

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Crl. Jail Appeal No.S – 304 of 2019

Appellants: 1) Soomar alias Liaquat Ali son of Gulab and 2) Gulab son of Shah Ali through Mr. Ghulamullah Chang, Advocate.

Complainant: Raza Muhammad son of Shah Bux; through Mr. Mian Taj Muhammad Keerio, 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 have impugned judgment dated 11.10.2019 passed by learned Additional Sessions Judge-I/MCTC Tando Adam, whereby they for an offence under Section 302(b) PPC for committing murder of deceased Nek Muhammad have been convicted and sentenced to undergo Rigorous Imprisonment for Life and to pay compensation of five lac each to the legal heirs of the said deceased and in default whereof to undergo Simple Imprisonment for six months.

2. The facts in brief necessary for disposal of instant appeal are that the appellants and absconding accused Balach caused hatchet and lathi blows to Nek Muhammad, consequently he died, for that they were booked and reported upon.

3. At trial, the appellants did not plead guilty to the charge and the prosecution to prove it, examined complainant Raza Muhammad 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 they have been involved in this case falsely by the complainant party and Mst. Nabia the widow of the deceased by making an application u/s 22-A Cr.P.C sought for direction from learned Ex-officio Justice of Peace, Tando Adam against the complainant and his witnesses for committing death of her late husband. They however, did not examine anyone in their defence or themselves on oath.

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

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; the FIR has been lodged with delay of about four days; the incident has taken place in a manner other than one which is alleged by the complainant party; 161 Cr.P.C statements of the PWs have been recorded with further delay of one day even to FIR and the evidence of the prosecution being doubtful has been believed by learned trial Court without lawful justification. By contending so he sought for acquittal of the appellants. In support of his contention he relied upon cases of *Pathan vs The State (2015 SCMR 315)*, *Liaquat Ali vs The State (2008 SCMR 95)*, *Muhammad Asif vs The State (2017 SCMR 486)*, *Muhammad Shafi alias Khuddoo vs The State (2019 SCMR 1045)* and *Amin Ali and another vs The State (2011 SCMR 323)*.

7. Learned DPG for the State and learned counsel for the complainant by supporting the impugned judgment have sought for the dismissal of the instant appeal by contending that they have been involved fully in commission of incident by the complainant and his witnesses through confidence inspiring evidence.

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

9. As per the complainant the appellants and the absconding accused by making entry in their house caused hatchet and lathi blows to the deceased and then went away by maltreating him (complainant) and his witnesses. They took Nek Muhammad in injured condition to RHC Jam Nawaz Ali then to Taluka Hospital at Tando Muhammad and then to Civil Hospital Hyderabad where he died. No entry in respect of the incident apparently was lodged by the complainant with police at P.S Nauabad, which appears to be significant. The deceased died on 4th day of incident and his death was followed by lodgment of FIR of present case by the complainant. Such delay having not been explained plausibly by the complainant could not be overlooked. If it is believed that the complainant and his witnesses were actually available at the time of incident then they ought to have put resistance to prevent the death of the deceased, which they have failed to put for no obvious reason. It was alleged by the complainant and his witnesses that they too were maltreated by the appellants and others at the time of incident. Nothing has been brought on record in shape of mashirnama of injuries or medical certificate which may suggest that the complainant and his witnesses

actually were maltreated by the culprits involved in the above said incident. As per post mortem report the deceased on examination was found sustaining five injuries. Injury number one (sustained by the deceased) was found to be lacerated punctured wound on his skull. Such injury as per medical officer Dr. Allah Warayo was the cause of the death of the deceased. On asking, he was fair enough to admit that such injury can be caused either by *fire arm* or *bullet* of missile type. It is not the case of prosecution that the deceased besides, lathi and hatchet injuries was also caused fire shot injury on his head. No explanation to such injury to the deceased prima facie suggests that the deceased has died in a manner other than the one as is alleged by the complainant and his witnesses. As per SIO/SIP Muhammad Suhail appellant Gulab was with the complainant party when they brought the injured at P.S Nauabad. If, appellant Gulab would had been one of the culprit of the incident then he dared not to have gone with the complainant party together with the injured at police station. Be that as it may, Mst.Nabia, the widow of the deceased was examined by the Court as a Court witness. It was inter-alia stated by her that she does not know, who killed her husband. By stating so, she impliedly declared the appellants to be innocent. In these circumstances, to make the appellants guilty for the above said offences, on the basis of recovery of lathi and hatchet that too on 5th day of their arrest would be unjustified.

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.

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. 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.

13. The above are the reason of shot order dated 18.01.2020 whereby the instant appeal was allowed and appellants were acquitted and ordered to be released from custody.

Judge