

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

**Criminal Jail Appeal No.D- 50 of 2009**

**Confirmation Case No.D-18 of 2009**

**Criminal Appeal No.D-51 of 2009**

**Criminal Appeal No.D-69 of 2009**

**Before;**

Mr. Justice Muhammad Iqbal Mahar

Mr. Justice Irshad Ali Shah

**Cr.Jail Appeal No.D-50 of 2009**

**Appellant:** Ghulam Rasool alias Ghulam Muhammad alias  
Gulla son of Ramzan Mallah  
Through Mr. Ashfaq Ali Khaskheli, Advocate

**State:** Ms. Sana Memon, A.P.G

**Cr. Jail Appeal No.D-51 of 2009**

**Appellants:** Allah Jurio son of Jan Mohammad alias Jani  
Mallah and Ramzan son of Ezzo Mallah  
Through Mr. Ashfaq Ahmed Lanjar, Advocate

**State:** Ms. Sana Memon, A.P.G

**Criminal Appeal No.D-69 of 2009**

**Appellant:** Rabdino alias Raboo son of Mamoon Mallah  
Through Mr. Ashfaq Ali Khaskheli, Advocate

**State:** Ms. Sana Memon, A.P.G

**Date of hearing:** 26.09.2019

**Date of decision:** 26.09.2019

**J U D G M E N T**

**IRSHAD ALI SHAH, J.** The facts in brief necessary for disposal of the captioned appeals and reference are that the appellants allegedly in furtherance of their common intention in order to satisfy their dispute with the complainant party over landed property by using criminal force not only committed Qatl-e-amd of Ghulam Hussain by causing him hatchets and gunshot injuries but caused fire shot injury to PW Mehmood

with pistol with intention to commit his murder and then went away by insulting the complainant Khuda Bux and his witnesses for that they were booked and reported upon.

2. At trial, the appellants did not plead guilty to the charge and prosecution to prove it, examined complainant Khuda Bux and his witnesses and then closed the side.

3. The appellants in their statements recorded u/s 342 CrPC denied the prosecution allegation by pleading innocence by stating that they have been involved in this case falsely by the complainant party in order to satisfy their matrimonial dispute with them. In order to prove their innocence they produced certain documents, but did not examine anyone in their defence or themselves on oath.

4. On evaluation of evidence, so produced by the prosecution learned Ist Additional Sessions Judge, Badin found appellants Ghulam Rasool alias Ghulam Muhammad alias Gulla, Allah Jurio and Ramzan to be guilty for offence punishable u/s 302-B PPC and awarded them **death** sentence with compensation of Rs.50,000/-each payable to the legal heirs of the said deceased, while convicted and sentenced appellant Raboo alias Rabdino to undergo rigorous imprisonment for five years with fine of Rs.10,000/- payable to injured Mehmood by finding him to be guilty for offence punishable u/s 324 PPC vide his judgment dated 24.04.2009, which has been impugned by the appellants before this Court by way of filing separate appeals. Simultaneously, a reference has also been made by learned trial Court, in terms of section 374 Cr.P.C with this Court, for

confirmation of death sentence awarded to Ghulam Rasool alias Ghulam Muhammad alias Gulla, Allah Jurio and Ramzan.

5. The appeals preferred by the appellants and reference made by learned trial Court now are being disposed of by this Court through single judgment.

6. PWs Jumoon and Mehmood (injured) by supporting the case of prosecution on factual premises to some extent have not implicated the appellants in commission of incident expressly. Mst. Chagi who allegedly came at the place of incident, soon after incident, has not been examined by the prosecution, for no obvious reason. The inference which could be drawn of her non-examination would be that she was not going to support the case of prosecution. PW / mashir Mohammad during course of his examination was fair enough to admit that no recovery was affected by police in his presence (from the appellants) and his LTIs on all the mashirnamas were obtained by the police at Hospital. By stating so, he has not supported the case of prosecution impliedly to the extent of preparation of mahsirnamas in manners which is claimed by SIO / ASI Rehan Shah. The crime weapons gun and country made pistol allegedly recovered from appellants Ghulam Muhammad alias Ghulam Rasool alias Gulla and Rabdino have been subjected to its examination through expert with delay of about three years, such un-explained delay could not be overlooked. Complainant Khuda Bux, no doubt has implicated appellants Ghulam Muhammad alias Ghulam Rasool alias Gulla, Allah Jurio and Ramzan for committing death of Ghulam Hussain by causing him hatchets and fire shot injuries and appellants Rabdino for causing fire shot injuries

to PW Mehmood with country made pistol with intention to commit his murder, but there could be made no denial to the fact that his evidence did not take support from evidence of any other witness, on ocular premises. As per complainant in his FIR, he at the time of incident was sitting in his house and on hearing fire shot report went running towards the place of incident. If it is believed to be so, then the complainant might have reported his arrival at the place of incident when it was almost over. The FIR of the incident has been lodged with delay of about three hours without plausible explanation to such delay. In that situation, it would be hard to maintain conviction on the basis of sole evidence of the complainant which for the above reasons is found to be untrustworthy and doubtful in its character.

7. In case of ***Muhammad Asif vs the State (2008 SCMR 1001)***, it has been held by Hon'ble apex Court that;

*“Delay of about two hours in lodging FIR had not been explained—FIRs which were not recorded at the Police Station, suffered from the inherent presumption that same were recorded after due deliberation.”*

8. In case of ***Tariq Pervaiz vs the State (1995 SCMR 1345)***. It has been held by the Hon'ble apex 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.”*

9. In view of the facts and reasons discussed above, the conviction and sentence recorded against the appellants by way of impugned judgment could not be sustained, those are set aside. Consequently, the appellants

are acquitted of the offence for which they were charged, tried and convicted by learned trial Court. The appellant Rabdino alias Raboo is present in court on bail, his bail bond is cancelled and surety is discharged. While, appellants Ghulam Rasool alias Ghulam Muhammad alias Gulla, Allah Jurio and Ramzan are in custody, they shall be released forthwith in present case.

10. The captioned appeals and reference are disposed of in above terms.

**J U D G E**

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