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ORDER SHEET

THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO

Cr. Appeal No. S-66 of 2018

Date

Order with signature of Judge

For hearing of main case.

21-02-2019

Mr. Muhammad Afzal Jagirani, advocate for appellants along with appellants (on bail).

Mr. Abid Hussain Qadri, learned counsel for the complainant a/w complainant Mst. Kainat.

Mr. Aitbar Ali Bullo, D.P.G.

Heard arguments.

Admittedly the prosecution failed to prove the charge in respect of Section 354-A P.P.C, therefore, all the accused have been acquitted from the charge of Section 354-A P.P.C. As far as application of Section 504 P.P.C is concerned, no word of abuse has been mentioned in the F.I.R nor was uttered by the complainant as well as her witness in their respective evidence before the trial court. The ingredients for application of Section 506/2 P.P.C are also lacking in prosecution case as well as evidence; however, the appellants have been convicted for Section 504 and 506/2 P.P.C with sentence. Suffice it to say that trial court while discussing evidence of the prosecution has found the appellants to be guilty for the offence under Section 355 P.P.C which is beyond averments of F.I.R as well as not mentioned in charge. If according to the view/opinion of trial court, any offence in respect of the Section 355 P.P.C was established then the trial court should have framed the charge afresh by adding section 355 P.P.C and that has not been done. I could not gather wisdom behind the application of Section 355 P.P.C as well conviction of the appellants for rest of sections, namely, 504 and 506/2 P.P.C including Section



355 P.P.C as the basic ingredient as manifest from bare reading of two sections was not made out.

For the detailed reasons to be recorded later-on, instant criminal appeal is allowed. Impugned judgment dated 31.07.2018 handed down by II-Additional Sessions Judge, Mehar in Sessions Case No.457/2017, re: State V/S Ranjhan and others, being outcome of Crime No.83/2017 of P.S. K.N. Shah, under Sections 506/2,354,504,34 P.P.C is hereby set-aside. Consequently, the appellants who are present before the court on bail are hereby acquitted of all the charges. The appellants are present on bail, their bail bonds are cancelled and sureties furnished by them are also hereby discharged.

Judge

Abdul Salam/PA

Above Order complied
on dt. 05.07.2019

Accountant
31.07.18



IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO.

CrI. Appeal No.S-66 of 2018.

Appellant	Ranjhan & others through Mr. Muhammad Afzal Jagirani, Advocate.
The State	through Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh
Complainant	Mst. Kainat, through Mr. Abid Hussain Qadir, Advocate.
Date of hearing	21.02.2019
Date of judgment	21.02.2019

JUDGMENT

MUHAMMAD SALEEM JESSAR, J:- The appellants are aggrieved by judgment dated 31st day of July, 2018, passed by II-Additional Sessions Judge, Mehar, in Sessions Case No.457 of 2017, emanating from Crime No.83/2017 of P.S. K. N. Shah, whereby the appellants were convicted and sentenced as under:

- i) R.I one year for offence under section 355 PPC,
- ii) R.I for six months for offence u/s 504 PPC, and
- iii) R.I for two years for offence u/s 506 (2) PPC.

It was directed that all sentences shall run concurrently.

2. Facts of the case are that Complainant Mst. Kainat, lodged F.I.R No. 83/2017 at P.S K.N. Shah, on 22.05.2017 about an occurrence which allegedly took place on 14.05.2017 after getting orders from Justice of Peace for offences under section 354/A, 504, 506/2 read with section 34 PPC, stating therein that about three years back her marriage took place with one Amjad Solangi,

however, because of ill attitude and behavior of her husband she filed suit for dissolution of marriage and got decree in her favour for dissolution of marriage, hence Amjad Solangi was annoyed with her. According to complainant thereafter she married with one Irfan Solangi. On 14.05.2017 complainant along with her mother Mst. Zeba and her brother Azhar Ali went to hospital at K. N. Shah for treatment because complainant was pregnant and after treatment they were returning back, and while they were on their way back on motorcycle on link road KN Shah to Sita at 3:00 pm they arrived near brick kiln where one white color car arrived, which stopped in front of them, hence complainant party stopped motorcycle, from said car accused Ranjhan and Amjad empty handed, Shahnawaz with repeater gun, Nawaz s/o Ranjhan with pistol alighted, they hurled abuses at the complainant and accused Amjad claimed about complainant to be his wife and asked her to sit in the car. According to complainant she disclosed to the accused Amjad that she is no more his wife after dissolution of marriage and she refused to sit in the car; however, accused Amjad and Shahnawaz tried to force the complainant inside the car hence complainant raised cries, in such scuffle complainant's clothes were torn, she was disgraced, allegedly her parts of body were exposed because her clothes were torn, complainant's mother and brother pleaded to accused persons, other persons crossing from the road also arrived there. Thereafter complainant was left by the accused while issuing her threats that she would be killed and they went away in the same car. After registration of F.I.R the investigation resulted in challan. Thereafter, the case was transferred to II-Additional Sessions Judge, Mehar on 08.09.2017 from the Court of learned Sessions Judge, Dadu for its disposal according to law. Documents of police papers were supplied to accused at Ex.1. A charge for offence u/s 354/A, 506/2, 504 PPC was framed against accused at

Ex.2, to which they pleaded not guilty and claimed to be tried vide their pleas at Ex.3 to 6.

3. In support of its case, prosecution examined the complainant Mst. Kainat at Ex.8, she produced her statement recorded by police prior to registration of F.I.R at Ex.8/A, F.I.R No.83/2017 Police Station KN Shah at Ex.8/B, certified true copy of order dated 22.05.2017 in CrI.M.A No.876/2017 filed by complainant seeking directions for registration of F.I.R at Ex.8/C, copy of order dated 16.09.2016 in CrI.M.A No.1419/2016 filed by the complainant for legal protection; PW-2 Mst. Zeba the mother of complainant at Ex.9; Imran Ali Solangi the mashir of place of wardat and production of torn clothes of complainant at Ex.10 who produced the mashirnama of place of wardat at Ex.10/A, mashirnama of clothes at ex.10.B; PW-3-A.S.I Ahmed Bux, I.O. of the case at Ex.11. Thereafter, the A.D.P.P closed prosecution's side vide Ex. 12.

4. The statements of accused were recorded under section 342 Cr.P.C. at Ex.13 to 16 respectively, wherein they denied prosecution case and termed the same to be false and result of matrimonial dispute. None of the accused led evidence in defence nor examined himself on oath to disprove the charges in terms of section 340(2) Cr.P.C.

5. The learned trial Court, after formulating points for determination and deciding them against the appellants, convicted and sentenced the appellants as above, hence this criminal appeal challenging the impugned Judgment.

6. I have heard the learned counsel for the appellants as well learned DPG and have perused the record with their assistance.

7. Learned counsel for the appellants vehemently submitted that the impugned Judgment suffers from irregularity and illegality and the same is not sustainable in the eye of law. He also emphasized that though the Charge Sheet

is silent about any crime falling within the ambit of section 355, PPC, but still the trial Court has convicted and sentenced the appellants under section 355, PPC which is a grave illegality. He also submitted that Prosecution has miserably failed to prove its case even under sections 504 and 506(2), PPC as ingredients for such offences have not be shown to be present. Therefore, learned counsel prayed for setting aside the impugned judgment and acquittal of the appellants.

8. On the other hand, learned DPG fully supported the impugned judgment and submitted that names of the appellants are mentioned in the FIR with specific role assigned to them as well as that there is no case of mistaken identity as the complainant knows the appellants well. He also submitted that the evidence of the prosecution witnesses is consistent and trust worthy as well as confidence inspiring, therefore, he prayed that instant criminal appeal may be dismissed and the conviction and sentence awarded to the appellants may be maintained.

9. In order to resolve the controversy regarding application of section 355, PPC, it would be advantageous if the said section is reproduced, which reads as under:

"355. Assault or criminal force with intent to dishonour person, otherwise than on grave provocation: Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

10. A perusal of above quoted section 355 of the PPC, reveals that when a person assaults or uses criminal force to any person in order to dishonor that person without any grave and sudden provocation, he is to be punished under section 355, PPC for a term which may extend to two years R.I. or with fine, or both. In the present case, the appellants have been convicted and sentenced

under section 355, PPC to suffer R.I for one year. However, it has been observed that the charge framed against the appellant did not find mention of any offence under section 355, PPC. The charge framed in the instant case reads as under:

"That on 14.05.2017 at 1500 hours at Link road leading from K.N. Shah to Sita Road near brick kiln being armed with deadly weapons assaulted, used criminal force to the complainant and stripped her clothes and thereby you have committed the offences punishable under section 354-A PPC within the cognizance of this Court.

And that I further charge you, that on 14.05.2017 at 1500 hours at Link road leading from K.N. Shah to Sita Road near brick kiln issued threats of murder / dire consequences to complainant party, thereby you committed offence punishable under section 506/2 PPC and within the cognizance of this Court.

And that I further charge you that on 14.05.2017 at 1500 hours at Link road leading from K.N. Shah to Sita Road near brick kiln, insulted complainant party by hurling abusive language with them and thereby gave provocation to them intentionally that such provocation will cause them to break the public peace or to commit any other offence and that thereby you committed offence punishable under section 504 PPC and within cognizance of this Court.

And that I hereby direct that you be tried by this court on the aforesaid charges."

11. A perusal of the above quoted charge (Exh.2, page 13 of paper book) reveals that the appellants were directed to be tried on three counts i.e. for offences under section 354-A, PPC, for offence under section 506/2, PPC and for offence under section 504, PPC. There is no mention of any offence falling within the ambit of section 355, PPC. The last sentence of the charge, which states "And that I hereby direct that you be tried by this court on the aforesaid charges" clearly stipulates that the appellants are to be tried for the offences under sections 354-A, 506/2 and 504, PPC only and not for any offence under section 355, PPC.



12. The superior Courts have held that Charge is the precise formation of specific accusation and its purpose is to tell the accused as precisely and concisely what the prosecution intends to prove against him. The object of framing charge is to afford defence an opportunity to concentrate its attention on the case that it has to meet. Thus, when a charge is framed against an accused in a criminal case, the prosecution puts him on notice as to what is the case of the prosecution so that the accused can defend it. How and why the appellants were convicted and sentenced under section 355, PPC, which was not mentioned in the charge at all, is beyond comprehension. Either it may be attributed to gross negligence on the part of the trial Court or it may be result of incompetence. In both cases it is deplorable. Such judgments not only increase the pendency of work manifold but it also results into misery to the litigants who, in turn, lose their faith in the judiciary.

13. If, for the sake of argument, it may be presumed that during recording of evidence, the trial Court was of the view that offence under section 355, PPC has been committed by the appellants, then the proper course would have been to reframe the charge by including section 355, PPC so that the appellants would not have been taken by surprise and the judgment delivered in the instant case would not be suffering from patent illegality. There is no cure for such illegality except to set aside such illegal and unlawful conviction and sentence. Accordingly, conviction and sentence awarded to the appellants under section 355, PPC is hereby set aside.

14. Another aspect of the case is that the case of the complainant is that she was being forced to sit in the car by accused Amjad and Shahnawaz and it was only through intervention of some local persons, who were attracted by the hue and cries raised by the complainant as well as her mother, that she managed to come out of the car. In the scuffle her clothes were torn; however, miraculously

she did not suffer any injury or even a scratch on her part in the scuffle. In case the complainant was wearing the clothes produced by her during evidence, which were torn from two places, then it is natural that in the scuffle with two male persons, who forced her to sit in the car, she should suffer some injury, although it may be minor one but surprisingly it is stated that she did not suffer any injury during the scuffle.

15. It is also strange to note that during this entire episode, when two appellants were trying to force the complainant into their car, brother of the complainant was observing the scuffle as a silent bystander and did not act in a violent manner. As per the mother of the complainant, he even did not raise any cry and there is nothing on record to suggest that he made any attempt to save his sister from the assailants. He was also not examined as a witness. This creates a serious doubt in the case of the prosecution. So far as the charge regarding offence falling under section 354-A, PPC is concerned, since the appellants have been acquitted of this charge, therefore, it would be an exercise in futility to further dwell on this point.

16. As regards the offence falling under section 504, PPC is concerned, the appellants have been charged that they hurled abuses at the complainant party and thereby provoked them to break public peace or to commit any other offence. However, apart from the verbal assertion of the complainant, there is nothing on record to show as to what abusive language was used by the appellants. Two alleged eye witnesses of the incident, namely, complainant Kainat and her mother Zaiba, have been examined by the prosecution, however, none of them has said a single word which could fall in the category of abusive language. In case they were feeling shy to utter any such word, brother of complainant, namely, Azhar Ali, should have been examined by the prosecution in order to prove the allegation of abusive language allegedly used by the

appellants. However, since neither any word of abuse has been mentioned in the FIR nor any prosecution witness made any specific reference to any such word in his deposition, therefore, the conviction and sentence under section 504, PPC also stands not proved and, accordingly, the same is hereby set aside.

17. Lastly, I will turn my attention to allegation falling within the ambit of section 506/2 PPC. The case of the complainant is that on 14.5.2017, she was going along with her mother and brother on a motorcycle from hospital to her home via Sita Road and when they reached near brick kiln out of K.N. Shah Town, at about 3.00 p.m., they were stopped by the appellants who were armed and appellant Amjad tried to forcibly sit her in his car which was standing nearby. However, the complainant refused and she as well as her mother and brother raised cries on which some persons were attracted and accordingly the complainant came out of the car and the appellants went away. While accused Amjad is former husband of the complainant, accused Ranjhan is her former father in law and also related to her mother. It has come on record that accused Amjad gave Rs.200,000/- to the parents of complainant along with gold ornaments. This is denied by the complainant but even she admitted in her cross examination that Rs.50,000/- along with some gold ornaments were given by the accused Amjad to her parents. Thus, there are two versions of the case and it cannot be ignored that the complainant as well as her mother Mst. Zaiba have admitted that appellant Amjad gave Rs.50,000/- with some gold ornaments to her parents for her marriage with him. This might have raised an issue between the parties that since the marriage has been dissolved by the complainant herself by way of khula, therefore, the appellants might have called upon the complainant that she or her parents must return the money and gold ornaments which were given by the appellant Amjad to the complainant and her parents. While complainant states that appellants were duly armed, mother of the

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complainant clearly stated in her deposition that appellant Razqhan was not armed. It may also be noted that the only witnesses against the appellants are mother and daughter, and no independent witness was produced by the prosecution. Since nothing incriminating was recovered from the appellants, therefore, allegations that the appellants resorted to criminal intimidation has not been proved. Therefore, I am of the considered view that the prosecution has not been able to prove its case under section 506, PPC.

18. Apart from above improbabilities, there are material contradictions in the evidence brought on record by the prosecution.

19. PW-1, complainant Mst. Kainat, stated in her deposition that she raised cries as well as her brother and mother also raised cries on which three persons came from the western side for her rescue. However, her mother, Mst. Zaiba (PW-2) states in her deposition that her son Azhar Ali did not raise cry, however, she and her daughter raised cries due to which 5 to 6 six persons came to the place of wardat.

20. The complainant stated in her deposition that the motor cycle on which they went to hospital, was a hired one while PW-2, mother of the complainant, stated that the motor cycle was arranged by her son Azhar Ali from the clinic of Dr. Sikandar Lakhair.

21. Similarly, there is contradiction between the depositions of complainant and her mother with regard as to who raised cries. While the complainant in her deposition stated that she, her mother and brother Azhar raised cries, the mother of the complainant stated that my son Azhar did not raise cry but she and her daughter raised cries. Since both these witnesses were allegedly present on the spot, therefore, there is no justification in such differing statements by them on the same point.



22. Complainant in her deposition stated that during scuffle with accused Amjad and Shahwanaz, her shirt was torn and she produced her shirt, shameez and trouser before the police which was sealed. However, when the parcel was opened it contained only shirt and shameez and no trouser (shalwar) was found therein.

23. There is also contradiction as to who produced the clothes before the police as the complainant states that she produced the torn clothes before the police herself which were sealed by the police, however, PW-4, ASI Ahmed Bux Brohi states in his deposition (Exh. 11) that the clothes of the complainant were produced by her brother which were collected in the presence of mashirs Imran Ali and Zulfiqar Ali and were sealed.

24. PW-3 Imran Ali is mashir of inspection of place of wardat. He stated in his deposition that he went on foot for purchase of daily use articles and came at the place of wardat where he saw rush of people and as soon as he arrived there co-mashir Zulfiqar also reached there. However, the complainant stated in her deposition that mashirs had also accompanied alongwith us right from Police Station for inspection of wardat. PW-4, ASI Ahmed Bux Brohi (page 55 of paper book) clearly stated in his deposition that "Mashirs cited in mashirnama of wardat were taken by me right from police station in police mobile"

25. There is also contradiction, and a huge one, between the statement of the complainant and that of mashir Imran with regard to the number of people available at the place of wardat at the time of inspection. The complainant, in very clear and unequivocal terms states (page 27 of the paper book) that There was no person at brick kiln when police inspected wardat, however, mashir of place of wardat, namely, Imran Ali, stated in his deposition (page 42 [back side of page 41] of paper book) "even more than 100 people had gathered at place of wardat during inspection of police."

26. Imran Ali (PW-3) was mashir of inspection of place of wardat and mashir of production of clothes. Mashir Imran Ali deposed that place of wardat was inspected by police at 7:15 pm while complainant first stated that place of wardat was inspected at 3-00 p.m. and then she stated the time to be 7-00 p.m. and then she said the place of wardat was inspected at 7-30 p.m. Imran Ali further deposed that complainant had shown place of wardat to police, as soon as he arrived there, co-mashir Zulfiqar also arrived there on motorcycle. However, PW-4, ASI Ahmed Bux Brohi (page 55 of paper book) clearly stated in his deposition that "Mashirs cited in mashirnama of wardat were taken by me right from police station in police mobile" He further deposed that complainant handed over clothes of golden color consisting on qameez, shalwar without duppata and he also identified the shirt along with shameez taken out from the parcel. However, PW-Ahmed Bux Brohi contradicted him by stating in his deposition that complainant's brother produced the clothes when mashir's cited in mashirnama were with him.

27. PW Ahmed Bux Brohi also admitted that he did not give notice to any private person present at the time of inspection to record their statements as to whether the occurrence has actually taken place or not. This proves that the investigation was not done properly by the I.O. as even no efforts were made to incorporate some private witness.

28. The effect of the above contradictions in the evidence of prosecution witnesses and infirmities / flaws in the prosecution case is that serious dents have been put and doubts have been created in the prosecution case. It is well settled principle of law that the prosecution is bound under the law to prove its case against the accused beyond any shadow of doubt. In view of aforesaid defects and contradictions in the prosecution evidence, it can safely be held that the prosecution has not succeeded in discharging such obligation on its part. It is

well settled principle of law that the accused is entitled to be extended benefit of doubt as a matter of right. In the present case, there are many circumstances / contradictions which create doubt in the prosecution case. An accused cannot be deprived of benefit of doubt merely because there is only one circumstance which creates doubt in the prosecution story. In the case reported as Tariq Pervaiz vs. The State 1995 SCMR 1345 the Honourable Supreme Court held as under :-

"The concept of benefit of doubt to an accused is deep-rooted in our country. For giving him benefit of doubt, 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 a matter of right."

29. Since main ingredients for application of section 354-A, 504 and 506/2 PPC are lacking in FIR even in the evidence, therefore, it can safely be hailed that police have wrongly added these sections. Besides, the clothes produced are short of a piece as well not showing mark of a drop of blood to substantiate claim of prosecution. The trial court without charge or any substance even in absence of specific evidence has convicted the appellants as per its/his own thinking, which too, not find support from the record. All these discrepancies, major contradictions are sufficient to discard the prosecution evidence. Hence, the conviction and sentence awarded to appellants vide impugned judgment, cannot be maintained. Consequently, for the detailed reasons to be recorded later on, this criminal appeal was allowed by my short order dated 21st February, 2019, the impugned judgment dated 31st July, 2018 passed by II-Additional Sessions Judge, Mehar in Sessions Case No.457 of 2017 (State v. Ranjhan and others), being outcome of FIR No.83 of 2017 registered at PS K.N. Shah, under sections 506/2, 354, 504/34, was set aside and the appellants were acquitted of all the charges. Bail bonds of the appellants were cancelled and sureties furnished by them were also discharged.

30. Above are the reasons for the short order dated 21st February, 2019.


Judge