

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Appeal No. S- 279 of 2018

Appellants: Mureed son of Verseen and Shareef, Bhai Khan, Jamil (sons of Mureed by caste Makwana), Hyder son of Rahmatullah Samejo, Younis son of Usman Nohri,
Through M/s Ghulam Shbir Shar and Muhammad Sachal R. Awan, Advocates.

State: Mr. Shahzado Saleem Nahiyoan, DPG.

Complainant: Chetan son of Chaton Meghwar,
Through Mr. Kanji Mal Meghwar, Advocate

Date of hearing: 27.09.2019
Date of decision: 27.09.2019

J U D G M E N T

IRSHAD ALI SHAH, J. The appellants by way of instant appeal have impugned judgment dated 20.12.2018 passed by learned Sessions Judge, Tharparkar at Mithi whereby they for an offence punishable u/s 302-B PPC r/w Section 34 PPC have been convicted and sentenced to undergo Rigorous Imprisonment for life and to pay Rs.100,000/-each as compensation to legal heirs of deceased Bachomal.

2. The facts in brief necessary for disposal of the instant appeal are that the appellants allegedly in furtherance of their common intention in order to satisfy their enmity with the complainant party committed murder of Bachomal by causing him fire shot injury for that they were booked and reported upon.

3. At trial, the appellants did not plead **“guilty”** to the charge and prosecution to prove it, examined PW-1 complainant Cheetan at (Ex.11), he produced FIR of the present case; PW-2 Hotchand at (Ex.12); PW-3 Kewal, he produced memo of examination of dead body of deceased, Danishnama, Lashchakas form, memo of place of incident, memo of recovery of belongings of the deceased, memo of recovery of cloth of the deceased, memo of arrest of appellants Mureed and Haider and memo of recovery of motorcycle, PW-4 PC Muhammad Ali, he produced report of chemical examiner; PW-5 Tapedar Jhamandas at (Ex.16), he produced sketch of **“wardat”**; PW-6 SIO / ASI Ranchomal at (Ex.17), he produced Roznamcha entry and photographs of the deceased; PW-7 Gulab at (Ex.19); PW-8 PC Hassan Ali at (Ex.20), he produced receipt whereby he delivered dead body of deceased Bachomal to his relatives; PW-9 SIO / SIP Dur Muhammad Khoso at (Ex.21), he produced report of chemical examiner and letter whereby he sent the Revolver and bullets to the forensic expert and copy of roznamcha entry; CW-1 Inspector Abdul Razaq at (Ex.24), he produced attested copies of roznamchas entRIES No.20 to 23, memos of examination of dead body of the deceased and place of incident, statement of complainant Cheetan and joint statement of Kewal and Mahasingh and others recorded u/s 161 Cr.P.C; PW-10 Dr. Nehchaldas at (Ex.26), he produced attested copy of post mortem report on dead body of the deceased and then closed the side.

4. The appellants in their statements recorded u/s 342 Cr.PC 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 enmity with them. They did not examine anyone in their defence or themselves on oath.

5. On evaluation of evidence, so produced by prosecution; learned trial Court convicted and sentenced the appellants, as stated 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 only to make them compel to have compromise with them in murder case; it was road accident which is given colour of murder; it was un-seen incident; FIR has been lodged on 3rd day of incident, after due deliberation and consultation and the evidence which the prosecution has produced before learned trial Court being inconsistent and doubtful has been believed by learned trial Court without lawful justification. By contending so, they sought for acquittal of the appellants. In support of their contention they have relied upon cases of ***NASRULLAH alias NASRO vs The State (2017 SCMR 724), (2) HASHIM QASIM and another vs The STATE (2017 SCMR 986), (3) MUHAMMAD SADIQ vs The STATE (2017 SCMR 144), (4) MUHAMMAD ASIF vs The STATE (2017 SCMR 486) and (5) FAYYAZ AHMAD vs The STATE (2017 SCMR 2026).***

7. Learned D.P.G for the State and learned counsel for the complainant have sought for dismissal of instant appeal by supporting the impugned judgment by contending that the appellants in very clandestine manner have committed death of the deceased to give it a look of road

accident. In support of their contention they have relied upon cases of **(1) SHAH NAWAZ and another vs MUHAMMAD ASHRAF and 2 others (2017 SCMR 1732), (2) AMANAT ALI vs The STATE (2017 SCME 1976), (3) SAIF ULLAH vs The STATE (2017 SCMR 2041), (4) NASIR IQBAL @ NASRA and another vs The STATE (2016 SCMR 2152), (5) SAEED AHMED vs The STATE (2015 SCMR 710) and (6) MUHAMMAD JAVED vs The STATE (2015 SCMR 864).**

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

9. In first instance, as per Inspector Abdul Razaq the death of the deceased was reported to be road accident, such entry was recorded in “Roznamcha” and statements of complainant Cheetan, Kewal, Mahasingh and others to such effect were also recorded. There is no denial to the fact that the complainant is not an eye-witness of the incident and he has lodged FIR on the 3rd day of the incident. It does not contain names of appellants Younis and Haider, which appears to be significant. In that situation, it could be concluded safely that the evidence of the complainant could hardly lend support to the case of prosecution.

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.”

10. PW Hotchand has been examined by the prosecution as an eye-witness of the incident. He during course of his examination was fair

enough to admit that his 161 CrPC statement was recorded by the police on 23rd day of the incident. No satisfactory explanation to such late recording of his 161 CrPC statement is offered by the prosecution, therefore, no much reliance could be placed upon his evidence.

In case of **Abdul Khaliq vs. the State (1996 SCMR 1553)**, it was observed by Hon'ble Court that;

“---S.161---Late recording of statements of the prosecution witnesses under section 161 Cr.P.C. Reduces its value to nil unless delay is plausibly explained.”

11. PWs Mitho, Saghram and Raimal have been given up by the prosecution without assigning any reason for their non-examination. The inference which could be drawn of their non-examination would be that they were not going to support the case of prosecution.

12. No doubt, on arrest from appellant Mureed, on his pointation has been secured unlicensed Revolver of 32 bore with bullets by SIO /SIP Dur Muhammad Khoso allegedly and such memo according to him was prepared at the place of recovery in presence of mashirs, such fact is belied by PW / Mashir Gulab by stating that his signature on mashirnama was obtained by SIO / SIP Dur Muhammad at Police Station, which has made the very recovery of unlicensed revolver of 32 bore allegedly from appellant Mureed to be doubtful one. In that situation, appellant Mureed could hardly be connected with the recovery of unlicensed revolver of 32 bore and bullets.

13. Even otherwise for single fire shot injury (through and through) which allegedly is attributed to appellant Mureed, in case which

prosecution has not been able to prove beyond shadow of doubt, conviction against six persons on point of vicarious liability could not be approved.

14. 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.”

15. The case law which is relied upon by learned D.P.G for the State and learned counsel for the complainant is on distinguishable facts and circumstances. In case of **SHAH NAWAZ** and others (*supra*), the prosecution was able to prove its case against the appellants beyond doubt. In the instant case, prosecution has not been able to prove its case against the appellants beyond doubt. In case of **AMANAT ALI** (*supra*), ocular account was furnished by two witnesses. In the instant matter, evidence of PW Hotchand who claimed to be an eye witness to the incident has been found to be doubtful. In case of **SAIFULLAH** (*supra*), the ocular account of the evidence was supported by medical evidence. In the instant matter ocular account of the evidence is found to be doubtful. What to talk of its support by medical evidence. In case of **NASIR IQBAL @ NASIRA** (*supra*), the death sentence awarded to the accused was converted into life imprisonment. In the instant matter no issue of death sentence for its conversion to life imprisonment is involved. In case of **SAEED AHMED** (*supra*), accused was found killing his wife and then

absconded away. In the instant matter no issue of death of wife at the hands of husband is involved and there is no absconsion on the part of appellants. In case of **MUHAMMAD JAVED** (*supra*), the ocular account furnished by the eye-witnesses received full support from medical evidence. In the instant matter ocular account furnished by PW Hotchand is found to be doubtful.

16. Pursuant to above discussion, 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.

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

J U D G E