

JUDGMENT SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Present:

Mr. Justice Abdul Maalik Gaddi  
Mr. Justice Khadim Hussain Tunio

Cr. Acq. Appeal. No.D- 10 of 2017

Date of hearing: 22.01.2020.

Date of judgment: 22.01.2020.

Mr. Roshan Ali Azeem Mallah, Advocate alongwith appellant Muhammad Juman.

Mr. Muhammad Ishaque Khoso, Advocate alongwith private Respondents No.1 to 4.

Ms. Rameshan Oad, A.P.G. for the State.

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

**ABDUL MAALIK GADDI, J.**-By this judgment, we intend to dispose of the above Criminal Acquittal Appeal filed by appellant / complainant Muhammad Juman, whereby he has challenged the legality and propriety of impugned judgment dated 16.03.2017 passed by learned IInd Additional Sessions Judge, Badin in Sessions Case No.130 of 2014 emanating from Crime No.30 of 2014, registered at Police Station Kario Ganhwar, under sections 302, 114, 504 and 34 PPC, whereby after full-dressed trial, while extending benefit of doubt private Respondents No.1 to 4 were acquitted of the charge.

2. As per F.I.R. lodged by complainant Muhammad Juman at Police Station Kario Ganhwar on 19.03.2014 they were not on good terms with accused party. It was alleged that on the fateful day, complainant alongwith his grandson Mehboob Ali went on motorcycle to Kario Ganhwar Town to purchase some commodities; his brother Allahditto Khaskheli alongwith his son Sikandar Ali Khaskheli was standing at Fazil Chowk; they were talking with each other. In the meantime, accused Shabir and Bashir armed with hatchets, Mehmood with hatchet, whereas accused Zaheer armed with lathi

came there and while abusing and stating that as they (complainant party) had committed murder of their men why come in front of them, accused Shabir instigated others not to spare the complainant party and commit their murder; thereafter, accused Bashir caused hatchet blow to Mehboob Ali on the above of his right ear; accused Mehmood caused hatchet blow on his head. Thereafter, all accused maltreated him. Complainant party raised cries on which people of the town gathered there, intervened and rescued them. Thereafter accused while abusing, went away. Then, after obtaining letter from Police Station injured Mehboob Ali was brought at LUMS Hyderabad for his treatment. Thereafter, complainant lodged his F.I.R. Initially, the F.I.R. was lodged under sections 324, 114, 504 and 34 PPC but as injured Mehboob Ali during his treatment in hospital had succumbed to his injuries, therefore, offence under section 302 PPC was added while submitting the challan.

3. Learned counsel for appellant while opposing the impugned judgment contended that the judgment passed by the learned trial court is perverse and the reasons are artificial viz-a-viz the evidence on record; that the grounds on which the trial court proceeded to acquit the accused persons are not supported from the documents and evidence on record. He further submitted that accused have directly been charged and the discrepancies in the statements of witnesses are not so material on the basis of which accused could be acquitted. He also contended that at the time of incident accused Shabir, Bashir and Mehmood duly armed with hatchets came at the vardat alongwith co-accused Zaheer who was having lathi in his hand, and caused injuries to Mehboob Ali, as a result thereof injured Mehboob Ali died in hospital; however, during his treatment he has made his statement / dying declaration before the I.O. in which he has supported the contents of F.I.R. He further contended that learned trial court has based the findings of acquittal mainly on the basis of minor contradictions on non-vital points of the statements of prosecution witnesses and that the prosecution evidence has not been properly appreciated therefore, under these circumstances, he was of the view that instant appeal may be allowed and the accused involved in this case may be given exemplary punishment.

4. On the other hand, learned counsel for private respondents supported the impugned judgment of acquittal on the ground that learned trial court has

discussed each and every aspect of the case in its judgment whereby it has rightly acquitted the accused persons due to deficient evidence which was even not corroborated by medical as well as documentary evidence. In support of his contentions he placed his reliance on the cases of **Muhammad Mansha Kausar V Muhammad Asghar and others** (2003 SCMR 477), **Altaf Hussain V Fakhar Hussain and another** (2008 SCMR 1103) and **Muhammad Usman and 2 others V The State** (1992 SCMR 489).

5. Learned A.P.G appearing for the State while adopting the arguments of learned counsel for appellant has opposed the impugned judgment to the extent of Respondents No.1 and 2 (Mehmood and Bashir), on the ground that they jointly have caused fatal injuries to deceased; however, she has opposed the instant appeal against acquittal and supported the impugned judgment to the extent of Respondents No.3 and 4 (Zaheer and Shabir), as only their presence at the vardat as well instigation made by respondent Shabir is shown in F.I.R. and no overt act in the commission of offence has been assigned to them.

6. We have heard the learned counsel for parties at considerable length and have gone through the evidence and documents on record with their able assistance.

7. After going through the record, we have come to the conclusion that prosecution has failed to prove its case against the accused / private respondents for the reasons that at the time of alleged incident accused Mehmood, Bashir and Shabir were armed with hatchets, whereas accused Zaheer was armed with lathi. According to the F.I.R, accused Mehmood and Bashir at the instigation of co-accused Shabir, caused hatchet blows to injured / deceased Mehboob Ali (apparently two injuries), who after receiving the injuries shifted to hospital for treatment where he succumbed to injuries; however, post-mortem report available on record shows that there were three injuries on the person of deceased. Thus, it appears that there is conflict in between ocular evidence as furnished by the complainant with medical evidence. It is noted that accused Mehmood was arrested on 21.03.2014; however, nothing incriminating was recovered from his possession, whereas accused Bashir was arrested on 28.03.2014 and recovery of hatchets was affected from his possession on 10.04.2014 after the delay of about 12 days of

his arrest. It is also noted that recovered hatchets were not blood stained. It is further noted that as per prosecution evidence deceased Mehboob Ali recorded his dying declaration statement in LUMS on 26.03.2014 before I.O of the case but it is surprising to note that the said dying declaration statement has not been produced in evidence in support of prosecution case. On perusal of statement dated 26.03.2014, on police file, it reveals that it is only signed by I.O of the case. The signature / thumb impression of the deceased is not available on said statement. Not only this, this statement is without signature of Medical Officer concerned, therefore, on this ground also the authenticity of this dying declaration statement is doubtful. During the course of arguments we have specifically asked the question from learned counsel for appellant that why this dying declaration statement has not been produced in evidence he has no satisfactory reply with him; however, he submits that it was a defect in the case of appellant. This aspect of the case as well as other material contradictions / discrepancies in the evidence of prosecution witnesses have also been highlighted by the learned trial Court while passing the impugned judgment. For the sake of convenience, it would be appropriate and relevant to reproduce the operative paragraph of the impugned judgment which read as under:-

**“----- . Perusal of the evidence of prosecution witnesses, it reveals that there are material contradictions and inconsistencies in the evidence of prosecution witnesses. The complainant in his evidence has stated that on the day of incident he alongwith his grandson deceased Mehboob Ali alias Baboo went to Kario Ganhwar for purchasing commodities on motorcycle, while on other hand the complainant in his cross examination has stated that he, Mehboob alias Baboo and Allahditto left the village for Kario Ganhwar in one and same Rickshaw. P.W Allahditto has stated that he and Mehboob Ali left the village on motorcycle, while on other hand he has stated that he and Mehboob Ali went to Kario Ganhwar by foot. Besides above, P.W Sikandar has stated that he and Allahditto left the village in Donkey cart. There are three different versions of the complainant and P.Ws with regard to their arrival at place of Vardat from their village. It is also admitted fact that the complainant is grandfather, P.W Sikandar is real father, while P.W Allahditto is uncle of the deceased Mehboob alias Baboo who said to have present at the place of vardat and were talking with other but neither they resisted the accused nor they received any hurt or stretch on their body at the hand of accused. The above conduct of PWs, who are near relatives to deceased Mehboob Ali alias Baboo is highly un-natural due to reason as to how they had given free hand to accused to inflict the injuries to deceased. If the said P.Ws were present at the spot they would have easy empowered the accused and caught hold one of them at the spot.**

Such conduct of the above P.Ws is unnatural and their presence at the spot is also seems to be doubtful. The arrival of P.Ws from their village at Kario Ganhwar, which admittedly nine kilometer away from place of wardat, is also highly doubtful as discussed above. The arrival of P.Ws by different sources creates serious doubt for the reasons that either they were not present at the place of wardat at the time of incident or the incident had not taken place in the manner as alleged by the prosecution. The incident is said to have taken place at Fazil Chowk Kario Ganhwar town, where admittedly shops, hotels are situated but no witness from surrounding area are cited or produced by prosecution. The complainant in his FIR has stated that the accused Shabir armed with lathi, while in his evidence he has stated that accused Shabir was armed with hatchet. From the contradictions of statements of complainant and P.Ws it reveals that P.Ws have dishonestly made improvement in their evidence in order to fill lacuna regarding the injuries on head as the medical evidence disclosed one injury on head which is not on the line of ocular account. The ocular account is contradictory to medical evidence as discussed above. Coming to the circumstantial evidence, the prosecution has examined PW Gulab Mashir and I.O Jan Muhammad. IO Muhammad Ayoub, Tapedar Morji Mal. It is admitted that the hatchet present in Court is not sealed one. I.O has admitted that he has not secured the cloth of Mehboob Ali on 19.3.2014 at the time of preparing mashirnama of injuries. I.O has also admitted that it is not mentioned in the mashirnama of injuries that the clothes of the injured were bloodstained. It is admitted fact that the mashirnama of place of wardat does not disclose that the blood was lying on the place of wardat. I.O has admitted that it is not mentioned in the statements of the PWs that accused Zaheer was armed with hatchet. So far Dying declaration is concerned, the alleged incident is said to have been taken place on 19.3.2014 at 2100 hours while the deceased was died on 27.3.2014, after eight days in hospital. The deceased was alive eight days in hospital but it is admitted fact that neither such written statement of deceased is available neither on record nor the same has been recorded in presence of medical officer of concerned Hospital. The post-mortem report shows only one injury, while checking form of dead body shows three injuries, which is conflicting with the medical evidence. Since, the ocular evidence seems to be doubtful, therefore, there is no need to discuss the rest of the evidence. It is settled principle of law that prosecution primarily is bound to establish guilt against the accused without shadow of reasonable doubt by producing trustworthy, convincing and coherent evidence and if Court comes to the conclusion that the charge so leveled against the accused has not been proved beyond reasonable doubt, then the accused becomes entitled for their acquittal on getting benefit of doubt. If any reasonable doubt would arise in the prosecution case the benefit of same must be extended to accused not as a grace or concession but as a matter of right. So many doubts were not required in the prosecution case, rather any reasonable doubt arising out of the prosecution evidence, pricking the Judicial mind is sufficient for acquittal of the accused. Acquittal by error is better than conviction by error, as such, the case of the prosecution is not free from any doubt. -----.

8. During the course of arguments, We have specifically confronted the above reasoning of acquittal as well as lacunas found in the prosecution case from the learned counsel for the appellant to point out any illegality or irregularity he has no satisfactory answer with him. Even otherwise, learned counsel also could not show any specific part of the impugned judgment where the learned trial Court has committed gross illegality, as the ocular and medical evidence are not favouring the complainant / appellant.

9. Be that as it may, the alleged incident had taken place in the year 2014 and private respondents have already suffered the agony of the trial as well as pendency of instant appeal against acquittal before this Court. We have also noted number of contradictions / discrepancies in between the statements of prosecution witnesses and when these contradictions / discrepancies were brought to the notice of learned counsel for appellant for reply, again he has no satisfactory answer with him. No any ground is available or pointed out by learned counsel for the appellant for showing indulgence in this appeal against acquittal.

10. Considering all the above aspects of the case, we have come to the conclusion that the trial court has rightly extended benefit of doubt in favour of accused / private respondents and the impugned judgment contain valid reasons for extending benefit of doubt to them. Hence the said judgment does not require any interference by this court. We may further observe that there is clear distinction in between appeal against conviction and appeal against acquittal. It is settled law that accused who has / have been acquitted in a crime can claim double innocence, one at the pre-trial stage and the other he / they may earn on the basis of judgment of acquittal in his / their favour from the court of competent jurisdiction. The competent court in the instant matter has extended benefit of doubt to the accused / private Respondents after examining / discussing the entire evidence. Therefore, we see no reason to interfere with impugned judgment. Consequently, instant appeal against acquittal being devoid of merits is hereby dismissed alongwith listed application.

JUDGE

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