

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Appeal No.D-146 of 2019

Before:

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Irshad Ali Shah.

Appellant: Manzoor Ali son of Arbab Ali Chandio,
Through Mr. Nisar Ahmed S. Chandio,
Advocate.

The State: Through Ms. Sana Memon, A.P.G.

Date of hearing: 09-12-2020.

Date of decision: 09-12-2020.

J U D G M E N T

IRSHAD ALI SHAH-J: The facts in brief necessary for disposal of instant appeal are that the appellant with rest of the culprits in furtherance of their common intention allegedly caused fire shot injury to PW Imam Bux with intention to commit his murder and then went away by making aerial firing to create harassment and terrorism, for that they were booked and reported upon.

2. At trial, the appellant did not plead guilty to the charge and prosecution to prove it, examined complainant Mohammad Ramzan and his witnesses and then closed the side.

3. The appellant, in his statement recorded u/s 342 Cr.P.C has denied the prosecution's allegation by pleading innocence; he however, did not examine anyone in his defence or himself on oath to disprove the prosecution allegation against him.

4. On conclusion of the trial, learned Judge Anti-Terrorism Court Naushehro Feroze found the appellant guilty therefore, vide judgment dated 31.07.2019 convicted and sentenced the appellant as under;

- i. For offence under section 7(1)(c) of Anti-terrorism Act, 1997 sentenced to R.I for 10 years and to pay fine of Rs.50,000/-, in case of default in payment of fine, accused shall suffer S.I for six months more.
- ii). For offence under section 324 PPC sentenced to R.I for ten years.
- iii). For offence punishable u/s 337-F(vi) PPC sentenced to R.I for seven years as ta'zir. Accused is directed to pay Daman amounting to Rs.50,000/-, to injured Imam Bux Chandio".

5. The appellant has impugned the above said judgment before this Court by way of instant appeal.

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 satisfy its dispute with him; the FIR has been lodged with delay of about one day and no injury to the injured is attributed to the appellant specifically; there is no independent witness to the incident and evidence of the prosecution being doubtful in its character has been believed by learned trial Court without lawful justification. By contending so, he sought for acquittal of the appellant.

7. Learned A.P.G for the State by supporting the impugned judgment sought for dismissal of the instant appeal by contending that the appellant is attributed role of causing one of the fire shot injury to the injured.

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

9. The incident initially was recorded in Roznamcha entry No.11 dated 07.02.2016. It does not contain the name of the appellant, which appears to be significant. The FIR of the incident has been lodged with delay of about one day; such delay having not been explained plausibly could not be overlooked. No injury to the injured is attributed to the appellant specifically. The incident is said to have taken place in "Bazar" a thickly populated area, yet no independent witness to the incident is cited, such omission on the part of police could not be overlooked. There is no recovery of any sort from the appellant.

10. The conclusion which could be drawn of the above discussion would be that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt and to such benefit the appellant is found entitled.

11. 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), GhulamQadir 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)."

12. In view of the facts and reasons discussed above, the conviction and sentence recorded against the appellant by way of impugned judgment are set-aside. Consequently, he is acquitted of the offence, for which he has been charged, tried and convicted by learned trial Court, he shall be released in the present case if not required in any other custody case.

13. The instant appeal is disposed of accordingly.

JUDGE

JUDGE

Ahmed/Pa,

