

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

Cr.Appeal.No.S- 76 of 2017

Date of hearing: 27.01.2020.
Date of judgment: 27.01.2020.

M/s Ghulam Asghar Mirbahar and Mian Taj Muhammad Keerio,
Advocates for appellants alongwith appellants (on bail).

Mr. Shahid Shaikh, D.P.G. for the State.

Complainant Leemo present in person.

J U D G M E N T

ABDUL MAALIK GADDI, J – Through this criminal appeal, the appellants Allah Bachayo, Zulfiqar, Mushtaque Qadri and Jan Muhammad (present on bail) have assailed the legality and propriety of judgment dated 27.03.2017 passed by learned Additional Sessions Judge-II, Kotri in Direct Complaint No.42 of 2016 (Re: Leemo v. Allah Bachayo and others), whereby the learned trial court after full dressed trial convicted and sentenced the appellant as stated in Point No.2 of the impugned judgment. For the sake of convenience, it would be proper to reproduce Point No.2 of the impugned judgment which reads as under:-

“In view of above detailed discussion and the case law cited above, I have come to the conclusion that complainant fully proved its case against the above named beyond reasonable doubt, I, therefore, award sentence to accused Allah Bachayo, Zulfiqar, Mushtaque and Jan Muhammad for offence punishable u/s 395, P.P.C and convict them imprisonment R.I. for 05 years with fine of Rs.30,000/- (Thirty thousand) each. In case of default in payment of fine, the accused shall undergo further R.I for three months more. Accused present in the court on bail are taken into custody

and remanded to jail alongwith conviction warrant with direction to Jail Superintendent to carry out the sentence into execution according to law.”

2. The facts forming the background of above Direct Complaint are that on 04.09.2016 at 06-00 p.m, appellants alongwith two unknown accused persons, duly armed with pistols, committed dacoity at the plot of the complainant Leemo son of Khan Muhammad situated in Deh Manjhand and looted Rs.10,000/- from the complainant, Rs.5000/- from Wahid Bux and Rs.2,000/- from Soomar, construction material two small iron gates, one big iron gate, 30-bags of cement, 5-iron windows and 200-kg iron rods.

3. After filing the Direct Complaint, statement of the complainant was recorded u/s 200 Cr.P.C. and thereafter, the statement of witnesses u/s 202 Cr.P.C. Then the trial court taken the cognizance and issued B.Ws against the above named accused persons who appeared and furnished their surety before the trial court.

4. The charge was framed against the above named accused u/s 395 PPC at Ex.2, to which they pleaded not guilty and claimed their trial vide their pleas at Ex.2/A to 2/D.

5. At the trial prosecution examined the following witnesses:-

(i) Complainant Leemo as Ex.3, who produced the copy of statement of accused persons as Ex.3/A, CTC of order dated 27.08.2016 passed by the learned Sessions Judge, Jamshoro at Kotri at Ex.3/B, copy of direct complaint as Ex.3/C.

(ii) P.W Wahid Bux as Ex.4.

These witnesses have been cross examined by counsel for accused. Thereafter, prosecution side was closed vide order dated 07.03.2017 at Ex.5.

6. The statements of the appellants were recorded u/s 342 Cr.P.C. at Ex.6 to 9, wherein they have denied the allegation leveled against them by the complainant and pleaded themselves to be innocent. However, neither they

examined themselves on Oath in disproof of the prosecution allegations nor led any evidence in their defence.

7. After assessment of evidence and documents on record, the learned trial court has convicted and sentenced the appellants as stated above.

8. Leaned counsel for the appellants contended that the impugned judgment is opposed to law, facts and so also the principles of natural justice; that the learned trial Court has erred in convicting and sentencing the appellants by not taking into consideration the entire material available on record; that the learned trial Court has seriously erred by not properly appreciating the prosecution evidence according to established principle of judicial appraisal of evidence; that the impugned judgment rests upon the testimony of interested witnesses and has caused miscarriage of justice; that prior to instant complaint, complainant had filed Cr. Misc. A; No.731 of 2016 before the Court of learned Sessions Judge, Jamshoro, whereas appellant Zulfiquar Ali had also filed Cr. Misc. A. No.738 of 2016 before same Court, which were dismissed while observing that the dispute between both parties was of civil nature being over a landed property and can only be decided by competent Court of law, however the trial Court had not taken into consideration such fact and passed the impugned judgment, which is erroneous and illegal, hence calls for interference by this Court. Learned counsel submitted that in his direct complaint, complainant did not mention about the colour of tractor and its registration number; that neither value nor purchasing receipt of the construction material allegedly stolen / looted away, was brought on record; that complainant Leemo had not disclosed the denomination of currency notes, allegedly robbed away, during his cross-examination; that entire case of complainant is doubtful. They lastly prayed that instant appeal may be allowed and as a result thereof the appellants may be acquitted of the charge.

9. On the other hand, learned A.P.G. appearing for the State supports the impugned judgment for the reasons that complainant has produced the proof of the plot and he has produced the reliable / trustworthy evidence.

10. Learned counsel for the complainant was called absent however, complainant present in person was heard at length, who submitted that on 04.09.2016 at 06-00 p.m, appellants alongwith two unknown accused persons, duly armed with pistols, committed dacoity at his plot situated in Deh Manjhand and also looted Rs.10,000/- from him, Rs.5000/- from Wahid Bux and Rs.2,000/- from Soomar. He further stated that accused also took away construction material which he has mentioned in the said Direct Complaint.

11. I have heard learned counsel for the parties and perused the entire material available on record with their kind assistance.

12. Admittedly, from the evidence and documents available on record it appears that there was civil dispute between the complainant and accused persons over the plot and both the parties had filed criminal miscellaneous applications against each other before the learned Sessions Judge, Jamshoro who dismissed the same by observing that the dispute between the parties is over the plot which is a civil dispute and can be resolved by competent Civil Court and no cognizance offence is made out. It also appears from the record that complainant also filed a F.C. Suit No.45/2016 against the present appellants which was dismissed vide judgment dated 16.04.2019 and the appeal against said dismissal of suit is also stated to be pending before the competent court of law.

13. It is noted that the alleged incident is said to have occurred on 04.09.2016 whereas the Direct Complaint was filed on 10.09.2016 after the delay of about six days. It is also noted that no recovery has been affected

from any of the accused as such the ingredients of Section 395 PPC are apparently lacking in this case. No registration number of tractor trolley is mentioned in the Direct Complaint filed by complainant. Even no description or colour of said tractor trolley is given by the complainant to corroborate his version that the incident was actually taken place in a manner as stated by him.

14. It is also noted that the alleged incident is said to have taken place on 04.09.2016 at 06-00 p.m. in the heart of city but no independent person of the locality was associated to witness the incident and only the statement of P.W Wahid Bux was recorded but another witness namely Soomar has not been examined by the complainant from whom allegedly Rs.2000/- were snatched / robbed by the appellants. He was best witness of the complainant and by not examining him, an adverse inference can be drawn to the effect that if he would have appeared in witness box certainly he would have adversely deposed against the complainant. The names of two unknown persons have not been disclosed either in Direct Complaint or in the evidence of complainant. Both the parties are claiming ownership over the plot where the alleged incident is said to have taken place. I have also perused the evidence on record and found contradictory to each other on material particulars of the case with regard to snatching amount as well as looted construction material available on record and all these contradictions were brought into the notice of learned D.P.G. and complainant for their reply, they have no satisfactory answer with them.

15. It is also surprising to note that although the appellants were allegedly armed with pistols at the time of incident but they did not cause any injury either to the complainant or to prosecution witnesses though there was resistance on the part of complainant, therefore, under these circumstances, false implication of the appellants in this case with due deliberations and

consultations on account of admitted enmity, cannot be ruled out. All these things create doubts in a prudent mind that the incident as alleged by the complainant in his Direct Complaint has not occurred and it is well settled principle of law that even a single circumstance creating a reasonable doubt, the benefit of which, always goes in favour of accused, however, in the instant case there are material discrepancies and lacunas in the prosecution evidence. In this regard, reliance can be placed upon case of 'Tariq Parvez v. The State' [1995 SCMR 1345] wherein it has been held by Honourable Supreme Court of Pakistan that:

"For giving benefit of doubt to appellant it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as matter of right".

16. In the light of what has been discussed above and case law, I am of the considered view that the prosecution has failed to prove its case against the appellants beyond any reasonable doubt, therefore, instant appeal is allowed, impugned judgment dated 27.03.2017 is set aside and the appellants are acquitted of the charge. The appellants are present on bail, their bail bonds stand cancelled and sureties discharged.

JUDGE

Tufail