

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Appeal No.S- 32 of 2015

Appellants: 1). Taju son of Mir Muhammad, 2). Walu son of Mir Muhammad and 3). Ramzan son of Mir Muhammad,
Through Mian Taj Muhammad Keerio,
Advocate

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

Date of hearing: 29.11.2019

Date of decision: 29.11.2019

J U D G M E N T

IRSHAD ALI SHAH, J. The facts in brief necessary for passing the instant judgment are that police party of P.S Khipro led by ASI Muhammad Iqbal, on information went at the place of incident to apprehend absconding accused Suhnoon, there they were prevented from doing so, as a public servant by the appellants and others by making fires at them with intention to commit their murder and then they made their escape good by causing hatchet and lathi injuries to PW PC Khair Muhammad, for that they were booked and reported upon.

2. At trial, the appellants and co-accused did not plead guilty to the charge and prosecution to prove it examined complainant ASI Muhammad Iqbal and his witnesses and then closed the side.

3. The appellants and co-accused in their statements recorded U/S 342 Cr.P.C denied the prosecution allegation by pleading

innocence. They did not examine anyone in their defence to disprove the prosecution allegation against them.

4. On evaluation of evidence so produced by the prosecution, learned trial court acquitted co-accused Ali Khan, Ghulam Muhammad, Mir Muhammad and Suhnoon, while found the appellants guilty for offence punishable u/s 353, 337-A(i) and 337-F(i) PPC and then convicted and sentenced them as under vide his judgment dated 20.02.2015:

“Accused Ramzan, Walu and Taju are sentenced for offence punishable under sections 353 read with section 149 PPC, as rigorous imprisonment, for one year as Tazir and to pay fine amount of Rs.5000/- each total Rs.15000/-payable to the government. In case of failure thereto, they shall suffer simple imprisonment for one month more.

Accused Ramzan, Walu and Taju are directed to pay Rs.10,000/-each (equally) total Rs.30000/-as Daman to be paid to PC Khair Muhammad son of Haji Muhammad Hashim Dars (injured in present case) as compensation for commission of offence punishable under section 337-A(i) PPC (Shajjah-i-Khafifah) or in default thereof to remain in jail and be dealt with in the same manner as if sentenced to simple imprisonment until “Daman” is paid in full.

Accused Ramzan, Walu and Taju are also directed to pay Rs.5000/-each (equally) total Rs.15000/-as Daman to be paid to PC Khair Muhammad son of Haji Muhammad Hashim Dars (injured in present case) as compensation for commission of offence punishable under section 337-F(i) PPC (Ghayr-jaifah damiyah) or in default thereof to remain in jail and be dealt with in the same manner as if sentenced to simple imprisonment until “Daman” is paid in full. The sentences awarded to the accused shall run concurrently.”

5. The appellants have impugned the aforesaid judgment to the extent of their conviction before this Court, by way of instant appeal.

6. It is contended by learned counsel for the appellants that the appellants being innocent have been involved in this case falsely by the police; there was no independent witness to the incident and on same set of evidence co-accused Ali Khan, Ghulam Muhammad, Mir Muhammad and Suhnoon have been acquitted by learned trial Court. By contending so, he sought for acquittal of the appellant.

7. Learned A.P.G for the State by supporting the impugned judgment has sought for dismissal of the instant appeal by contending that the appellants have actively participated in commission of incident.

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

9. There is no conviction against the appellants for offence punishable u/s 324 PPC, which goes to suggest that they have been acquitted for that penal section by learned trial Court by disbelieving the case of prosecution to that extent too. There is no independent witness to the incident. The fires allegedly made by the appellants and rest of the culprits at the complainant and his witnesses admittedly proved to be ineffective in all respect. PW mashir Allah Bachayo has been declared to be hostile to the prosecution on account of his failure to support the case of prosecution. As per prosecution PW Khair Muhammad he sustained hatchet and lathi injuries allegedly at the hands of the appellants and others. On medical examination as per Dr. Gordhan Das no injury with sharp

cutting weapon was found on person of PW Khair Muhammad. Such inconsistency could not be overlooked. Co-accused Ali Khan, Ghulam Muhammad, Mir Muhammad and Suhnoon being main accused have already been acquitted by learned trial Court disbelieving the case of the prosecution in their respect, therefore, there was hardly a justification for learned trial Court to have convicted the appellants on the basis of same set of evidence.

10. In case of **Sardar Bibi and others vs. Munir Ahmed and others (2017 SCMR-344)**, it was held by the Hon'ble Court that;

“When the eye-witnesses produced by the prosecution were disbelieved to the extent of one accused person attributed effective role, then the said eye-witnesses could not be relied upon for the purpose of convicting another accused person attributed a similar role without availability of independent corroboration to the extent of such other accused”.

11. The discussion involved a conclusion, that the prosecution has failed to prove its case against the appellants too beyond shadow of doubt and they are found entitled to such benefit.

12. 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), Ghulam Qadir 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)."

13. For what has been discussed above. the conviction and sentence awarded to 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 the learned trial court.

14. The appellants are present in Court on bail. Their bail bonds are cancelled and sureties are discharged.

15. The instant appeal is disposed of accordingly.

J U D G E