

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Appeal No.D-124 of 2013

Cr. Acq. Appeal No.D-28 of 2013

Cr. Rev. Application No.D-147 of 2013

Before;

Mr. Justice Irshad Ali Shah

Mr. Justice Amjad Ali Sahito

Appellant/Accused: Ali Gohar @ Dhilloo S/o Naimatullah
Through Mr. M. Jameel Ahmed advocate

Respondents: Haji Arab and Sadam (in Cr. Acq. Appeal)
Through Mr. Aga Waqar Ahmed advocate

Complainant: Shafi Muhammad S/o Haji M.Hassan
Through Mr. Imtiaz Chaniho advocate

State: Ms. Rameshan Oad, A.P.G.

Date of hearing: 14.11.2019

Date of decision: 14.11.2019

J U D G M E N T

IRSHAD ALI SHAH, J. The appellants by way of captioned Criminal Appeals have impugned judgment dated 19.08.2014 passed by learned 2nd Additional Sessions Judge Shaheed Benazirabad, whereby they have been convicted and sentenced as under;

“(1). The accused Wazeer Ali S/o Khawand Bux @ Daid Shah Bhangwar and Zulfiqar Ali S/o Ali Khan Bhangwar are convicted and sentenced for an offence U/s 302(b) Tazir, be hanged with neck till they are dead and to pay Rs.1,00,000/-(Rupees One Lac) each as compensation to the legal heirs of both the deceased, as reference U/s 374 Cr.P.C is being submitted to the Honourable High Court of Sindh for confirmation. The accused Meer Sahib

S/o Ali Khan Bhangwar and Muhammad Khan S/o Shah Murad Bhangwar are sentenced for the offence U/s 302(b) Tazir 149 PPC to suffer life imprisonment and to pay compensation of Rs.50,000/- (Rupees Fifty Thousand) each to the legal heirs of both the deceased, in case of failure the accused shall undergo S.I for six months more.

(2). The accused Meer Sahib S/o Ali Khan Bhangwar and Muhammad Khan S/o Shah Murad Bhangwar are also convicted and sentenced for an offence U/s 324, 149 PPC to suffer R.I for Seven years and to pay compensation of Rs.50,000/- each to injured / complainant Fida Hussain in case of failure of payment they shall suffer S.I for six months more.

(3). The accused Meer Sahib S/o Ali Khan Bhangwar and Muhammad Khan S/o Shah Murad Bhangwar are convicted and sentenced to R.I three years for an offence U/s 337-F(ii)(iii) PPC and to pay the damn amount of Rs.20,000/- each to injured / complainant Fida Hussain, in case of failure they shall suffer S.I for three months more.”

2. It is alleged that the appellants with the rest of the culprits after having formed an unlawful assembly and in prosecution of their common object not only committed Qatl-e-Amd of Raza Hussain and Imam Bux by causing them fire shot injuries, but also caused fire shot injuries to complainant Fida Hussain with intention to commit his murder too and then went away by taking away with them Repeater gun of the complainant party, for that they were booked and reported upon by the police.

3. At trial, appellants did not plead guilty to the charge and prosecution to prove it examined the complainant and his witnesses (in all eleven in number) and then closed its side.

4. The appellants in their statements recorded U/s 342 Cr.P.C denied the prosecution allegation by pleading innocence; they however did not examine anyone in their defence or themselves on oath to disprove the prosecution allegation leveled against them.

5. On conclusion of the trial, learned trial Court convicted and sentenced the appellants as detailed above and then made reference with this Court for confirmation of death sentence awarded to appellants Wazeer Ali and Zulfiqar. Such reference now is being disposed of by this Court together with the appeals of the appellants by way of single judgment.

6. We have heard learned counsel for the parties and perused the record.

7. It was the case of prosecution that the appellants with rest of the culprits after having formed an unlawful assembly

and in prosecution of their common object committed the above said incident. In the instant matter the appellants have been found to be guilty for the offence alleged against them yet two of them (Wazeer Ali and Zulfiqar) have been awarded death penalty while two of them (Meer Sahib and Muhammad Khan) have been awarded imprisonment for life. Besides, compensation payable to the legal heirs of both of the deceased. No reason as is required by section 367(5) Cr.P.C for awarding penalty other than death to appellants Muhammad Khan and Meer Sahib has been disclosed by learned trial Court. Additionally, appellant Meer Sahib has also been convicted for offence punishable U/s 324 and 337-F(ii)(iii) PPC. If, all the appellants were found guilty for the above said offence on point of vicarious liability then as per the mandate contained by section 149 PPC the conviction against all of appellants would have been unanimous and consistent. The different and distinct conviction against the appellants without assigning any reason is violative of section 149 PPC, which specify that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, then every person who at

the time of the committing of that offence, is a member of same assembly, is guilty of that offence. Even otherwise, nothing has been disclosed in the impugned judgment which may suggest that the appellants have been convicted and sentenced for single murder or double murder. Further, it is settled by now, that defence plea which is put forth by the accused during course of their examination u/s 342 Cr.P.C is to be considered in juxta position with the evidence which is produced by the prosecution. In the instant matter the defence plea which is put forth by the appellants during course of their examination u/s 342 CrPC is rejected by learned trial Court with simple sentence by making a conclusion that the appellants have failed to disprove the charge. Such finding, rejecting the defence plea could hardly be approved.

8. In view of the facts and reasons discussed above, the conviction and sentence recorded against the appellants together with the impugned judgment could not be sustained on legal premises, those are set-aside with a direction to learned trial Court to re-write judgment within

one month after receipt of this judgment, after providing chance of hearing to all the concerned.

9. The instant captioned appeals and reference stand disposed of.

JUDGE

JUDGE

Ahmed/Pa.