

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Appeal No.S-81 of 2017

Appellants: 1) Mehboob Son of Hussain Junejo, 2) Allah Rakhio Son of Sulleman Junejo, 3) Muhammad Bux alias Buksho Son of Muhammad Umer, 4) Muhammad Ramzan alias Ramoon Son of Muhammad Umer, 5) Javeed Son of Soomro Junejo, 6) Hussain Son of Piyaro Junejo, 7) Aijaz Son of Soomro Junejo, 8) Mooso Son of Umer Junejo, 9) Abdullah Son of Piyaro Junejo, 10) Ali Abn Son of Hoat Khan Junejo and 11) Habib Son of Haji Junejo, through Mr. Wazeer Hussain Khoso, Advocate.

Complainant: Muhammad Siddique Junejo Son of Muhammad Umer, through Mr. G.M. Leghari, Advocate.

Respondent: The State, through Shahzado Saleem Nahiyoan, DPG.

Date of hearing: 11.01.2021.

Date of decision: 11.01.2021.

JUDGMENT

IRSHAD ALI SHAH, J: The appellants by way of instant Appeal have impugned judgment dated 09.03.2017 passed by learned Sessions Judge, Badin whereby they have been convicted and sentenced as under;

“1. Accused Mehboob son of Hussain Junejo, Allah Rakhio son of Sulleman Junejo, Muhammad Bux alias Buksho son of Muhammad Umar Junejo, Muhammad Ramzan @ Ramoon son of Muhammad Umar Junejo, Javed son of Soomar Junejo, Hussain son of Piyaro Junejo, Aijaz son of Soomar Junejo, Mooso son of Umar Junejo, Abdullah son of Piyaro Junejo, Ali Aban son

of Hot @ Porho Junejo and Habib son of Haji Junejo are convicted under section 148 PPC read with section 149 PPC and sentenced to suffer R.I for one year.

2. All the above accused are also convicted under section 324 PPC read with section 149 PPC and sentenced to suffer R.I for five years.

3. All the above accused are also convicted under section 302 (b) read with section 149 PPC and sentenced to suffer imprisonment for life as Ta'zir and are also directed to pay compensation of Rs.1,00,000- (rupees one lac) each to the legal heris of deceased Muhammad Umar under section 544 (a) Cr.P.C. In default of payment of compensation, the accused shall suffer S.I for six months more. The Capital sentence is not awarded to the accused keeping in view that deceased received multiple injuries at the hands of accused and it has not been established on record that which specific injury proved to be fatal.

4. All the above named accused are convicted under sections 337-A(i), 337-F(i) and 337-L(ii) PPC read with section 149 PPC and each accused is directed to pay Daman amounting to Rs.2000-00 for each injury to injured Noor Muhammad son of Saindino Junejo.

5. All the above named accused are also convicted under sections 337-F(vi), 337-F(i), 337-A(i) and 337-L(ii) PPC read with section 149 PPC and the accused are

directed to pay Daman amounting to Rs.5,000-00 (each) for injury under section 337-F(vi) PPC and Daman amounting to Rs.2000-00 (each) for each injury under sections 337-A(i) and 337-L(ii) PPC to injured Ramzan son of Chango Junejo.

6. All the above named accused are also convicted under sections 337-A(i), 337-L(ii) PPC read with section 149 PPC and they are directed to pay Daman amounting to RS.2000-00 (each) for each injury referred above to injured Ramzan son of Hussain Junejo.”

2. The facts in brief necessary for disposal of instant Criminal Appeal are that the appellants with one more culprit after having formed an unlawful assembly in prosecution of their common object caused hatchets and lathis blows to PWs Muhammad Umar alias Porho, Noor Muhammad, Ramzan Son of Chango and Ramzan Son of Hussain with intention to commit their murder and then went away by insulting complainant Muhammad Siddique and others. Subsequently, Muhammad Umar alias Porho died of injuries sustained by him, for that the present case was registered.

3. At trial, the appellants did not plead guilty to the charge and the prosecution to prove it, examined complainant Muhammad Siddique and his witnesses and then closed the side.

4. The appellants in their statements recorded u/s 342 Cr.P.C denied the prosecution's allegations by pleading innocence by

stating that they have been involved in this case falsely by the complainant party on account of dispute over landed property, they did not examine anyone in their defence or themselves on oath in disproof of the prosecution's allegation against them.

5. On conclusion of the trial, learned trial Court found the appellants guilty for the above said offence and then convicted and sentenced them as is detailed above by way of impugned judgment.

6. It is contended by learned counsel for the appellants that the appellants being innocent have been involved in this case falsely by the complainant party in order to satisfy its grudge with them over landed property and watercourse; the FIR has been lodged with delay of about one day; the medical evidence is in conflict with the ocular evidence and no injury to the deceased is attributed to any of the appellant specifically and appellant Habib on investigation was let off by the police finding him to be innocent 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 appellants. In support of his contentions, he relied upon cases of *Amin Ali and another Vs. The State (2011 SCMR 323)*, *Shahzad Tanveer Vs. The State (2012 SCMR 172)*, *Muhammad Shafi alias Kuddoo (2019 SCMR 1045)*, *Zafar Vs. The State and others (2018 SCMR 326)*, *Mst. Asia Bibi Vs. The State and others (PLD 2019 Supreme Court 64)*, and *Muhammad Gopang Vs. The State (2019 P Cr. L J Note 144)*.

7. Learned DPG for the State and learned counsel for the complainant by supporting the impugned judgment have sought for dismissal of the instant appeal by contending that the appellants have actively participated in commission of incident, which resulted death of one person and injuries to three others.

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

9. Initially the incident was recorded by ASI Rajab Ali under Roznamcha entry No.28 dated 30.05.2014 at P.S. Tando Bagho. It is stated therein that PWs Muhammad Umar alias Porho, Noor Muhammad, Ramzan Son of Chango and Ramzan Son of Hussain have sustained hatchets injuries at the hands of Muhammad Bux and others. On the next date formal FIR of the incident was lodged by complainant Muhammad Siddique disclosing the names of eleven (11) more person (s) as accused, besides Muhammad Bux, which appears to be significant. The delay in lodgment of F.I.R by one day as such could not be lost sight off, same apparently is reflecting consultation. The 161 Cr.P.C statements of the PWs as per SIO/SIP Haji Muhammad Pitafi have recorded by him on 14.06.2014. It was with thirteen (13) days delay even to F.I.R. No plausible explanation to such delay is offered by the prosecution. As per the complainant and his witnesses deceased Muhammad Umar alias Porho besides lathies blows, was also caused hatchets blows on his head by appellants

Muhammad Bux, Hussain and Habib. As per Medical Officer Doctor Muhammad Aslam deceased Muhammad Umar alias Porho was found sustaining in all nine injuries, out of them, only two injuries one on his head and other on his left hand middle finger were found to have been caused to him with sharp cutting weapon. Which of the appellant caused those injuries with sharp cutting weapon to the deceased? It is not made known specifically either by the complainant or any of his witness. Deceased Muhammad Umar alias Porho as per Medical Officer Doctor Muhammad Aslam was referred to LUMHS Hyderabad for further management. He probably died there. However, no record is produced which may suggest that he actually died at LUMHS at Hyderabad. PWs Noor Muhammad, Ramzan Son of Chango and Ramzan Son of Hussain insisted that they besides lathies blows have also been caused injuries with hatchets. As per Medical Officer Doctor Muhammad Aslam all of the above said witnesses were found sustaining injuries with some hard blunt substance. Such inconsistency between medical and ocular evidence could not be lost sight off. Appellant Habib on investigation as per SIO/SIP Haji Muhammad Pitafi was let off by him. The parties admittedly were disputed over watercourse. In these circumstances, it would be unjustified to maintain the conviction against the appellants, on the basis of alleged recovery of hatchets and lathies which is appearing to be doubtful in its character.

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 appellants beyond shadow of doubt and they are found entitled to such benefit.

11. In case of *Tariq Pervaiz vs the State (1995 SCMR 1345)*. It has been held by the Hon'ble Supreme Court that:-

“For giving benefit of doubt to an accused, it is not necessary that there should be many circumstances creating reasonable doubt in a prudent mind about the guilt of accused, then he would be entitled to such benefit not as a matter of grace and concession but of right.”

12. In view of the facts and reasons discussed above, the conviction and sentence recorded against the appellants together with the impugned judgment are set aside; consequently, the appellants are acquitted of the offence for which they have been charged, tried and convicted by learned trial Court, they are in jail and shall be released forthwith in the present case.

13. Instant criminal appeal is disposed of in above terms.

Judge

Muhammad Danish Steno*