

**JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Criminal Appeal No.S-287 of 2017

Present:-

Mr. Justice Fahim Ahmed Siddiqui

Date of hearing: 29.04.2019

Date of Decision: 29.04.2019

Appellants: Mr. Wazir Hussain Khoso, advocate for appellants along with appellants Muhammad Bachal and Allah Jurio, who are present on bail.

Respondent: The State through Ms. Sana Memon, Assistant Prosecutor General Sindh.

Mian Taj Muhammad Keerio, advocate for complainant along with PWs Mazhar and Muhammad Ismail.

J U D G M E N T

Fahim Ahmed Siddiqui, J.- By passing the impugned judgment dated 20-11-2017 in Sessions Case No. 567/2016, the learned trial Court (Additional Sessions Judge-Ist, Dadu) has convicted the appellants and sentenced them as under:-

- a) All of them under Section 324 PPC rigorous imprisonment for three years and fine of Rs. 10,000/- each to be paid to the injured and in case of default to suffer simple imprisonment for two months more.
- b) Appellant Muhammad Bachal under Section 337-F (iii) to pay Daman of Rs. 50,000/- to be paid to the injured and to suffer rigorous imprisonment for three years as Ta'zir.
- c) Appellant Ghulam Nabi under Section 337-F (iii) to pay Daman of Rs. 50,000/- to be paid to the injured and to suffer rigorous imprisonment for three years as Ta'zir and also under Section 337-D PPC to pay Arsh as 1/3 of the Diyat to be paid to the injured and to suffer rigorous imprisonment for ten years Ta'zir.

- d) Appellant Allah Jurio alias Jurio under Section 337-A (i) PPC Daman of Rs. 25,000/- to be paid to the injured and to suffer rigorous imprisonment for two years as Ta'zir.

2. As per narration in the F.I.R., the prosecution case is that complainant Ghulam Shabbir Shaikh reported to police that there was a dispute between complainant and appellants over the street, which was resolved by Raees Baban Khan Panhwar. As per the settlement, the complainant party was constructing a wall at a distance of 15 feet in the street in presence of witnesses when the appellants (accused persons) came there at 8:15 AM who were armed with guns and batons. Appellant/accused Bachal alias Bacho Shaikh, after using abusive language, directed them to stop the construction of the wall. Complainant party asked him not to use abusive language and informed him that the wall was being constructed as per settlement between them before Raees Baban Khan to which they said that the settlement was not acceptable to them. Meanwhile, appellant/accused Allah Jurio caused baton blow on the head of injured Mazhar Ali while appellant/accused Muhammad Bachal fired at Mazhar Ali straight at his abdomen who bled and fell down. Appellant/accused Ghulam Nabi Shaikh fired at Muhammad Ismail, who also received the same at his belly and fell down while bleeding. Rest of the appellants allegedly caused baton blows to the complaining party. Due to commotion, the co-villagers attracted to the scene of offence and seeing them, the appellants fled to their houses.

3. After usual investigation, a final report was submitted before the concerned Judicial Magistrate, who took cognizance and sent up the case to Sessions Court from where it was entrusted to the trial Court. A formal charge was framed against the appellants, which was responded in negation and they claimed trial. As such the trial was initiated and after recording the

evidence of prosecution witnesses, an opportunity was given to the appellants to give their explanation regarding the prosecution case by recording their statements under Section 342 Cr.P.C. After completion of the trial, the learned trial Court pronounced the conviction and sentences as mentioned above.

4. In support of the instant appeal, the learned counsel for the appellants preferred his submission that length. After going through the entire prosecution evidence, he draws attention towards some important aspects of the case. His entire arguments encompasses the two important aspects of the case i.e. the enmity between the parties is admitted and there is major contradictions in the ocular and medical account. According to him, in view of the admitted animosity and contradictory evidence of the ocular account and medico legal officer in respect of nature of the injury and distances quoted by the ocular witnesses, possibility of false involvement and self-suffered injuries cannot be ruled out.

5. On the other hand, the learned counsel for the complainant considers that the contradictions pointed out by the appellants' counsel are minor in nature and can be overlooked. According to him, the distances quoted by the ocular witnesses are sufficient to cause blackening and charring available on the body of the injured. He submits that baton used in the offence was recovered from one of the accused while the recovery of guns could not be affected as the rest of the appellants succeeded in getting pre-rest bail.

6. The learned A.P.G. supports the impugned judgment by submitting that there is no illegality and irregularity in the trial as well as in the impugned judgment. According to her, the prosecution succeeded in establishing the factual aspects of the case by producing sufficient material

during trial. She requests that the impugned judgment should be maintained.

7. After hearing the valued submission made before me, I have examined the entire material placed before me. During assessment of evidence adduced by the prosecution, I have found that the prosecution has examined eye witnesses namely, complainant Ghulam Shabbir, Mazhar and Muhammad Ismail. PW mashir Abdul Hameed, Medical Officer Dr. Talib Hussain, who medically examined both the injured namely Mazhar Ali and Muhammad Ismail and PW ASI Mazhar Hussain who conducted the investigation of the case. It reflects that the parties were already at loggerhead over a street near to their houses. The claim of the complainant party is that while they were raising construction of a wall of the house, the appellant party attacked upon them with baton and firearms and as per their evidence, the appellant Jurio caused baton blow on the head of injured Mazhar Ali while appellant Muhammad Bachal fired a gunshot on his abdomen; they have also booked the appellant Ghulam Nabi with the allegation that he fired gunshots on the abdomen, arm and leg of injured Muhammad Ismail. A careful evaluation of evidence of the eye witnesses would reveal that they have differentiated their version regarding the infliction of gunshot blow upon the arm of injured Muhammad Ismail as complainant Ghulam Shabbir says that gunshot received on the **left** arm of injured Muhammad Ismail whereas, Muhammad Ismail negating the complainant stating that he received gunshot on his **right** arm. All the witnesses were stated to be present at the place of scene and injured were brought at hospital in injured condition then how the complainant can narrate sustaining of injury on the left arm instead of right arm. Per evidence of witnesses, in their village more than 100 houses of different communities are situated and at the time of alleged incident some persons also gathered

there, however, inspite of that the prosecution has failed to produce any independent witness from different communities in support of their version. Moreover, the memo of place of incident [Exhibit-12/B] shows that the blood marks of blood of injured were present at the place of incident but the blood stained mud was not taken by the Investigating Officer for analysis purpose in order to confirm as to whether the same were of injured. In the whole evidence, it has come on record that the alleged recovery of baton from appellant Jurio was not blood-stained. More interesting the Investigating Officer of the case ASI Mazhar Hussain stated that the mashirnamas were prepared in presence of mashirs namely 'Abdul Majeed' and Muhammad Uris while all the memos show the name of one of the mashirs as 'Abdul Hameed', who was also examined at Exhibit-12. The complainant stated that both the injured remained in the hospital for 09/10 days while the injured Mazhar Ali stated that he remained in the hospital for 15/20 minutes whereas injured Muhammad Ismail deposed that they remained for about 45 minutes in the hospital.

8. It is worth noting that not only the witnesses have contradicted each other as stated above but have also contradicted regarding the distance of the point wherefrom gunshots were inflicted to the injured. In this regard, complainant Ghulam Shabbir deposed that accused made gunshots from the distance of 10/12 feet while injured Mazhar Ali says 10 feet whereas injured Muhammad Ismail stated 15/20 feet distance. According to medical officer, blackening and burning was present in all injuries. Further, the medical Officer who examined injured must specify each and everything which include the outline of firearm injuries showing the distance of its infliction but perusal of medical certificates and deposition of Medical Officer depict that he has occulted the explanation showing the distance from which the firearm shots were made. A firearm may be generally defined as an assembly

of a barrel and action from which a projectile is propelled through the deflagration (rapid burning) of a propellant (gunpowder). As far as injuries due to firearms caused to the injured of this case are concerned, skill in the interpretation of the same is vitally important to be known as there are many unique features of firearms that may be of critical importance in a forensic investigation. Although, it is familiar in the medical jurisprudence that when blackening and burning is present in the injuries, it means that the same are caused within the range of five feet distance. It is well settled proposition of law that ocular version must be in line with the medical evidence however, in the instant case, the ocular account has contradicted the medical theory. Astonishingly I would like to add here that I used every endeavor to ascertain if there was some narration by any of the eye witnesses to find any justification for believing the ocular evidence in this respect, but without success, and all hopes of bringing the offenders to punishment are seemed to be at an end after keeping the ocular account in juxtaposition of medical account. In conclusion, I find myself totally unable to maintain the impugned judgment passed by the trial Court especially in presence of well known dicta that there should not be many circumstances creating doubt in the prosecution story for acquitting the accused but a single circumstance which creates reasonable doubt in the prudent mind about the guilt of the accused is sufficient to acquit the accused by extending benefit of doubt not as matter of grace and concession but as a matter of right. In this regard, I am fortified with the cases of 'TARIQ PERVAIZ v. The STATE [1995 SCMR 1345] and 'MUHAMMAD AKRAM v. The STATE [2009 SCMR 230].

9. As a result of what has been discussed above, the appeal is allowed and the appellants are acquitted of the charge. Appellant Ghulam Nabi is confined in Jail. He shall be released forthwith, if not required in any other custody case. Appellants Muhammad Bachal and Allah Jurio are

present on bail, their bail bonds stand cancelled and surety[-ies] discharged.

These are the reasons for my short order dated 29.04.2019.

JUDGE

Abdullah Channa/PS
Hyderabad.
Dated 23.05.2019.