

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

Criminal Appeal No: S-89 of 2017

Date of Hearing: 20.05.2019

Date of Decision: 20.05.2019

Appellants: Abdul Khalique and Abdul Ghafoor through Mr. Ghulamullah Chang, Advocate.
Appellant Abdul Ghafoor is present on bail.

Respondent: The State through Mr. Shahid Ahmed Shaikh, Deputy Prosecutor General Sindh.

Complainant: Muhammad Sadiq through Syed Shafique Ahmed Shah, Advocate.

J U D G M E N T

Fahim Ahmed Siddiqui, J.- Through the instant Criminal Appeal, the appellants have challenged their convictions and sentences recorded in the impugned judgment dated 30.03.2017 passed by learned 2nd Additional Sessions Judge, Tando Muhammad Khan in S.C No.15 of 2014 emanating from crime No.46 / 2014 registered at police station Bulri Shah Karim for the offence under sections 324, 504, 34 PPC, whereby they were awarded sentenced to imprisonment for life and fine of Rs.2,00,000.00 [Rupees two hundred thousand only] as compensation; in case of default whereof, to suffer simple imprisonment for one year more. However, they were extended benefit of section 382-B Cr.P.C.

2. Allegations against the appellants are that on the day of incident i.e. 18.07.2014 at about 10.00 a.m. accused Ghulam Mustafa Soomro, Abdul Khalique having daggers and Abdul Ghafoor empty handed reached at Jinhan Soomro road near Eidgah while the complainant Muhammad Sadique along with his maternal uncle Khalil Ahmed [now deceased], PWs Abdul Rehman and Rasheed Ahmed

were going to their houses after offering Taravi prayer. The accused persons challenged to Khalil Ahmed and asked him as to why he was disallowing the accused persons from passing from the land and that he would not be spared. Accused Ghafoor Soomro caught hold Khalil Ahmed and accused Ghulam Ghulam Mustafa and Abdul Khaliq caused dagger blows to Khalil with intention to kill him. Khalil Ahmed sustained injuries at his stomach, head and back side. One Muhammad Umar was sent for getting police letter while injured was shifted to hospital and then the complainant lodged FIR on 19.07.2014 under section 324, 504, 34 PPC. The injured Khalil Ahmed however, succumbed to the injuries on 21.07.2014 in the hospital and subsequently section 302 PPC was inserted by the Investigating Officer.

3. The appellants were arrested and after investigation, the police has submitted Final Report before the concerned Court of Judicial Magistrate. Since the case is triable by Sessions Court; therefore, the learned Magistrate sent up the same to Sessions Judge, Tando Muhammad Khan, from where it was entrusted to the trial Court.

4. After completing all the requisite formalities, the charge was framed against all the accused but after framing of charge, accused Ghulam Mustafa became absconder and after fulfillment of requirements of sections 87 & 88 Cr.P.C., he was declared as proclaimed offender; hence, amended charge against the appellants was framed, which they denied and claimed trial. During trial, the prosecution examined as many as nine witnesses which include complainant, eye witnesses, Tapedar, the Medico Legal Officers and Investigating Officer. After examination of the prosecution witnesses, the appellants were given chance to explain about the prosecution evidence by recording their statement under Section 342 Cr.P.C, in which they denied all the allegations and said that they are innocent and case against them is registered due to annoyance of the area M.P.A. Abdul Karim Soomro being their opponent. However, they did not offer to be examined on oath and avoided to produce in defense witness. After hearing counsel for the appellants and prosecution, the

trial Court pronounced verdict against the appellants as mentioned above.

5. I have heard the arguments from either side and perused the material available on record.

6. The learned counsel for the appellants argued the matter at length. After going through the entire prosecution evidence, he points out certain contradictions and emphasizes upon that the part assigned to the appellants is not convincing as the motive stated by complainant is very weak. According to him, it is not believable that the appellant Abdul Ghafoor has caught hold of the deceased facilitating appellant Abdul Khalique to kill the deceased with dagger. According to him in such a situation Abdul Ghafoor must have received injuries. He further submits that there is a delay of sixteen hours in lodging the FIR which attracts the possibility of consultation and deliberation for false involvement of the appellants. He further submits that all the P.Ws are close related and interested. He draws attention towards that fact that one Muhammad Umar got letter from police station for treatment of deceased but he was not examined by the prosecution even he was not made as witness. There is an allegation of dispute over landed property mentioned in FIR but the depositions of the witnesses are silent in this regard. This is fact in its deposition, which according to the learned counsel are fatal contradictions. Learned counsel also drawn attention towards the charge framed against the appellants whereby he pointed out that name of deceased is written 'Abdullah' meaning thereby the appellants have charged for qatl-i-amd of deceased 'Abdullah' but not for deceased Khalil Ahmed as stated by the complainant in his FIR He prayed for acquittal of the appellants. In support of his contentions, he has relied upon 1990 SCMR 158, 1991 SCMR 2270, 1996 SCMR 1931, 1992 SCMR 545, 2006 YLR 359, 2008 SCMR 95, 2008 SCMR 1064, 2010 SCMR 374, 2010 SCMR 1039, 2010 SCMR 1009, 2011 SCMR 1190, 2011 SCMR 1524, 2012 SCMR 419, 2012 SCMR 82, 2013 SCMR 383, 2015 SCMR 315, 2015 SCMR 1142, 2017 SCMR 486, 2017 SCMR 596, 2016 SCMR 1233, 2016 SCMR 2021 & 2019 SCMR 652.

7. On the other hand, the learned D.P.G. supports the impugned judgment and submits that the prosecution witnesses are in line in the depositions and even they have explained about their availability at the place of incident. He clarified that in charge it is clear mentioned the name of Khalil Ahmed but due to typographical mistake the name of 'Abdullah' is written, and such typographical mistake cannot be made basis for acquittal of the appellants or overcome to the whole prosecution story.

8. Learned counsel for the complainant while drawing attention upon the evidence of prosecution witnesses contended that all the PWs have fully implicated the appellants with specific role. The ocular and medical evidence is in line. The complainant party established their availability at the place of scene beyond slight contradiction in their evidence. However, he emphasized that in absence of material contradictions the benefit of doubt cannot be extended to the accused. He prayed for dismissal of instant appeal by relying upon the cases reported in 2001 SCMR 177 & 199, 2015 P.Cr.L.J 1251, 2017 P.Cr.L.J 34, 2018 P.Cr.L.J 490, 2019 P.Cr.L.J 17 & 2018 YLR 786.

9. After hearing the arguments, I have gone through the entire material. The complainant in the body of FIR as well as in his deposition has stated that while they after offering Taravi prayer going to their houses, appellant Abdul Khalique being armed with dagger/churrah caused dagger blows to Khalil Ahmed over his abdomen and neck, resultantly Khalil Ahmed became unconscious, hence, injured was shifted to District Head Quarter Hospital, Tando Muhammad Khan. The eye witnesses namely Rasheed Ahmed and Abdul Rehman in their depositions are also in line with the complainant. During cross examination, complainant specifically deposed that at the place of scene there were electricity light of bulbs of Madarsa, Masjid and so also street light, hence, identification of accused is established. As far as the infliction of injuries to the deceased are concerned, the medical officers who examined the injured / deceased have confirmed the injuries caused on his abdomen as stated by the eye witnesses. Recovery of dagger from appellant Abdul

Khalique was also effected on his pointation. The report of ballistic expert is positive which indicates that Churee / dagger was stained with human blood. As per allegation, appellant Abdul Khalique has caused dagger blows to the deceased and the prosecution witnesses have not contradicted this fact. Since deceased received dagger blows on his abdomen and this fact is verified by the medico legal officers and being a fatal injury he succumbed to the injuries. Nevertheless, I am of the opinion that the part assigned to the appellant Abdul Ghafoor appears to be aggravated and it is not possible that he will remain safe while catching the deceased. If he has caught hold of deceased to enable the co-appellant Abdul Khalique to achieve his target, he must have received injuries. I am of the considered view that no person can dare to remain so close to deceased in the style described by the prosecution so that he might also receive injury. Nothing was recovered from appellant Abdul Ghafoor and the part assigned upon him by the complainant party is also doubtful.

10. In the light of above facts, I am of the view that since the charge leveled against the appellant Abdul Ghafoor is doubtful and his involvement in the style mentioned by the prosecution in the offence is next to impossible, therefore, in my opinion charge against him could not be established. As far as the case of appellant Abdul Khalique is concerned, the motive has been described within the body of FIR and all the prosecution witnesses remained in line in respect of allegation of infliction dagger blows by the appellant Abdul Khalique at deceased, which is also verified by the medico legal officers; therefore, charge is proved against him and the sentence of life imprisonment is justifiable in the present circumstances of the case. The ultimate outcome of the above discussion is that the appeal is partly **allowed** and conviction and sentence awarded to him to appellant Abdul Ghafoor is set aside. He is acquitted of the charge. He is present on bail. His bail bonds stand cancelled and surety discharge. While in the circumstances as stated above, the appeal to the extent the conviction and sentence awarded to the appellant Abdul Khalique for offence with which he is charged is **dismissed** and the impugned judgment to

this extent is maintained as it does not require any interference by this Court.

11. Above are reasons for my order dated 20.05.2019.

JUDGE

Abdullah Channa/PS

Dated: 30.05.2019