

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Appeal No.S- 301 of 2012

Appellant: Arab son of Allah Rakhio alias Rakhial,
Through Mr. Altaf Hussain Chandio, Advocate

Complainant: Noor Muhammad (in person).

State: Through Ms. Rameshan Oad, A.P.G

Date of hearing: 19.10.2020

Date of decision: 19.10.2020

JUDGMENT

IRSHAD ALI SHAH, J.- The appellant by way of instant criminal appeal has impugned judgment dated 20.09.2012, passed by learned 3rd Additional Sessions Judge, Dadu whereby he (appellant) for offence punishable u/s 302 (b) r/w Section 34 PPC is convicted and sentenced to undergo rigorous imprisonment for life and to pay compensation of Rs.50,000/- to the legal heirs of deceased Peeral with benefit of section 382-B Cr.P.C.

2. The facts in brief necessary for disposal of instant criminal appeal are that the appellant with rest of the culprit in furtherance of their common intention allegedly not only committed Qatl-e-amd of Peeral by causing him hatchet blows but caused hatchet blows to PWs Ghulam Sarwar and Rafique with intention to commit their murder too, for that the present case was registered and reported upon by the police.

3. At trial, the appellant did not plead guilty to the charge and the prosecution to prove it, examined in all nine witnesses including complainant Noor Muhammad and then close its' side.

4. The appellant in his statement recorded u/s.342 Cr.PC, denied the prosecution's allegation by pleading innocence. He did not examine anyone in his defence or himself on oath.

5. On evaluation of evidence, so produced by the prosecution, the learned trial Court convicted and sentenced the appellant, as is detailed above, by way of impugned judgment.

6. It is contended by learned counsel of the appellant that the appellant being innocent has been involved in this case falsely by the complainant in order to satisfy its matrimonial dispute with him; the FIR of the incident has been lodged with unexplained delay of about two days; there is no recovery of any sort from the appellant and role attributed to the appellant in commission of incident is only to the extent of instigation. By contending so, he sought for setting aside of the impugned judgment with acquittal of the appellant. In support of his contention, he relied upon case of *Abdul Rehman and 3 others vs The State and another (2018 MLD 663)*.

7. Learned D.P.G for the State, who is assisted by the complainant has sought for dismissal of the instant appeal by supporting the impugned judgment by contending that the appellant has actively participated in commission of incident by instigating rest of the culprits to commit the incident.

8. I have considered the above arguments and perused the record.

9. The FIR of the incident has been lodged with delay of about two days, such delay having not been explained plausibly by the complainant could not be overlooked.

10. In case of ***Mehmood Ahmed & 03 others vs. The State and another (1995 SCMR-127)***, it has been held by Honourable Apex Court that;

“Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.

11. 161 Cr.P.C statements of the PWs Ghulam Sarwar and Rafique as per SIO SIP Muhammad Ashraf have been recorded on 11.11.2008. If it was so, then it was with delay of about 11 days even to FIR, such delay having not been plausibly could not be ignored.

12. In case of ***Abdul Khaliq vs. the State (1996 SCMR 1553)***, it was observed by Hon’ble Court that;

“---S.161---Late recording of statements of the prosecution witnesses under section 161 Cr.P.C. Reduces its value to nil unless delay is plausibly explained.”

13. PWs/Mashir Abdul Majeed, Azizullah and Darya Khan have been given-up by the prosecution. Their non-examination prima facie

indicates that they were not going to support the case of prosecution. PW ASI Nasrullah Solangi who as per SIO/ SIP Muhammad Ashraf finalized the investigation of the present case has not been examined by the prosecution for no obvious reason. His non-examination has prejudiced the appellant in his defence seriously. No finding for acquittal or conviction against the appellant for allegedly causing hatchet blows to PWs Ghulam Sarwar and Rafique with intention to commit their murder has been recorded by learned trial Court, which appears to be significant. The role attributed to the appellant in commission of incident as per the complainant, PWs Ghulam Sarwar and Rafique even otherwise is only to the extent of instigation. The person armed with a gun would hardly go at the place of incident only to make instigation. There is no recovery of any sort from the appellant. The parties admittedly are disputed over matrimonial affairs. In that situation, the involvement of the appellant in commission of the incident obviously is appearing to be doubtful to such benefit he is found to be entitled.

14. In case of *Faheem Ahmed Farooqui vs. The State* (2008 SCMR-1572), it is held that;

“single infirmity creating reasonable doubt regarding truth of the charge makes the whole case doubtful.

15. In view of the facts and reasons discussed above, the impugned judgment is set-aside, consequently the appellant is acquitted of the offence for which he was charged, tried and convicted by learned trial Court, he is in custody and shall be released forthwith in present case.

16. The instant appeal is disposed of accordingly.

JUDGE

Ahmed/Pa