

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

**Crl. Jail Appeal No.S - 26 of 2019**

Appellants: 1) Vikio son of Pir Bux alias Peroo Panhwar, 2) Arbab son of Ahmed Panhwar, 3) Khuda Bux son of Ahmed Panhwar, 4) Anwar son of Haji Panhwar, 5) Natho son of Hussain Panhwar and 6) Muhammad Sharif son of Haji Panhwar through Mr. Mian Taj Muhammad Keerio, Advocate.

Complainant: Mir son of Allahdino Panhwar; through Mr. Muhammad Ishaque Khoso, Advocate.

Respondent: The State, through Mr. Shahzado Saleem Nahiyoon D.P.G for the State.

Date of hearing: 18-01-2021.

Date of decision: 18-01-2021.

**JUDGMENT**

**IRSHAD ALI SHAH, J:** The appellants by way of instant appeal have impugned judgment dated 04.03.2019 passed by learned 2<sup>nd</sup> Additional Sessions Judge, Badin, whereby they for an offence punishable U/S 302(b) and 34 PPC have been convicted and sentenced to undergo Rigorous Imprisonment for Life and to pay compensation of Rs.200,000/each to the legal heirs of deceased Allahdino, in default whereof shall further undergo one year Rigorous Imprisonment.

2. The facts in brief necessary for disposal of instant appeal are that deceased Allahdino on leaving his house never came back, on search his dead body was found lying by complainant Mir in a watercourse therefore, complainant lodged FIR of the incident alleging death of his son at the hands of

unknown culprits. Subsequently, he suspected the appellants for committing death of his son Allahdino with sharp cutting weapon. They were apprehended and reported upon by the police.

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

4. The appellants in their statements recorded u/s 342 Cr.P.C denied the prosecution's allegation by pleading innocence by stating that the very case was disposed of by the police under "A-class" and they on reinvestigation have been challenged in this case falsely. They did not examine themselves on oath but examined DW Inspector Muhammad Akram Rajput in their defence.

5. On evaluation of evidence so produced by the prosecution learned trial Court convicted and sentenced the appellants 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 dispute with them over matrimonial affairs; it was unseen incident; the involvement of the appellants on the basis of recovery of hatchet and torch is a weak piece of evidence, therefore, the appellants are liable to their acquittal.

7. Learned APG for the State and learned counsel for the complainant by supporting the impugned judgment have sought for the dismissal of the instant appeal or alternatively requested for remand of matter to learned trial Court for rewriting of the judgment after recording statements of the appellants u/s 342 Cr.P.C afresh by confronting them with the recovery.

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

9. Admittedly, none has seen the appellants committing the alleged incident; it is why FIR was lodged by complainant Mir against unknown culprits. Subsequent to lodgment of FIR complainant PWs Juman and Muhammad Ashraf suspected the appellants to be involved in above said incident by making further statements. Those were recorded with delay of about one month. Such delay could not be over looked. Be that as it may, the involvement of the appellants on the basis of their extra-judicial confession before above named PWs could hardly be justified in the circumstances of the case. On arrest, from the appellants it is said has been secured the hatchet used in the commission of incident and torch belonging to the deceased. Such recovery has been made from them on 4<sup>th</sup> day of their arrest; as such same could hardly connect them with the commission of incident. As per DW Inspector Muhammad Akram the very case on investigation once was disposed of under "A-class". In these

circumstances, it could be concluded safely that the prosecution has not been able to prove its case against the appellants beyond shadow of doubt.

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), 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)."***

11. Having discussed above, the conviction and sentence recorded against the appellants by way of impugned judgment are set-aside; consequently, they are acquitted of the offence for which they have been charged, tried and convicted by learned trial Court, they shall be released forthwith in the subject case, if not required in any other custody case.

12. The instant appeal is disposed of accordingly.

**Judge**



