

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

Cr. Rev. A. No.S- 16 of 2009

Muhammad Uris

Versus

Muhammad Yakoob & another

Applicant : Muhammad Uris (present on bail)	Through Mr. Shaukat Ali Kaka, Advocate
Respondent No.2: The State	Through Ms. Rameshan Oad, A.P.G
None present on behalf of Respondent No.1 / complainant	
Date of hearing and judgment	10.02.2020

### **JUDGMENT**

**ABDUL MAALIK GADDI, J.-** Through this criminal revision application, the Applicant has assailed the legality and propriety of the judgment dated 31.12.2008, passed by learned Civil Judge & Judicial Magistrate-I, Tando Adam in Criminal Case No.117 of 2006 (Re: The State V Muhammad Uris) emanating from Crime No.28/2003, registered at Police Station Berani, under section 353, 337-F(i), 504 PPC, whereby after full dressed trial, the Applicant was convicted u/s 353 PPC and sentenced to suffer R.I for two years and fine of Rs.5000/-, in case of non-payment of fine, the Applicant shall further suffer S.I for six months, and was also awarded sentence u/s 337-F(i) PPC to pay penalty provided in Daman of Rs.10,000/- as the expenses of hospitalization and mental anguish suffered by the P.W/injured and until Daman is paid in full, the convict be kept in jail and dealt with in same manner as sentence equal to simple imprisonment, as well as judgment dated 23.01.2009, passed by learned Sessions Judge, Sanghar in Cr. Appeal No. 01 of 2009 (Re: Muhammad Uris V The State) whereby he maintained the aforementioned judgment of the trial Court.

2. Brief facts of the prosecution case are that, on 11.12.2003, complainant Muhammad Yaqoob lodged his F.I.R. at Police Station Berani alleging therein that he is employee of Sub-Division WAPD0A-II Tando Adam as Line Superintendent. On 11.12.2003, he alongwith his staff L.M Mukhtar Ahmed

and others left his office in Government Vehicle for installation of a new transformer in Village Ibrahim Makorani. They were busy in removing old transformer when at 1300 hours, accused Muhammad Uris came and asked that since the old transformer is of 50 KV and the new transformer is of 25 KV, therefore, he could not permit them to remove the old transformer. Complainant asked him not to interfere in the official duty, but accused became annoyed and took operating rod from the WAPDA vehicle and put the same in left foot of Mukhtar Ahmed LMC-II who was working at the pole, and pull the rod, as a result thereof Mukhtar Ahmed fell down in the vehicle and then at the root of the pole over cement made block and received injuries at the lower back. The complainant party stopped the work and took injured Mukhtar Ahmed to hospital. Thereafter, SDO WAPDA issued letter for lodging F.I.R. which was registered accordingly.

3. It appears from the record that after usual investigation, challan of the case was submitted before the concerned Court and after framing of charge, prosecution in order to prove its case has examined P.W/ injured Mukhtar Ahmed At.4, Mashir Muhammad Mursalin at Ex.5, HC Qadeer Ahmed at Ex.6, ASI Fateh Ali Shahani, who recorded F.I.R. at Ex.7, complainant Muhammad Yaqoob at Ex.8, P.W Niaz Ahmed at Ex.9, P.W/Doctor Fayaz Ali at Ex.10, SIP Nawab Imran at Ex.11 and ASI Wazeer Ahmed at Ex.12. Thereafter, learned P.I closed the side of prosecution vide his statement at Ex.13

4. Subsequently the statement of accused was recorded under section 342 Cr.P.C at Ex.14, in which he denied the allegations of the prosecution case, claimed his innocence and prayed for justice; however, neither he examined himself on oath nor led any evidence in defence.

5. Learned trial Judge after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the Applicant as stated above by the impugned judgment dated 31.12.2008. Being aggrieved with such judgment, Applicant preferred Cr. Appeal No.01 of 2009 before the Sessions Judge, Sanghar, who after hearing the parties counsel, while maintaining the aforementioned judgment of the trial Court, dismissed the same. Hence this criminal revision application.

6. Learned advocate for Applicant has contended that the case against the Applicant is false and has been registered due to enmity; that prosecution case is highly doubtful; that no incident as alleged in the F.I.R. has taken

placed; that the impugned judgments were delivered by two Courts below without applying judicial mind; that both the Courts below have given undue weight to the prosecution evidence even perusal of the same reveals that either same is contradictory to each other or the witnesses have improved the stance of the prosecution; therefore, the same could not be relied upon for basing conviction of the applicant, hence the instant revision application may be allowed and the impugned judgments be set aside.

7. Learned A.P.G appearing for the State has opposed the instant revision application and supports the impugned judgments by contending that the learned trial Court has acted according to law and rightly convicted the Applicant which conviction was rightly maintained by the appellate Court, as adequate evidence was furnished at the trial; that no major defect was found in the evidence of prosecution witnesses who have fully supported the case of prosecution, therefore, the learned trial Court has rightly and legally delivered the impugned judgment dated 31.12.2008, which was lawfully and perfectly maintained by the learned appellate Court vide impugned judgment dated 23.01.2009. She prays for dismissal of instant criminal revision.

8. Heard the learned counsel for the parties, scanned the entire evidence and considered the relevant law.

9. After scanning the record, I have come to the conclusion that prosecution has successfully established its case against the Applicant for the reasons that the contradictions and discrepancies pointed out by learned counsel for the Applicant, which are minor in nature, are not material to discard the evidence of prosecution witnesses. It appears that on the day of incident complainant alongwith injured P.W Mukhtar Ahmed and others went to the place of incident in order to perform their official duty being employees of Sub-Division WAPDA Tando Adam to replace transformer of 25 K.V for which the Applicant refused to allow them to substitute the same because of difference of range and such fact has been categorically deposed by the complainant during his examination-in-chief. Such evidence is also finds supports / corroboration from evidence of injured / P.W Mukhtar Ahmed and P.W Niaz Ahmed, who both have also corroborated that accused / Applicant had become annoyed, insulted the abovenamed employees of WAPDA department and pull down the transformer by using operating rod resulting P.W Mukhtar Ahmed fallen down and sustained injuries. Thus, the complainant and P.Ws Niaz and Mukhtar Ahmed have established motive

behind the above offence committed by present Applicant and learned counsel for Applicant has failed to allege / establish any malafide or ill will / enmity on the part of complainant and P.Ws to have falsely implicate the Applicant in present case. Perusal of evidence of complainant shows that during his cross-examination a suggestion was put to him that he has falsely implicated the accused / Applicant at the instigation of P.Ws Niaz and Mukhtar which has been specifically denied; however, it is pertinent to mention that no such suggestion has been put to P.Ws Mukhtar and Niaz Ahmed that on their instigation present case has been registered.

10. It also appears from the record that fact of injuries sustained by P.W / injured Mukhtar Ahmed was also corroborated by Medical Officer who has also produced medical certificate alongwith his final opinion that injured had sustained injuries in terms of Ghayr Jaifah Damiah and such fact was also corroborated by I.O and mashir of injuries by producing mashirnamas of injuries (Ex.5-B).

11. It is pertinent to mention here that in criminal revision application, the High Court has to see as to whether the sub-ordinate Courts have committed jurisdictional error, un-condonable in nature or in exercise of jurisdiction committed legal error causing miscarriage of justice because the Honourable Supreme Court has consistently held that the High Court in its revisional jurisdiction, not supposed to decide matter as Court of appeal by making reappraisal of evidence and to form a different opinion from one concurrently held by two Court below. During the course of arguments, I have specifically asked the question from learned counsel for the Applicant to point out any illegality or jurisdictional defect in the judgments passed by two Courts below, he has no answer with him. On perusal of record it reveals that learned Judicial Magistrate as well as learned Sessions Judge have attended to all the material aspects of the case and have considered each and every important piece of evidence and after their proper appraisal, rendered concurrent findings. Learned counsel for the Applicant failed to point out any illegality, material irregularity and misreading or non-reading of material evidence available on the record to call for interference in revisional jurisdiction of this Court.

12. For the reasons discussed above, the instant criminal revision application is devoid of merits, therefore, by a short order passed in earlier part of today viz 10.02.2020, the instant criminal revision application was

dismissed and the impugned judgments were upheld. For sake of convenience, the short order is reproduced as under:-

“ Heard learned counsel for the parties. They have concluded their arguments. For the reasons to be recorded later on, instant criminal revision application is dismissed. The impugned judgment dated 31.12.2008, passed by learned Civil Judge & Judicial Magistrate-I, Tando Adam in Criminal Case No.117 of 2006 (Re: The State V Muhammad Uris) emanating from Crime No.28/2003, registered at Police Station Berani, under section 353, 337-F(i), 504 PPC, whereby Applicant was convicted u/s 353, 337-F(i), 504 PPC and sentenced to suffer R.I for two years and fine of Rs.5000/-, in case of non-payment of fine, the Applicant shall further suffer S.I for six months and was also awarded sentence in offence u/s 337-F(i) PPC to pay Daman of Rs.10,000/- as the expenses of hospitalization and mental anguish suffered by the complainant and until Daman is paid in full, the convict be kept in jail and dealt with in same manner as it sentence to simple imprisonment, as well as impugned judgment dated 23.01.2009, passed by learned Sessions Judge, Sanghar in Cr. Appeal No. 01 of 2009 (Re: Muhammad Uris V The State) whereby he maintained the aforementioned judgment of the trial Court, are hereby upheld. Applicant is present on bail in terms of orders dated 24.04.2009. He is taken into custody and remanded to jail to serve out the sentence as awarded to him by the learned trial Court in its judgment dated 31.12.2008 and maintained by the learned appellate Court vide judgment dated 23.01.2009. The bail bonds furnished by the Applicant are cancelled and surety stands discharged.”

JUDGE

S