

Judgment sheet.  
**IN THE HIGH COURT OF SINDH,**  
**CIRCUIT COURT, HYDERABAD.**  
Cr. Appeal No.S-451 of 2010  
Cr. Jail Appeal No.S-460 of 2010

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
Appellant Saddam Hussain	Through Mr. Imtiaz Ali Chanio, Advocate.
Appellant Abdul Sattar	Through Mr. Nisar Ahmed Chandio, Advocate.
The State	Through Syed Meeral Shah DPG , A.P.G.  None present for complainant.
Date of hearing:	27.09.2017.
Date of decision:	27.09.2017

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**J U D G M E N T :-**

**ABDUL MAALIK GADDI, J-** By this common judgment I intend to dispose of above captioned both appeals arising out from the same Crime No.69 of 2009 for offence under Sections 394, 337-F(i), 34 PPC of P.S Pithoro.

2. Through these appeals the appellants have assailed the legality and propriety of the judgment dated 01.12.2010 passed by the learned Additional Sessions Judge, Umerkot, in Sessions Case Nos.112 and 112-A of 2009 (as juvenile case) of P.S. Pithoro, Re: State vs. Abdul Sattar & another as well as Saddam Hussin respectively, whereby the

learned trial court convicted and sentenced the appellant Abdul Sattar in Sessions Case No.112 of 2009 for offence U/S 411 PPC and appellant Sadam Hussain was convicted and sentenced in Sessions Case No.112-A of 2009 for offence under section 411 PPC and awarded them three years each rigorous imprisonment. Benefit of section 382-B Cr.P.C was also extended to the appellants/accused.

3. Brief facts are that on dated 27.11.2009, complainant Wahid Bux has got registered FIR at P.S Pithoro, stating therein that on 24.11.2009, he alongwith his friend Anwar son of Tharo r/o Pithoro town had gone to Ghulam Nabi Shah on his motorcycle CD-70 AFR, for some work. After finishing work they were going to Umerkot on the motorcycle. When at 11:30 PM, they reached near Abdul Rahim Samejo Rasti Ghulam Nabi Shah-Dhoronaro road, they saw three persons standing with arms, they were (1) Sadam Hussain armed with pistol, (2) Mohram Noohani armed with Repeater, (3) Abdul Sattar Noondani with lathi, they signaled them to stop, they did not stop on which Sadam Hussain fired at them which hit at right leg of Anwar, Mohram Noohani also fired from his repeater which hit complainant. They fell down on the road. Accused Mohram caused lathi blows to them and other accused caused kicks and fists blows. Accused persons robbed their motorcycle and went away. The persons passed through the road informed police and brought the injured to Dhoronaro

hospital, where from injured Anwar was referred to Mirpurkhas hospital. Thereafter, FIR of the incident was lodged. Police after usual investigation challaned the case.

4. At trial in above captioned both cases, the prosecution examined PW-1 Anwar, PW-2 P.C Manzoor Hussain who produced mashirnama of arrest and recovery, mashirnama of place of incident. PW-3 Medical Officer Doctor Tarachand, who produced letter of police, medical certificates of injured Wahid Bux and Anwar. Prosecution further examined PW-4 complainant Wahid Bux, who produced FIR and lastly prosecution examined PW-5 SIP Muhammad Arif Bhatti, thereafter the side of prosecution was closed vide statement as Exh.09 and 10 respectively.

5. Statements of appellants/accused were recorded under section 342, Cr.P.C, wherein they have denied the allegations leveled against them and state that they have falsely been implicated in this case.

6. After hearing the parties' counsel, learned trial court came to the conclusion that the case has been proved against the appellants/accused; he convicted and sentenced them as stated above.

7. The main contention of the learned counsel for the appellants is that impugned judgment of conviction and sentence is perfunctory, opposed to law and facts on record; that the case against appellants is false and has been registered due to enmity; that the complainant/injured/eye-witnesses did not implicate the present appellant/accused in this case, but the learned trial court did not consider the same and convicted the appellant/accused on the basis of evidence adduced by the formal witnesses/police officials. He lastly urged that there are material contradiction in between the prosecution witnesses, but the learned trial court did not consider the same and passed 'botch-up judgment', whereby innocent appellants/accused have been convicted, therefore he prayed for their acquittal.

8. Learned D.P.G under the circumstances of the case has not supported the case of prosecution.

9. I have carefully considered the arguments as advanced by the learned counsel for the parties and carefully scanned the material so available before me. Indeed, in this case the prosecution has examined ocular testimony as well as circumstantial evidence, hence the whole base of the instant case is hooked on the evidence of ocular testimony, such as complainant Wahid Bux and PW Anwar, who both were injured at the time of

incident, but they in their evidence did not support their case, whereby the whole episode of the prosecution case cuts its root and creates doubt into the guilt of accused persons as well as incident. However, it is very surprising to note that the appellants were convicted only on the evidence of formal witnesses / circumstances evidence of police officials for offence under section 411 PPC, but in my humble view that under the above circumstances if the whole incident of prosecution has not come forth in nature so narrated in FIR and the star-witnesses did not support the case, hence the alleged recovery so effected creates apparent doubt in it. For the sake of accessibility the point No.01 of the impugned judgment dated 01.12.2010 is reproduced hereunder:

“Neither complainant Wahid Bux as Exh.07 nor P.W Awar implicated the present accused in robbery. While in the FIR complainant Wahid Bux has assigned specific role to the accused. PW Anwar as Exh.03, deposed that accused present in the Court are not the same. Complainant Wahid Bux also not confirmed whether accused is same or otherwise. In view of the evidence adduced by these PWs no offence for committing robbery and causing hurt to them is made out. Therefore to discuss the medical evidence is wastage of time. Anyhow, answer to this point is in negative being doubtful.”

10. The whole story as stated in the FIR has been denied by the star-witnesses viz. complainant Wahid Bux and injured Pw Anwar, therefore under these circumstances the serious doubt has been created in the case of the prosecution. I have gone through the case

of Tarique Pervaiz vs. the State as reported in 1995 SCMR page-1345 wherein it has been held as under:-

(b) Prohibition (Enforcement of Hadd) Order (4 of 1979)---

---Art.4---Benefit of doubt, grant of---For giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubts---If a simple circumstance creates reasonable doubt in a prudent mind about the guilt of accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right.

11. Similar view has also been taken in the case of Muhammad Akram vs. the State reported in 2009 SCMR 230 which reads as under:-

(c) Criminal trial---

---Benefit of doubt---Principles---For giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts---Single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefit, not as a matter of grace and concession, but as a matter of right.

12. I have also gone through the evidence adduced by the formal witnesses viz. police officials and found that the same is also contradictory on material particulars, therefore the same also cannot be safely relied upon for maintaining order of the trial court.

13. For my above stated reasons, I have no hesitation to hold that the prosecution has failed to prove its case against the appellants

and the learned trial court did not appreciate the evidence properly. Consequently the impugned order is set-aside and the appellants are acquitted from the charge. They are present on bail, their bail bonds stand cancelled and surety discharged. Since, the appellants have been acquitted therefore, office is directed to return the surety papers to the surety after proper verification and identification.

**JUDGE**

Ahmed/Pa