

IN THE HIGH COURT OF SINDH, KARACHI

Cr. Appeal No.471 of 2004.

Present:

Mr.Justice Nazar Akbar-J

Appellant : Muhammad Siraj through Mr.Fazlur Rehman, Advocate.

Respondent : The State through Mr.Rahat Ahsan, D.P.G.

Date of hearing : 07.04.2016.

Date of Judgment : 07.04.2016.

J U D G M E N T.

Nazar Akbar, J.:- Through this Criminal Appeal, the appellant Muhammad Siraj has assailed the judgment dated 04.05.2004 passed by learned Sessions Judge, Malir in Sessions Case No.273 of 2003 arising out of Crime No.66 of 2003 of P.S Ibrahim Hyderi for committing offence U/S 398, 34 PPC, whereby the appellant has been convicted and sentenced to undergo rigorous imprisonment for seven years and also to pay fine of Rs.50,000/- and in default of payment of fine to undergo simple imprisonment for six months more.

The facts of the case are that the complainant lodged F.I.R on 30.06.2003 at 03.20 p.m stating therein that on that day at about 1.45 p.m, three armed persons intruded into his house out of whom two were armed with T.T pistols and suspecting them dacoits, they raised cries on which the neighbours and police officials of Bhatta Colony

Check Post arrived there immediately. The culprits on seeing this took to their heels but the complainant party chased them and ultimately captured two of them who came out to be the accused namely Muhammad Ikram and Siraj, while the third one succeeded in making his escape good. He further disclosed that from accused Siraj was arrested with one T.T pistol and three live bullets were also recovered from him. Thereafter both apprehended accused alongwith weapon were produced before police and the F.I.R was registered against them. After registration of F.I.R, SIP Niaz Muhammad Niazi of Police Station Ibrahim Hyderi inspected the place of occurrence and prepared such mashirnama in presence of the mashirs namely Waseem and Muhammad Siddiq.

After registration of F.I.R the investigation followed and on completion thereof the case was challaned in the trial Court. Formal charge was framed as Ex.2 against the accused/appellant Muhammad Siraj and Mohammad Ikram under Section 398/34 PPC to which they pleaded not guilty and claimed to be tried vide their statement as Ex.3&4 respectively

At trial, the prosecution examined P.W-1 the complainant Waseem as Ex.5, who produced the mashirnama of arrest of accused persons and recovery as Ex.5/A, F.I.R as Ex.5/B and mashirnama of inspection of place of occurrence as Ex.5/C, P.W-2 Muhammad Aslam at Ex.6, P.W-3 ASI Akhtiar Ali as Ex.7, P.W-4 Mohammad Hanif as Ex.8, P.W-5 ASI Hussain Bux as Ex.9 and P.W-6 SIP Niaz Muhammad Niazi as Ex.10. Thereafter the learned DDP closed the side of prosecution vide statement as Ex.11. The statements of accused persons were recorded U/S 342 Cr.P.C as Exs.12 & 13 in which the appellant and the other convictee Muhammad Ikram denied the charge and also offered themselves to special oath under Section 340 (2) Cr.P.C but did not examine any witness in their defence.

The learned trial Court, on completion of trial, heard learned counsel for the parties and passed the judgment which is assailed through instant criminal appeal.

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

It is mainly contended by learned counsel for the appellant that the impugned judgment is contrary to law, facts and equity, hence not maintainable and liable to be set aside; material contradictions appeared in the evidence deposed by prosecution witnesses, but the same have not been taken in account by the trial court; while passing impugned judgment the learned trial court has given undue weight to the prosecution witnesses and ignored major contradictions in prosecution evidence, which casts grave miscarriage of justice and the learned trial Judge has failed to apply his judicial mind while passing impugned judgment.

Learned D.P.G appearing on behalf of the State has supported the impugned judgment.

From the perusal of record, it appears that as per F.I.R three accused barged into his house when two of them were duly armed with T.T Pistols who on their cries took to their heels but they were chased by complainant party and muhalla people and two of them were apprehended, out of whom one T.T pistol with three live bullets were recovered and then the accused were produced before police where F.I.R was lodged. This totally negates the version of complainant taken by him in his deposition recorded before trial Court in which he stated that he alongwith muhalla people chased accused when police also accompanied in chasing accused and police apprehended the accused when mashirnama was prepared and then the accused were taken to P.S where F.I.R was lodged. Besides, HC Mohammad Aslam and ASI Akhtar Ali also stated in their statements that they were on regular patrolling when they saw a mob of public following three persons who also joined them and police apprehended the accused. As regards the deposition of P.W Muhammad Hanif is concerned, who is the only independent witness, he deposed that on the fateful day, he was going to his house when he heard cries from the house of complainant and then three accused came out who were being chased by complainant and others and police party also reached there and followed accused on which two of accused were apprehended by police. However, he failed to identify the two accused present in Court to be the same and also stated that he has weak eyesight. Under the above scrutiny, the prosecution evidence suffers from major contradictions and casts serious

doubts in the prosecution case. Besides all this, on the face of it, the claim of prosecution that complainant party alongwith muhalla people chased three accused, apprehended two accused and recovered one TT pistol with three live bullets were recovered from present applicant as stated in the F.I.R, appears to be false as it is highly improbable that the accused party despite having two T.T pistols could easily be apprehended by empty handed people. Even private witnesses from mohalla people were not cited as witness except the complainant and one Mohammad Haneef who failed to identify the appellant in trial Court. The complainant was also mashir of arrest and no one from the crowd who chased the appellant came forward to identify the appellant that he was the same culprit. In such scenario, the statements of accused recorded U/S 342 Cr.P.C stating therein that they were arrested from two different places and were challaned only they failed to make payment of bribe to the police, can not be taken out of consideration.

In view of above evidence, the prosecution has failed to prove its case beyond reasonable shadow of doubts and the appellant has been able to make out case for his acquittal on benefit of doubt.

In view of above facts and evidence, the instant criminal appeal was allowed and appellant was acquitted by a short order dated 07.04.2016, these are the detailed reasons for the short order.

JUDGE