

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Appeal No.S-239 of 2018**

Appellant: Muhammad Umar son of Miran Bux
Bhangwar,
Through Mr. Altaf Chandio, Advocate

Complainant: In person.

State: Mr. Shahzado Saleem Nahiyoon, DPG.

Date of hearing: 02.11.2020

Date of decision: 02.11.2020

JUDGMENT

IRSHAD ALI SHAH, J.The appellant by way of instant Criminal Appeal has impugned judgment dated 25.10.2018 passed by learned Additional Sessions Judge, Shahdadpur, whereby he (appellant) has been convicted and sentenced as under;

“therefore, the accused Muhammad Umar son of Miran Bux Bhangwar is convicted U/s 265-H(ii) Cr.P.C for the offence U/S 302(b) read with section 149 PPC and sentenced him for life imprisonment as Tazir and fine of Rs.1,00,000/= (one lac) u/s 544-A Cr.P.C. which will be payable to legal heirs of deceased. In default in payment whereof to undergo (6 months) S.I. The accusaed is also convicted under section 147 PPC for one year and fine of Rs.5000/= (five thousand) and in default in payment of fine to undergo for 2 months S.I. He is also convicted under section 148 PPC for one year and fine of Rs.5000/= (five thousand) and in default in payment of fine to undergo for 2 months more S.I. The benefit of S.382(b) Cr.P.C. is extended to him.’

2. The facts in brief necessary for disposal of instant appeal are that the appellant with rest of the culprits allegedly after having

formed an unlawful assembly and in prosecution of their common object committed Qatl-e-amd of Muhammad Alam by causing him fire short injuries and then went away by making fires in air to create harassment and insulting complainant Muhammad Rahim and his witnesses, 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 prosecution to prove it examined complainant Muhammad Rahim and his witnesses and then closed the side.

4. The appellant, in his statement recorded u/s 342 Cr.P.C denied the prosecution allegation by pleading innocence by stating that he has been involved in this case falsely by the complainant party on account of previous enmity. He did not examine anyone in his defence or himself on oath.

5. On conclusion of the trial, learned trial Court convicted and sentenced the appellant as is detailed above by way of impugned judgment.

6. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the complainant party in order to settle its dispute with him over landed property; the FIR has been lodged with un-explained delay of about one day; no effective role in commission of incident is attributed to appellant and evidence of the prosecution being doubtful has been

believed by learned trial Court without lawful justification. By contending so, he prayed for acquittal of the appellant.

7. Learned D.P.G for the State who is assisted by the complainant by supporting the impugned judgment has sought for dismissal of the instant appeal by contending that the appellant is vicariously involved for the commission of 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 one day, such delay having no been explained plausibly could not be overlooked. The role attributed to the appellant in commission of incident is only to the extent of making fires in air to create harassment. Surprisingly from place of incident was secured by the police only one empty which allegedly was fired at the deceased by absconding accused Ghulam Nabi. Nothing has been secured from the appellant on his arrest. The parties admittedly are disputed over landed property. In that situation, the involvement of the appellant in this case on point of vicarious liability is appearing to be doubtful.

10. In case of ***Muhammad Masha vs The State (2018 SCMR 772)***, it was observed by the Hon'ble Supreme Court of Pakistan that;

"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 Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)."

11. The based upon above discussion, 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 shall be released forthwith in the present case.
12. The appeal stands disposed of in above terms.

JUDGE