

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Appeal No. S- 114 of 1998

Rawat and others.Appellants.

Versus

The State.Respondent.

Appellant Wahid Bukhsh
alias Wahid Dino (present on
bail):

Through Mian Taj Muhammad
Keerio, Advocate

State:

Through Mr. Shahid Ahmed Shaikh,
D.P.G alongwith Mr. Shawak
Rathore, D.P.G

None present for complainant.

Date of hearing and judgment: 17.02.2020

JUDGMENT

ABDUL MAALIK GADDI, J.-Through this appeal, appellants Rawat and others have assailed the legality and propriety of the judgment dated 29.08.1998, passed by learned Additional Sessions Judge, Shahdadpur in Sessions Case No.71 of 1994 (Re: The State V/s Rawat and others) arisen out of Crime No.70 of 1994, registered under sections 302, 34 PPC at PS Shahdadpur, whereby the learned trial court after full dressed trial convicted and sentenced the appellants as stated in Point No.5 of the impugned judgment. For the sake of convenience, it would be proper to reproduce Point No.5 of the impugned judgment which reads as under:-

“ Point No.5

28. In view of my findings on the above points I reached at the irresistible conclusion that the prosecution has succeeded to bring home the guilt of the accused, by adducing confidence inspiring evidence. I, therefore, while pronouncing judgment u/s 265-H(II) Cr.P.C. Keeping in view the facts and mitigating circumstances convict the main accused Rawat and Bagoo alias Sikandar to undergo imprisonment for life under section 302(b) PPC as amended Qisas and Diyat Ordinance.

However, no specific role has assigned to remaining two (2) accused namely Menhoon, Wahid Bux alias Wahid Dino at the time of commission of offence but their presence and common intention has been established, therefore, they are sentenced U/S 302(c) PPC (as amended Qisas and Diyat Ordinance) to suffer R.I for 10 years each. Accused Rawat and Bagoo alias Sikandar are also burdened to pay compensation to L.Rs of deceased Muhammad Ibrahim and Muhammad Anwar as provided U/S 544-A Cr.P.C, to pay sum of Rs.100,000/- (one lac) to L.Rs of each deceased (of recovered). In failure to pay the compensation, they shall further undergo R.I for two years. Accused persons are present on bail. Their bail bonds stands cancelled and sureties discharged. They are taken in to custody and remanded to prison with the warrant of this Court to serve the awarded sentence.”

2. It appears from the record that during pendency of this appeal, appellants Bagoo alias Sikandar and Meehon alias Meenhal have died their natural death hence vide order passed by this Court dated 20.11.2017, proceedings against them were abated. For convenience, order dated 20.11.2017 is reproduced as under:-

“ Appellants Rawat and Wahid Bux are present on bail. ASI Ghulam Mustafa Sario PS Shahdadpur submits death report of appellants Bagoo alias Sikandar and Meehon alias Meehanal and states that the SHO has recorded the statements of Nekkards viz. Sher Muhammad and Haider Khan who stated that both the appellants have passed away. He has also annexed the death certificates of both the appellants issued by NADRA authorities, report is taken on record. The appeal against the appellants Bagoo alias Sikandar and Meehon alias Meehanal stand abated. Learned counsel for the appellants requests for time to prepare the brief.

Adjourned to 21.12.2017”

3. During course of arguments, learned counsel for appellants submits that appellant Rawat has also died by his natural death on 03.02.2020 and in support of his contention files a statement alongwith death certificate of said Rawat issued by NADRA duly attested by Secretary Union Council Gul Muhammad Laghari, District Sanghar, same is taken on record. Appellant Wahid Bux present on bail, also confirms the fact that appellant Rawat has died by his natural death. He is warned that if such his statement is found incorrect then stern action will be taken against him to which he has conceded. In these circumstances, appeal against appellant Rawat also stands abated. Now captioned appeal is remained pending only in respect of appellant Wahid Bukhsh alias Wahid Dino and same is being proceeded today.

4. Facts of the case as stated in the F.I.R. lodged by complainant Ghulam Qadir are that he was hari of Khuda Bux Lakho. About 10/11 years ago, he

alongwith his father Abdullah and brothers Muhammad Anwar, Muhammad Ibrahim and other family members shifted from his village Muhammad Lakho and settled in Village Sher Khan Laghari. It is alleged that one Khamiso Zardari was attending village Sher Khan Laghari, therefore, he was known by complainant and his brothers and thereafter they used to visit each other. That about 7/8 years back Khamiso was murdered and in this respect the heirs of Khamiso lodged F.I.R. against Muhammad Anwar i.e. brother of the complainant. Muhammad Anwar was on bail in said case which was pending trial before the Court of Additional Sessions Judge, Shahdadpur.

5. It is further alleged in the F.I.R. that on the last date of hearing of the case the complainant and his brothers Ibrahim and Muhammad Anwer had come to attend the hearing of murder case of Khamiso. The complainant party after challan of Muhammad Anwer in murder case of Khamiso had shifted from Village Sher Khan Leghari to their original village Muhammad Lakho, Taluka Bhirya. On date of hearing, Bagoo Zardari and Meenhoon Zardari extended threats to the complainant party that they would take revenge of the murder of Khamiso. The case against Muhammad Anwer was fixed on 24.02.1994 in the court but it was declared holiday hence on 25.07.1994 complainant alongwith his brother Muhammad Ibrahim, Muhammad Anwer and relative Ali Muhammad came to Shahdadpur to attend the court. When at 8-30 A.M, they all reached at Sub-Jail Chowk in front of the office of Mr. Abdul Qadir Soomro, advocate, they saw and identified Bagoo alias Sikandar Zardari armed with pistol, accused Rawat armed with revolver and Meenhoon armed with hatchet were standing there. Accused challenged the complainant party and said that they will take revenge of murder of Khamiso. Saying these words Bagoo Zardari fired with pistol on Muhammad Anwer and had fallen down in the office of Abdul Qadir advocate. Accused Rawat Zardari fired from his revolver upon Muhammad Ibrahim, i.e. brother of complainant. It is alleged that due to fear the complainant and P.W Ali Muhammad concealed themselves and all accused ran away with their weapons. In the meantime, Shahdadpur police reached at the vardat. The complainant saw that his brother Anwer was lying dead in the office of advocate and his brother Muhammad Ibrahim succumbed injuries in Taluka Hospital Shahdadpur. Thereafter, the complainant lodged F.I.R. against the aforementioned accused.

6. It also appears from the record that after usual investigation, police submitted final report before the concerned Judicial Magistrate, who took cognizance of the offence and subsequently, the case was entrusted to the learned trial Court, where formal charge vide Ex.3 has been framed against

accused Rawat, Menhooon and Wahid Buxon on 20.02.1995, who vide their plea Ex.4, 5 and 6 have pleaded not guilty and claimed to be tried.

7. At trial, the prosecution to prove its case has examined as many as six prosecution witnesses. During pendency of trial, by order dated 09.05.1996 the let-of accused Bagoo alias Sikandar was joined / impleaded to face the trial being main accused, which was result of dishonest investigation of police officer SIP Abdul Sattar, who has conducted the investigation, hence a reference was made to DIG Police to take appropriate action against the investigation office who has neither mentioned the name of accused in charge sheet nor the accused was challaned in the Court. The case was re-tried. Thereafter, amended was framed against all above named accused u/s 302 PPC and in separate pleas (Exs. 29, 30, 31, 32) accused persons pleaded not guilty and claimed to be tried. Learned DDA has filed an application u/s 540 Cr.P.C. to re-call P.Ws Ghulam Qadir and others (Ex.33). The application was allowed. In the earlier round, alongwith other P.Ws prosecution had also examined P.W / Mashir Abdullah at Ex.10, who produced mashirnamas of place of vardat, inquest report, mashirnama of dead body of Muhammad Ibrahim, mashirnama of recovery of clothes of deceased Muhammad Anwar and Muhammad Ibrahim, and mashirnama of arrest of accused Rawat and Menhooon at Exs.11 to 16, respectively. After grant of aforementioned application, learned DDA gave up this P.W / mashir Abdullah vide Ex.35. Thereafter, prosecution has examined complainant Ghulam Qadir at Ex.37, P.W Ali Muhammad at Ex.38, mashir Anghan at Ex.39, the evidence of M.O Dr. Allah Dino Khaskheli was adopted by statement at Ex.40; I.O / SIP Abdul Sattar was re-examined at Ex.42. Thereafter the learned DDA by way of statement at Ex.43 closed the prosecution side. The aforementioned witnesses have sufficiently been cross examined by the counsel for appellants.

8. Thereafter statements under section 342 Cr.P.C. of the accused / appellants were recorded at Ex.44, 45, 46 and 48, wherein they denied entire prosecution case and claimed their innocence but except accused / appellant Bagoo alias Sikandar (Ex.48) none of them has led any defence evidence to disprove the prosecution case. In his defence, accused / appellant Bagoo examined P.W Dhani Parto at Ex.49, who produced his statement recorded by Mukhtiarkar and FCM Shahdadpur u/s 164 Cr.P.C. at Ex.50; D.W Ali Murad at Ex.51, who also produced his statement u/s 164 Cr.P.C. at Ex.52 and then learned counsel for accused by way of statement Ex.53 closed the defence evidence.

9. Learned counsel for appellant Wahid Bukhsh alias Wahid Dino contended that the case is managed one and appellant is innocent and has been falsely implicated in this case; that in the F.I.R. neither the name of appellant has been mentioned nor he was assigned any role; that as per evidence of Investigating Officer, present appellant has been implicated in this case on the statement of co-accused Rawat, which is not admissible under the law; that although the place of incident i.e. Sessions Court Shahdadpur premised was a busy place and the time of alleged incident there were so many advocates, their clerks as well as other general public present, however, no one from them has been cited by the prosecution as witness or mashir; that all the material prosecution witnesses are interested therefore, their testimony cannot be relied upon without any independent corroboration; that the learned trial Court has only believed upon the examination in Chief of the PWs and did not bother to consider their respective cross examination while delivering the judgment and has miserably failed to properly evaluate such evidence; that learned trial Court while not discussing the cross examination of the prosecution witnesses has passed the impugned judgment in a hasty manner and the appellant ought to have been acquitted, hence, the findings recorded by the trial Court requires interference by this Court. He lastly prayed for acquittal of the appellant from the charge.

10. Mr. Shahid Ahmed Shaikh, learned D.P.G duly assisted by Mr. Shawak Rathore, D.P.G after going through the entire record as well impugned judgment has conceded to the submission made by learned counsel for the appellant.

11. I have heard the learned counsel for appellant, learned D.P.G for the State and perused the material available on record.

12. On perusal of record, it appears that name of present appellant Wahid Bukhsh is neither appearing in the F.I.R nor in the evidence of complainant as well as eye-witness Ali Muhammad. However, perusal of evidence of I.O / SIP Abdul Sattar (Ex.22) reveals that in his cross-examination he stated that ***"P.W Ali Muhammad has not disclosed name of accused Wahid Bux in his statement u/s 161 Cr.P.C. Voluntarily says that accused Rawat had disclosed name of accused Wahid Bux that accused Wahid Bux was with him at the time of commission of crime."*** It is mentioned in the F.I.R, that the case against Muhammad Anwer was fixed on 24.02.1994 in the court but it was declared holiday hence on 25.07.1994 complainant alongwith his brother Muhammad Ibrahim, Muhammad Anwer and relative Ali Muhammad came to Shahdadpur to attend the court. When at 8-30 A.M, they all reached at Sub-Jail Chowk in front of the office of Mr. Abdul Qadir Soomro, advocate, they saw

and identified Bagoo alias Sikandar Zardari armed with pistol, accused Rawat armed with revolver and Meenhoon armed with hatchet were standing there. Accused challenged the complainant party and said that they will take revenge of murder of Khamiso. Saying these words Bagoo Zardari fired with pistol on Muhammad Anwer and had fallen down in the office of Abdul Qadir advocate. Accused Rawat Zardari fired from his revolver upon Muhammad Ibrahim, i.e. brother of complainant. It is alleged that due to fear the complainant and P.W Ali Muhammad concealed themselves and all accused ran away with their weapons. Complainant Ghulam Qadir in his evidence (Ex.37) while corroborating the contents of his F.I.R, has not stated anything about present appellant Wahid Bukhsh whether he was present at the vardat or not. So also P.W Ali Muhammad who is said to be eye-witness of the incident has also not disclosed anything about appellant Wahid Bukhsh in his evidence before the trial Court.

13. It is also noted that in his statement under section 342 Cr.P.C, accused / appellant Rawat has neither implicated nor suggested any role to present appellant Wahid Bukhsh in the commission of presence offence.

14. In these circumstances, I am of the view that appellant Wahid Bukhsh has been falsely involved in this case by the I.O Abdul Sattar due to some ill-will or otherwise. This aspect of the case finds support from the fact that no recovery of any incriminating article is shown to have been made from him. Perusal of impugned judgment shows that mere his presence at the place of incident has been shown alongwith co-accused Rawat but the same has not been proved by bringing any cogent and unimpeachable evidence on record. This case pertains to year 1994 whereas present appellant was convicted under section 302(c) PPC. However, except statement of co-accused Rawat before the police, which is not admissible under the law and so also a weak type of evidence, no convincing evidence is available against this appellant. Consequently, the case against present appellant is not free from doubts. 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. Neither in the F.I.R, nor in evidence of material prosecution witnesses, the present appellant has been nominated nor his presence has been shown. In this regard, reliance can be placed upon case of **Tariq Parvez v. The State** (1995 SCMR 1345) wherein it has been held by 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".

15. In the light of what has been discussed above and case law, the prosecution has entirely failed to prove its case against the appellant beyond any shadow of reasonable doubt hence he is entitled to be acquitted of the charge.

16. Keeping in view of the above, I am of the affirm view that the learned Presiding Officer of the trial court acted erroneously in the matter with misconception and mis-interpretation of law and facts and disposed of the matter purely on non-appreciation and non-application of the required norms of law and that of justice. Consequently, I allow this appeal and set aside the impugned judgment dated 29.08.1998, passed by learned Additional Sessions Judge, Shahdadpur in Sessions Case No.71 of 1994 (Re: The State V/s Rawat and others) arisen out of Crime No.70 of 1994, registered under sections 302, 34 PPC at PS Shahdadpur only to the extent of appellant Wahid Bux alias Wahid Dino and he is acquitted of the charge. The appellant is present on bail. His bail bond stands cancelled and surety discharged. As regard the case of appellants namely Rawat, Bagoo alias Sikandar and Meehon alias Meenhal is concerned, they have expired by their natural death during pendency of instant appeal hence the proceedings against them were already abated as mentioned in Paras-2 and 3 of this judgment.

JUDGE

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