JUDGMENT SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Appeal No.S-185 of 2011

Date of hearing:	03.02.2020.
Date of Judgment:	03.02.2020.
Appellant:	Abid through Mr. Badaruddin Khoso, Advocate.
Respondent:	The State through Ms. Sana Memon, Assistant Prosecutor General Sindh.

J U D G M E N T

KHADIM HUSSAIN TUNIO, J,- Through instant criminal appeal, the appellant has impugned the judgment dated 06.05.2011 passed by learned 1st Additional Sessions Judge, Dadu, in S.C No.487 of 2009 [Re- State v. Ghulam Dastageer alias Sultan and others] emanating from crime No.290/2009 registered at PS Dadu for the offence punishable under sections 324, 337-A(i), 337-F (i), 147, 148, 149, 337-H (ii), 504 PPC, whereby he has convicted and sentenced the appellant for the offence under section 324 PPC R.I. for five years and to pay amount of Rs.5000/- (Rupees five thousand only) and in default whereof to further undergo S.I for one month more; for the offence under section 337-A (i) PPC as Ta'zir to undergo R.I for two years and to pay an amount of Rs.10000/- to injured Muhammad Haneef as daman; for the offence under section 337-A (ii) PPC as Ta'zir to undergo R.I for five years and to pay an amount of Rs.10000/- to injured Muhammad Haneef as arsh. All the convictions were ordered to run concurrently. However, appellant was extended benefit of section 382-B Cr.P.C.

2. Concisely, facts of the prosecution case as disclosed in the FIR are that on 19.06.2009, the complainant Nazeer Ahmed along with his brother Muhammad Haneef & nephew Abdul Razak was coming to his house after offering ISHA prayer and at about 10.30 p.m. then new standard time when they reached at public street near Jamia Masjid, they saw in the light of electric bulbs, accused Abid having Chhuri, Abdul Majeed with gun, Abdul Waheed and Muhammad with dandas and Babo duly armed with pistol were standing. Accused Abid abused the complainant party and said that they had exchanged hot words with his brother and say so accused Abid in prosecution of common object gave Churi blows to Muhammad Haneef, brother of complainant with intention to kill him and Muhammad Haneef received injuries in his forehead and thereafter the accused fled away while making aerial firing in order to cause harassment, hence, instant FIR was lodged.

3. After registration of the case, usual investigation was conducted by the Investigating Officer submitted the challan against the accused before competent Court of law showing the accused Abdul Waheed and Baboo as offenders, who after proceedings under section 87 & 88 Cr.P.C. were declared as proclaimed offenders. The learned trial Court after compliance under section 265-C Cr.P.C. framed a formal charge against the accused, to which they pleaded not guilty and claimed for trial. In order to substantiate the charge, prosecution examined as many as seven witnesses namely ASI Khair Muhammad, Dr.Mukhtiar Ahmed, complainant Nazeer Ahmed Jamali, injured Muhammad Haneef, Abdul Razzak Jamali Gulzar Jamali and ASI Nasrullah Solangi, who produced number of documents in their evidence, thereafter prosecution closed its side.

4. Statement of accused u/s 342 Cr.P.C were recorded, in which they denied the case of prosecution, claimed their false implication and pleaded their innocence. However, neither they

examined themselves on oath nor examined any witness in their defence.

5. After hearing the learned counsel for the respective parties, learned trial Court convicted and sentenced the appellant as stated above, while acquitted co-accused namely, Ghulam Dastageer, Abdul Majeed and Arz Muhammad, hence, this appeal.

6. Learned counsel for the appellant has contended that appellant is innocent and falsely implicated in the false case by the complainant due to enmity; that the son of acquitted accused Ghulam Dastageer namely Asad Ali lodged a FIR at PS Dadu against the complainant party before the alleged incident; that the alleged incident is managed one, however, in fact the injured Muhammad Haneef received injuries due to falling on stone pieces while going on motorcycle; that all the P.Ws are interested and related and none from vicinity has been examined; that the learned trail Court has recorded the conviction in hasty manner and did not apply its judicious mind while passing the impugned judgment despite on same set of evidence acquitted the co-accused; that this is case of mis-reading and non-reading of evidence; that there are material contradictions in the evidence of the PWs which have been ignored by the learned trial Court. He has prayed for his acquittal.

7. Conversely, learned A.P.G. for the State has supported the impugned judgment.

8. I have heard the learned counsel for appellant and learned A.P.G. for the State and minutely examined the material available on the record.

9. I have scanned the evidence of the P.Ws. It transpires that allegedly while the complainant party after offering Isha prayer was going back towards their houses, the accused attacked upon them in a public street situated near to the Masjid. It is also stated that before the alleged incident there was

exchange of harsh words between complainant party and accused. In this regard, I have noted down some contradictions and discrepancies in the evidence of prosecution witnesses. The complainant Nazeer Ahmed Jamali during course of cross examination deposed that ***"I was not accompanied with Abdul Jabbar when accused Abid had exchanged hot words to him. I and Abdul Jabbar had lodged complaint in the roznamcha regarding exchange of hot words but accused being rich party managed their release"*** however, said Abdul Jabbar has not been examined in order to substantiate as to whether such harsh words were taken place between and accused Abid, even the alleged entry/complaint as stated tto have been lodged, has not been brought on record. While PW injured Muhammad Haneef in his cross examination deposed that ***"It is correct to suggest that accused Abid Jamali had never exchanged hot words with me."*** The injured Muhammad Haneef examined by Medical Officer namely, Dr. Mukhtiar Ahmed who has deposed that injuries received three incised wounds with sharp and cutting weapon but the injured Muhammad Haneef has deposed otherwise by deposing that ***"I received rist injury just above eye brow, after receiving first injury I changed direction of my head and then I received second injury on my head."*** By this piece of evidence, medical version has negated the quantity of alleged injuries caused to the injured Muhammad Haneef. Further, complainant Nazeer Ahmed deposed in his cross examination that ***"I and Abdul Razzak also received medical treatment from hospital"*** while PW Abdul Razzak in his cross examination has negated the complainant by deposing that ***"We had not received letter for medical because we had simple blows and uncle Muhammad Haneef had injuries. I do not know the exact blows received by me on what part of body."*** Whereas, medical officer in his evidence does not say a single word regarding treatment of Abdul Razzak. PW Abdul Razzak in his cross examination also admitted the lodgment of FIR bearing

crime No.291/2009 at PS Dadu by Asad Ali son of accused Ghulam Dastaghir. Moreover, identification on electricity bulb is weak type of evidence. Record further reflects that the incident is stated to have taken place on 19.06.2009 at 10:30 p.m., while FIR was lodged on 20.06.2009 at 1530 hours after delay of 17 hours. The FIR describes the time of incident at 10.30 p.m. on the same date, whereas per medical certificate issued by Senior Medical Officer, Civil Hospital, Dadu, the time of incident is shown at 10.45 p.m. which contradicted the ocular account. Further, the empties were secured from the place of incident had been sealed on the place of scene per memo. It is claim of prosecution that co-accused Arz Muhammad was arrested on 22.06.2009 and on his pointation recovery of 'danda' allegedly used in the incident was effected on 27.06.2009 after five days of his arrest, however, no incriminating material had been recovered from the possession of appellant. In the circumstances, it appears that all P.Ws are related inter-se and are interested. The absolute certainty is not often in forming an opinion regarding guilt or innocence of a person but the Courts by means of proper appraisal of evidence must be vigilant to dig out the truth of the matter to ensure that no injustice is caused to either party. In the case in hand, the accused cannot be based on evidence to sustain the conviction in presence of same set of evidence adduced by the prosecution witnesses, on the basis of which, co-accused Ghulam Dastageer, Abdul Majeed and Arz Muhammad were acquitted.

10. In the instant case, the maxim "falsus in uno, falsus in omnibus" is attracted as the trial Court acquitted the co-accused on the evidence of same PWs as are in the case of appellant, the same could not be used against the appellant unless a clear distinction was noted by the Court, which in this case was missing. This maxim had been made applicable in dispention of Criminal Justice by the Hon'ble Apex Court in its landmark judgment dated 04.03.2019, rendered in case titled as "NOTICE IN PURSUANCE OF THE ORDER PASSED BY THIS

COURT ON 13.02.2019 IN CRIMINAL APPEAL NO.238-L OF 2013 TO POLICE CONSTABLE KHIZAR HAYAT SON OF HADAITULLAH ON ACCOUNT OF HIS FALSE STATEEMNT MADE BEFORE THE TRIAL COURT IN A CRIMINAL CASE " reported as PLJ 2019 SC (Cr.C) 265. It was held in the case supra that:-

> *"We may observe in the end that a judicial system which permits deliberate falsehood is doomed to fail and a society which tolerates it is destined to self-destruct. Truth is the foundation of justice and justice is the core and bedrock of a civilized society and thus, any compromise on truth amounts to a compromise on a society's failure as a just, fair and civilized society. Our judicial system has suffered a lot as a consequence of the abovementioned permissible deviation from the truth and it is about time that such a colossal wrong may be rectified in all earnestness. Therefore, in light of the discussion made above, we declare that the rule falsus in uno, falsus in omnibus shall henceforth be an integral part of our jurisprudence in criminal cases and the same shall be given effect to, followed and applied by all courts in the country in its letter and spirit. It is also directed that a witness found by a court to have resorted to a deliberate falsehood on a material aspect shall, without any latitude, invariably be proceeded against for committing perjury."*

11. In the case of 'Sardar Abbas and others v. The State and others' (2020 SCMR 219) whereby the Hon'ble Supreme Court of Pakistan has held as under:-

> *"3. Petitioners' father, namely, Charagh co-accused is assigned multiple club blows to Muhammad Bukhsh deceased; same is charge against Muzaffar co-accused; remainder of the accused, though assigned no harm to the deceased, nonetheless, are ascribed effective roles to the PWs; they are closely related being members of the same clan and in the totality of circumstances given the accusation, their roles cannot be bifurcated without nullifying the entire case. Motive cited in the crime report is non-specific; investigative conclusions were inconsistent with the case set up by the complainant. Recoveries are inconsequential. Complainant abandoned his case against the acquitted co-accused after failure of his petition seeking leave to appeal in the High Court. In this backdrop, no intelligible or objective distinction can be drawn to hold the petitioners guilty of the charge in isolation with their co-accused. Prosecution evidence, substantially found flawed, it would be unsafe to*

maintain the conviction without potential risk of error. Criminal Petition No.955-L/2016 is converted into appeal and allowed, impugned judgment is set aside, the petitioners/appellants shall be released forthwith, if not required to be detained in any other case."

12. In view of above facts and circumstances, I have come at the conclusion that the evidence of prosecution witnesses is not free from doubts/ambiguous and confidence inspiring, which suffers from many infirmities and discrepancies and same cannot be based for recording conviction. It is well settled law when the prosecution fails to establish the guilt of appellant at home without reasonable doubt and if where there appears a single circumstance creating a reasonable doubt in the prosecution case, the benefit of which, not as a matter of grace but as a right, is to be extended to the accused. In this regard, reliance can be placed on the case of "Mohammad Mansha v. The State" (2018 SCMR 772) whereby the Hon'ble Supreme Court of Pakistan has held as under:-

"4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v, The State 2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749)."

Similar view has been taken In the case of 'Mst. Asia Bibi v. The State and others' (PLD 2019 Supreme Court 64), whereby the Hon'ble Supreme Court has observed as follow:-

"41. All these contradictions are sufficient to cast a shadow of doubt on the prosecution's version of facts, which itself entitles the appellant to the right of benefit of the doubt. It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt, it is not necessary that there should be many circumstances creating uncertainty. If a single circumstance creates reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then

he/she shall be entitled to such benefit not as a matter of grace and concession, but as of right. Reference in this regard may be made to the cases of Tariq Pervaiz v. The State (1995 SCMR 1345) and Ayub Masih v. The state (PLD 2002 SC 1048). Thus, it is held that the appellant is entitled to the benefit of the doubt as a right."

Moreover, the Hon'ble Apex Court, in the case of 'Faheem Ahmed Farooqui v. The State' (2008 SCMR 1572) has been pleased to observe as under:-

"It needs no reiteration that for the purpose of giving benefit of doubt to an accused person, more than one infirmity is not required, a single infirmity creating reasonable doubt in the mind of a reasonable and prudent mind regarding the truth of the charge makes the whole case doubtful. Merely because the burden is on the accused to prove his innocence it does not absolve the prosecution from its duty to prove its case against the accused beyond any shadow of doubt."

13. For the foregoing reasons, I am of the humble opinion that the prosecution has failed to establish its case beyond reasonable shadow of doubt, therefore, the appeal was allowed, impugned judgment was set aside and appellant was acquitted of the charge through my short order dated 03.02.2020 and these are the reasons for the same.

JUDGE

Abdullah Channa/PS