

THE HIGH COURT OF SINDH, CIRCUIT COURT, AT HYDERABAD.

Before:

Mr. Justice Miran Muhammad Shah.

Criminal Appeal No.S-46 of 2023

Appellants	:1.	Hassan son of Haneef Leghari.
	2.	Ali Hassan son of Peeral Leghari. Through Mr. M. Saleem Leghari, advocate.
Respondent	:	The State. Through Ms. Sana Memon, Additional Prosecutor General, Sindh.
Date of hearing	:	13.05.2025.
Date of Judgment	:	23.07.2025.

JUDGMENT

Miran Muhammad Shah, J:- Through this Criminal Appeal, appellants Hassan son of Haneef Leghari and Ali Hassan son of Peeral Leghari have called in question the Judgment dated 01.09.2018 passed by the learned 1st Additional Sessions Judge, Dadu, in Sessions Case No.32 of 2013 (Re: The State vs. Hassan and others) arising out of crime / F.I.R No.36 of 2012, registered at Police Station Johi, for an offence under Sections 302, 324, 114, 504, 147, 148 and 149 PPC, whereby both the appellants were convicted and sentenced to suffer Life Imprisonment with directions to pay fine of Rs.100,000/- each to the legal heirs of deceased Ghulam Murtafa. In case of non-payment of fine, they shall further suffer S.I for six months more each with benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case are that on 28.03.2012 at 2130 hours, the complainant namely Muhammad Azam Leghair lodged an FIR, stating that he is a zamindar. Approximately two years ago, the accused Hassan Leghari and others had allegedly committed zina with his sister Mst. Zulekhan for which a case was registered against them at the Police Station Johi and the matter is currently pending before the Court of law. The accused Hassan and his accomplices had been pressuring the complainant's party to withdraw the case but they refused and replied that the matter would be decided by the Hon'ble Court. The accused persons had previously quarreled with the complainant's party on two occasions, during which Rustam Leghari and Muhammad Usman

sustained injuries and separate cases were registered at P.S Johi regarding those incidents. On 28.03.2012, the complainant along with his uncle Mustafa (aged about 35 years) was travelling on one motorcycle, while his other uncle Muhammad Ayoub and paternal uncle Muharram were on other motorcycle. When they reached between the banks of watercourse No.5 and 6 of the 9th Shakh at about 0830 hours, they saw the accused persons namely Muhammad Hassan armed with 44 a Rifle, Umar armed with a 222 Rifle, Ibrahim @ Abroo with a Gun, Ayoub with a Rifle and Ali Hassan, Meeral @ Meeran, Aslam, Allahditto and Mehboob all armed with guns were standing there. At that moment, accused Ali Hassan abused the complainant's party and instigated the other accused to commit their murder. The complainant's party got down from their motorcycles. Thereafter, on the instigation of accused persons Ali Hassan and Hassan straightly fired from their weapons at the complainant's party, causing injuries to Ghulam Mustafa, who fell down to the ground. The complainant party took cover near the watercourse while all the accused persons directly continued to fire directly at them within the intention to kill. Meanwhile some passersby reached at the scene, prompting the accused, who were still abusing and raising slogans, to flee. Thereafter, complainant found that Ghulam Mustafa had sustained a firearm injury behind his right ear near the temporal region. After arranging for transport, the injured Ghulam Mustafa was taken to Civil Hospital, Dadu where he succumbed to his injuries. Consequently, the present FIR was lodged against the accused persons.

3. On completion of usual investigation, the police submitted final report under Section 173 Cr.P.C against the accused/appellant. The formal charge was framed against the present appellants/accused persons and on 06.01.2018 an amended charge was also framed against the present appellants/accused persons, to which they pleaded not guilty and claimed trial. In order to prove a charge, prosecution examined as many as four (04) witnesses, which include PW No.1/Dr. Sikandar Ali at Ex.23, PW No.2 Muharram at Ex.24, PW No.3 Balu Khan at Ex.25 and PW No.4 Rizwan at Ex.26. All the Prosecution witnesses during evidence produced numerous documents, which were exhibited. The Statement of appellants/accused persons U/s 342 Cr.P.C were recorded, whereby they denied the allegations of prosecution in terms of Section 342

Cr.P.C, but they neither testified on oath nor called any defense witness(s). They claimed their false implication and pleaded their innocence.

4. After hearing the learned State counsel, learned counsel for appellants/accused persons as well as assessment of evidence available, the learned trial Court passed the Judgment dated 01.09.2018, convicted and sentenced the appellants/accused persons as stated above. Hence, the appellants/accused persons preferred the instant Criminal Appeal against the impugned Judgment.

5. The facts of the case have been succinctly stated above, and the evidence presented before the trial court is comprehensively detailed in the impugned Judgment. To avoid repetition, I will refrain from reiterating them here. Instead, I will address the relevant aspects in our findings.

6. The learned counsel for appellants/accused persons has primarily argued that there are major contradictions in the evidence of the prosecution witnesses, which were ignored by the learned trial Court while deciding the impugned Judgment; that the judgment of conviction is against the law and facts is not sustainable in eyes of law; that the prosecution failed to prove the case against the appellants/accused persons; that the learned trial Court did not properly appraise and appreciate the evidence in its true respective, in accordance with the safe administration of criminal justice, which require that the benefit of doubt be given to the accused. It is well-settled principle of law that is not necessary for the entire prosecution case to be doubtful even a single reasonable doubt is sufficient to invoke the golden rule of granting the benefit of doubt; that the impugned judgment of conviction is also contrary to the well-established and widely recognized principle of "Safe Administration of Criminal Justice" which mandates that the benefit of doubt must be extended to the accused and it is a settled principle of law that it is not necessary for the entire prosecution case to be doubtful even a single reasonable doubt is sufficient to invoke the golden rule of 'benefit of doubt'; that this principle was entirely ignored by the learned trial Court while recording the judgment of conviction and the learned trial Court also failed to appreciate the well-established

principle of law that when a set of evidence is disbelieved with respect to some of the accused persons, the same evidence cannot be relied upon to convict the remaining accused without independent corroboration. On this settled principle of law, the conviction recorded against the present appellants while acquitting other co-accused persons, on same set of evidence, is sufficient to extend the benefit of doubts to the present appellants; that the learned trial Court also failed to appreciate that the learned trial Court himself observed that the private witnesses had not come forward with the full and complete truth. In fact, it was categorically noted by the trial Court that one group of accused persons had been falsely implicated as an act of revenge. Such findings were and continue to be sufficient to apply the golden rule of benefit of doubt in favour of the present appellants. However, this was entirely ignored by the learned trial Court insofar as the appellants are concerned. Therefore, the impugned judgment of conviction to the extent it pertains to the appellants is not legally sustainable; that the learned trial Court entirely failed to appreciate the relevant facts, particularly that the allegations against the present appellants were not supported by any independent corroboration. In appreciating the floating facts that the allegations against the present appellants found no independent corroboration. Even the recovery of empty shells from the place of occurrence was sufficient to cast serious doubt on the prosecution's version. Furthermore, the complainant in his testimony stated that *"At the time of incident I was standing at the distance of 02/03 feet from deceased Ghulam Mustafa and accused did not fire up to 04/05 minutes."*, but surprisingly the complainant did not sustain any injury, which has consistently raised serious doubt regarding his alleged presence at the spot. However, this aspect was not properly appreciated by the learned trial Court; that the Court entirely failed to consider that there was admitted enmity between the parties; that the FIR was lodged with considerable delay and that the private witnesses were unable to establish their presence at the scene at the relevant time; that all these factors were sufficient to raise reasonable doubts and as such, the proper administration of criminal justice required that the benefit of those doubts be extended to the appellants. However, the learned trial Court failed to do so. Furthermore, the learned trial Court also

failed in appreciate that the alleged eye-witnesses had a motive to falsely implicate the appellants/accused persons, a fact even acknowledge by the trial Court in relation to the acquitted co-accused, therefore, it was not a fit case for recording convictions based on the testimony of witnesses, who had already been disbelieved, at least to the extent of one set of accused persons; that the learned trial Court also overlooked the fact that all private witnesses were closely related to one another, making it legally unsafe to rely on such testimony in the absence of independent corroboration, which is prima facie lacking in the instant case; that the learned trial Court also failed to appreciate that the ocular account, having been disbelieved to extent of one set of accused persons, lacked any independent corroboration from medical evidence, recovery or other corroborative evidences and this is particular significant as the allegations against the acquitted accused persons also involved the act of firing. Furthermore, the learned trial Court did not properly consider the material contradictions in the ocular account especially regarding the witnesses' presence at the scene and their manner of observing the incident, when compared to the documentary evidence such as the site sketch. These discrepancies were sufficient to invoke the golden rule of 'benefit of doubt'; that the learned trial Court failed to appreciate the fact that the prosecution (complainant party) did not present its case in two distinct parts but rather as a single, unified version, therefor, once the prosecution's case was disbelieved or at the very least, found doubtful for some of the specifically nominated and acquitted the co-accused, it was no longer safe to convict the appellants on the same evidence; that the learned trial Court also failed to apply the settled principle of weighing the prosecution and defence cases side by side by placing them in juxtaposition for proper comparative assessment; that the impugned judgment of conviction is a pure case of non-reading and misreading of the available material and circumstances couple with an incorrect interpretation of the principles for appreciation of evidence, hence, the judgment is not sustainable in law. Furthermore, the conviction of the appellants as recorded in the impugned judgment has resulted in a gross miscarriage of justice and therefore, the impugned judgment is liable to be set aside in the larger interest

of justice.

7. On the other hand, Ms. Sana Memon, Additional Prosecutor General, Sindh opposed the appeal. She argued that the testimonies of the PWs remained unsheltered and fully corroborated the version of the complainant. There is no contradiction between the medical and ocular evidence, despite the case being based on circumstantial evidence. The chain of circumstances inspires confidence regarding the commission of the offence by the present appellants/accused. She further contended that there was no delay in the lodging of the FIR. Therefore, she prayed for the dismissal of the instant Criminal Appeal.

8. I have carefully heard learned counsel for the parties and scanned the entire evidence as well as the record.

9. There are Contradictions in the Evidence of PWs despite being related to complainant and being interested. The Ocular accounts lacked consistency (e.g., complainant's claim of being 2-3 feet from the deceased yet escaping injury during 4-5 minutes of firing). Such inconsistency is fatal for the prosecution case. The learned trial court ignored the Benefit of Doubt factor completely: The trial court violated the golden principle of criminal justice i.e benefit of doubt must favor the accused" Even when there is a single piece of evidence which brings doubt to the prudent mind about the guilt of the accused such benefit must go to the accused (Muhammad Aslam v. The State, 2017 SCMR 123). The Acquittal of Co-Accused: Convicting the appellants on the same evidence that exonerated others is unsustainable (Muhammad Akram v. The State, PLD 2019 SC 1). This case against present accused died its own death on the very day of the pronouncement of judgment when based on same evidence one set of accused were acquitted whereas the other set of accused (present Appellants) were convicted. This aspect shattered the case of prosecution miserably in the impugned judgment as no convincing conclusion was given while distinguishing between the two set of accused who were acquitted and the other one being convicted. Lack of Corroboration: No independent witness, medical evidence, or recovery (e.g., empty shells) linked the appellants to the crime. The medical evidence did

not show any injury which could cause death to the deceased. The injuries were shown to be on non-vital part of the body. Witnesses were closely related and partisan. Enmity and False Implication. Admitted enmity tainted testimony (Ali Sher v. The State, 2015 SCMR 1453). The trial court itself noted false implication of one accused group based on filing of zina case by the accused party against the complainant party. The enmity is a double edged sword which must benefit the accused. Hence based upon the analysis given below that:-

1. The prosecution must prove guilt "beyond reasonable doubt" (Abdul Wahid v. The State, PLD 2016 SC 501). A single reasonable doubt warrants acquittal.
2. Principle of Benefit of Doubt: Where evidence is shaky or contradictory, the accused must be given its benefit (State v. Abdul Ghaffar, PLD 2021 SC 42).
3. Impact of Co-Accused Acquittal: When the same evidence exonerates some accused, convicting others requires independent corroboration. Here, no such corroboration exists.
4. Quality of Witness Testimony: Testimony of interested witnesses (relatives/enemies) requires cautious scrutiny. The witnesses here were closely related and hostile.
5. The complainant's improbable escape from injury despite proximity to the deceased undermines credibility (State v. Muhammad Iqbal, 2020 P.Cr.L.J. 1).
6. Medical and Circumstantial Evidence: No recovery of weapons or ballistic report linked the appellants to the crime. Empty shells found at the scene were not tied to them.
7. Medical evidence did not corroborate the prosecution's version of prolonged firing. Hence based on the above analysis and observations I am firm on my opinion that the prosecution has failed to prove guilt beyond reasonable doubt and the learned trial court has erred in ignoring material points while convicting the present appellants.

10. In such circumstances, the present appeal in hand is **ALLOWED**. The conviction and sentence under the impugned judgment are **SET ASIDE**. The appellants namely Hassan son of Haneef Leghari and Ali Hassan son of Peeral Leghari are **ACQUITTED** of all charges. They shall be released forthwith, if not required in any other case.

JUDGE