

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

**CrI. Jail Appeal No. D – 106 of 2015
Confirmation Case No.17 of 2015
Criminal Jail Appeal No.D-76 of 2016**

Before:

Mr. Justice Muhammad Iqbal Mahar
Mr. Justice Irshad Ali Shah

Appellants: Mukhtiar Ali son of Syed Wadal Ali Shah, Dildar Hussain son of Arbab Hussain Chandio through M/s Niaz Muhammad Ghangro, Ashfaque Ahmed Lanjar Advocates

Respondent: The State, through Shahzado Saleem Nahiyoan,DPG

Date of hearing: 30-09-2019.

Date of decision: 30-09-2019.

J U D G M E N T

IRSHAD ALI SHAH, J: The appellants by way of captioned Criminal Appeals have impugned judgment dated 13.11.2015 passed by learned IInd Additional Sessions Judge, Mirpukhas whereby they have been convicted and sentenced as under;

“I, therefore, convict both the accused U/S 302-B PPC read with section 34 PPC and sentenced the accused Mukhtiar to death, he shall be hanged by neck till death subject to confirmation by the Honourable High Court of Sindh, and sentenced the accused Dildar to suffer imprisonment for life and to pay Rs.300,000/- (Three Lacs) each as compensation to the legal heir of the deceased. In default of payment of

compensation, the accused shall suffer S.I for six months more.”

2. The facts in brief necessary for disposal of instant Criminal Appeals are that the appellants in furtherance of their common intention committed Qatl-e-amd of Shahid Ali by causing him hatchet injuries, 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 Muhammad Yousif and his witnesses and then closed the side.

4. The appellants in their statements recorded u/s 342 Cr.P.C denied the prosecutions' allegation by pleading innocence, they did not examine anyone in their defence or themselves on oath in disproof of the prosecution allegation against them.

5. On conclusion of the trial, learned trial Court found the appellants to be guilty for the above said offence and then convicted and sentenced them as detailed above and then made a reference with this Court u/s 374 Cr.P.C. for confirmation of death sentence to the appellant Mukhtiar.

6. The captioned appeals and the reference made by learned trial Court for confirmation of death sentence to appellant Mukhtiar now are being disposed of by this Court, by way of single judgment.

7. It is contended by learned counsel for the appellants that the appellants being innocent have been involved in this case falsely in a

blind FIR by introducing PWs Gulshan Ali and Shahjehan, on 23rd day of the incident when the appellants were already found to be in custody of police; the investigation of the case is dishonest one and the case of the prosecution was not free from doubt. By contending so, they sought for acquittal of the appellants.

8. Learned DPG for the State by supporting the impugned judgment has sought for dismissal of the captioned appeals.

9. We have considered the above arguments and perused the record.

10. Incident took place on 06.07.2011, FIR whereof was lodged on 08.07.2011. It was blind one. The names of the appellants were disclosed by the complainant subsequently on 26.07.2011 by way of further statement, wherein it was disclosed by him that the appellants were seen committing death of the deceased by PWs Gulshan Ali and Shahjehan. The further statement of the complainant could hardly be treated to be part of FIR. As per SIO /SIP Muhammad Soomar, on 22.07.2011 SSP Mirpurkhas held a press conference with regard to arrest of the appellants. If it was so, then further statement of the complainant and PWs Gulshan and Shahjehan were introduced subsequently by the police after arrest of the appellants only to involve them in said offence. Even otherwise, no plausible justification is advanced by PWs Gulshan and Shahjehan to withhold the information with regard to the death

of the deceased for about 20 days, which has made their version to be doubt. As per mashirnama of place of incident the hatchet was found lying by the side of dead body of the deceased and was secured by the police therefrom. What is stated in mashirnama of place of incident to that effect is belied by SIO /ASI Muhammad Soomar by stating that the hatchet was secured from the accused. Such inconsistency has made us to it believe that the investigation of this case has either been conducted in a casual manner or it was dishonest.

11. 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 appellants are found entitled to such benefit.

12. 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.”

13. 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.”

14. 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.

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

Judge

Judge

Ahmed/Pa