemo for complainant.

State: Through Mr. Shahzado Saleem Nahiyoon, Deputy Prosecutor General, Sindh.

Date of hearing: 16.03.2020

Date of Judgment: 16.03.2020

**JUDGEMENT**

**ABDUL MAALIK GADDI, J-** Through this criminal jail appeal, appellant has assailed the legality and propriety of the judgment dated 30.09.2019 passed by learned 4<sup>th</sup> Additional Sessions Judge, Dadu in Sessions Case No.150/2019 (Re: The State V/s Rehmatullah & another) arisen out of Crime No.29/2019 registered U/S 397 PPC at PS Johi, whereby the learned trial court after hearing the learned counsel for the parties as mentioned in the judgment, convicted the appellant Rehmatullah @ Kaloo u/s 397 PPC and sentenced him to suffer imprisonment for seven (07) years and to pay fine of Rs.10,000/- (Ten Thousand), in default whereof he shall undergo for five months more. However, benefit of Section 382-B Cr.P.C was extended to the appellant. It may pertinent to mention that trial Court has acquitted the co-accused Ali Khan alias Ali Gohar of the charge by extending him benefit of doubt.

2. Brief facts of the prosecution case as per F.I.R are that on 25.03.2019, complainant boarded on his motorcycle bearing No.DUB 1971 in order to visit his relatives Saeed Khan Leghari at his house situated at new Colony Johi city, and it was 0800 hours complainant reached in common street near house of Saeed Khan Leghari, where he saw three persons on one motorcycle and got stopped the complainant out of them one was identified as accused Rehmatullah @ Kaloo son of Behram Khushik while two were unidentified who were seen very well and will identify if seen again. Accused persons took out pistols form their folds and directed complainant to alight form it,

accused Rehmatullah @ Kaloo gave butt blows of pistol to him at his fore head, and robbed motorcycle from complainant. Accused Rehmatullah boarded on motorcycle of complainant, while other accused boarded on their own motorcycle and went away in the meantime, the relatives of complainant, namely Saeed Khan and Rahib also came out from their house and saw the accused, then accused went away towards eastern side. Thereafter, complainant came to P.S Johi, obtained letter for his treatment, after treatment got his FIR registered.

3. After usual investigation, police submitted challan before the concerned Judicial Magistrate, who took cognizance of the offence and thereafter the case was entrusted to the learned trial Court having jurisdiction in the matter. A formal charge against the accused was framed at Exh.02, who pleaded not guilty and claimed trial.

4. At trial, the prosecution to prove its case has examined following witnesses:

- i. PW-1 / Doctor Khadim Hussain Khoso examined at Ex.5, who produced police letter, and medial record at Ex.5/A to 5/F.
- ii. P.W-2 complainant Ali Gohar examined at Ex:6, who produced FIR at Ex:6/A.
- iii. P.W-3 Saeed Khan examined at Ex.7.
- iv. P.W-4-mashir Ghulam Hussain examined at Ex.8 who produced memo of injuries, memo of place of incident, memo of arrest and recovery, at Ex:8/A to 8/C.
- v. P.W-5 I.O / ASI Rehmatullah examined at Ex.9 who produced departure and arrival entries four in number at Ex:9/A to 9/D.
- vi. P.W-6 I.O ASI Maqbool Ahmed Shah examined at Ex.10.

It appears that all these witnesses have been cross-examined by the counsel for appellant.

5. Thereafter, learned ADPP for the State closed the prosecution side vide statement at Ex.11. Later on statements of accused were recorded U/S.342, Cr.P.C. at Ex.12 and 13 to which they pleaded their innocence stating that they were falsely been implicated in the instant case. However, they did not lead evidence in their defence and declined to give statement on oath.

6. Learned counsel for the appellant contended that the case is managed one and appellant is innocent and has been falsely implicated in this case with malafide intention and ulterior motives; that prosecution has miserably failed to prove the case against the accused beyond shadow of reasonable doubt, as from the deposition of prosecution witnesses, it appears that they had improved their version by strengthening the prosecution case and their such improved statements subsequently made cannot be relied upon, as credibility of their statements become doubtful on the well-known principle of Criminal jurisprudence that improvement casts serious doubt on the veracity of such witnesses. He further contends that there was an admitted enmity between the complainant and father of accused as such false implication cannot be ruled out. He stated that there are many material contradictions in the evidence of prosecution witnesses even the medical evidence was not in line with the ocular account; that appellant was arrested on 05.04.2019 and since then he is in custody without committing any offence, therefore, prays that he may be acquitted from the charge.

7. Conversely, learned D.P.G. Sindh while supporting the impugned judgment submits that prosecution has fully established its case beyond any reasonable doubt by producing consistent / convincing and reliable evidence and the impugned conviction and sentenced awarded to the appellant is the result of the proper appreciation of evidence brought on record, which needs no interference by this Court.

8. I have heard the learned counsel for appellant, learned D.P.G for the State and perused documents and evidence so brought on record.

9. After hearing the learned counsel for the parties, I have come to the conclusion that prosecution has failed to prove its case against the appellant for the reasons that as per F.I.R it is alleged by the complainant Ali Gohar that accused Rehmatullah @ Kaloo robbed his motorcycle and caused butt blows to him but it is surprising to note that complainant in his cross examination has stated as under:

**“It is fact that unknown accused persons caused injures to me”.**

10. It is noted that alleged pistol which was used in the commission of alleged offence has also not been recovered from the appellant

Rehmatullah @ Kaloo. It is also surprising to note that no efforts with regard to recovery of alleged pistol has been taken by the Investigating officer.

11. On perusal of record it appears that complainant Ali Gohar has stated in the F.I.R that he received butt blow injury on his forehead whereas he deposed in his evidence that he received injures at his eye and on both knees. Perusal of F.I.R further reveals that complainant was going to Johi to meet with his relative PW Saeed Khan and according to him after leaving his house when he covered 5 to 6 paces the alleged incident took place whereas PW Saeed Khan in his evidence has stated that house of the complainant is about 15 to 16 kilometer away from his house. It also appears from the record that the alleged incident took place on 25.03.2019 whereas recovery of motorcycle was made on 05.04.2019 after the delay of nine days for the reasons that after alleged recovery by ASI Maqbool Shah subsequently, PW Ghulam Hussain was called from his house and mashirnamas of arrest and recovery were prepared at police station.

12. I have gone through the evidence of complainant Ali Gohar who in his cross examination has also stated that **“It is fact that unknown accused persons caused injuries to him. Unknown accused caused him slaps”** therefore, in my view, injures received by the complainant at his head comes in a mystery as three (03) accused persons were available at the time of incident and who caused injury to him is a questionable fact. It is also noted that mashirnamas of arrest and recovery were prepared at police station therefore, the said mashirnamas for maintaining the conviction of the appellant cannot be safely relied upon.

13. No doubt the name of appellant Rehmatullah is appearing in the F.I.R but on perusal of cross examination of complainant in which he has also stated as under:

**“It is fact that accused Rehmatullah Khushik is neither my relative nor I am on dining terms with him. It is fact that accused Rehmatullah is resident of Dadu Taluka. The face of accused was open”.**

In view of the above cross examination of the complainant, the question arises that how complainant came to know about the name of present appellant and named him in the F.I.R which was lodged

promptly and when he did not know the appellant personally. This aspect of the case creates doubt in the prosecution story.

14. It is also noted that in this case name of co-accused Ali Khan @ Ali Gohar was subsequently inserted by Investigating Officer in the challan sheet and was shown as absconder. It is also noted that complainant in his cross examination stated that no identification parade for accused Ali Khan @ Ali Gohar had taken place before the concerned Magistrate. However, nothing on record to show that as to how the investigating officer came to know regarding the involvement of accused Ali Khan @ Ali Gohar in the commission of alleged offence as his name did not transpire in F.I.R. However, he has also been acquitted by the trial Court and no appeal against his acquittal order has been filed and present appellant has been convicted without assigning any valid reason. This aspect of the case also creates doubt in the prosecution story. In this regard I am fortified with the case law reported in PLD 2019 Supreme Court 527 in which it has been held that:

**“Falsus in uno, falsus in omnibus** which means as "false in one thing, false in everything." At common law, it is the legal principle that a witness who testifies falsely about one matter is not credible to testify about any matter”.

It has also been held in the case mentioned SUPRA which reads as under:

***“Truth was the foundation of justice and justice was the core and bedrock of a civilized society and, thus, any compromise on truth amounted to a compromise on a society’s future as a just, fair and civilized society”.***

15. In these circumstances, I am of the view that prosecution case is not free from doubts and it is well settled principle of law that even a single circumstance creating a reasonable doubt, the benefit of which, always goes in favour of accused. In the instant case there are material discrepancies and lacunas in the prosecution evidence. In this regard reliance can be placed upon the case of ‘TARIQ PERVAIZ v. The STATE’ [1995 SCMR 1345], wherein it has been held by the Honourable Supreme Court of Pakistan that:

***“For giving benefit of doubt to appellant it is not necessary that there should be many circumstances creating doubts. If there is a 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 matter of right”***

16. Keeping in view of the above, I am of the firm view that the Presiding Officer of the learned trial Court acted erroneously, in the matter, with misconception and misinterpretation and dispose of the matter purely on non-appreciation and non-application of the required norms of law and that of justice. Consequently, I allow this criminal jail appeal, set-aside the impugned judgment dated 30.09.2019 and acquit the appellant Rehmatullah @ Kaloo from the above charge. He is in custody therefore, Jail Authorities are directed to release him forthwith from the above case, if he is not required in any other custody case.

**JUDGE**

***\*Hafiz Fahad\****