

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

**Criminal Appeal No.S-298 of 2011**

Appellant: Dodo Khan Son of Nangar Lund, through Syed Tarique Ahmed Shah, Advocate.

Respondent: The State, through Ms. Safa Hisbani, Assistant Prosecutor General, Sindh for the State.

Date of hearing: 18-04-2022.

Date of decision: 25-04-2022.

**JUDGMENT**

**IRSHAD ALI SHAH, J:-** The facts in brief necessary for disposal of instant criminal appeal are that the appellant with rest of the culprits, after having formed an unlawful assembly and in prosecution of their common object, committed murder of Ghulam Mustafa by causing him fire shot injuries and then went away by insulting and making fires at complainant Ghulam Hyder and his witnesses with intention to commit their murder too, for that the present case was registered.

2. The appellant and co-accused Nazeer Ahmed were charged for the said offence; which was denied by them and prosecution to prove it, examined complainant Ghulam Hyder and his witnesses and then closed its side.

3. The appellant and co-accused Nazeer Ahmed in their statements recorded u/s: 342 Cr.PC denied the prosecution's allegation by pleading innocence by producing certain documents; they however did not examine anyone in their defence or themselves on oath to disprove the prosecution's allegation against them.

4. On conclusion of trial, co-accused Nazeer Ahmed was acquitted by extending him benefit of doubt, while the appellant was convicted under section 302(b) PPC and sentenced to undergo imprisonment for life and to pay fine of

rupees One Lac to the legal heirs of the deceased as compensation, and in default whereof to undergo R.I for six months with benefit of Section 382-B Cr.PC by learned 1<sup>st</sup> Additional Sessions Judge, Dadu, vide judgment dated 30.09.2011, which has been impugned by the appellant before this Court by preferring the instant criminal appeal.

5. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the complainant in order to satisfy his matrimonial dispute with him; PW Ghulam Muhammad has not been examined by the prosecution; the evidence of prosecution's witnesses has been disbelieved in respect of co-accused Nazeer Ahmed, while it has been believed in respect of the appellant by learned trial Court. By contending so, he sought for acquittal of the appellant. In support of his contention, he relied upon case of *Muhammad Mansha Vs. The State [2019 SCMR 64]*.

6. Learned Assistant Prosecutor General Sindh for the State by supporting the impugned judgment has sought for dismissal of the instant criminal appeal by contending that no active part in commission of incident was attributed to co-accused Nazeer Ahmed, his case was distinguishable to that of the appellant. In support of her contention, she relied upon the *Zahoor Ahmed Vs. The State [2007 SCMR 1519]*.

7. Head arguments and perused the record.

8. It has inter-alia been stated by complainant Ghulam Hyder and PW Aftab Ahmed that on the date of incident, when they, PW Ghulam Muhammad and the deceased after cultivating their lands were going back to their house were confronted by the appellant and others, they insulted them and then the appellant fired at the deceased with his repeater gun and then went away by making fires at them, such fires they managed to escape by taking shelter of 'Bannas'. Ghulam Mustafa after sustaining fire shot injuries fell down on the

ground and died; the police was informed accordingly; the dead body of the deceased was taken to the Hospital for post-mortem. The death of the deceased being unnatural on account of sustaining of fire shot injury (entry and exit wound) was confirmed by Medical Officer Dr. Talib Hussain. Obviously, the case of the appellant is distinguishable to that of co-accused Nazeer Ahmed who has been acquitted by learned trial Court by extending him benefit of doubt. It was the appellant, who is attributed the specific role of causing fire shot injury to the deceased on his chest which proved to be fatal to satisfy his matrimonial dispute with him, therefore, the appellant could not claim benefit which has been extended to co-accused Nazeer Ahmed.

9. In case of *Iftikhar Hussain v. State (2004 SCMR-1185)*, it has been held by the Hon'ble Apex Court that:

*"17. It is true that principle of falsus in unofalsus in omnibus is no more applicable as on following this principle, the evidence of a witness is to be accepted or discarded as a whole for the purpose of convicting or acquitting an accused person, therefore, keeping in view prevailing circumstances, the Courts for safe administration of justice follow the principle of appraisal of evidence i.e sifting of grain out of chaff i.e if an ocular testimony of a witness is to be disbelieved against a particular set of accused and is to be believed against another set of the accused facing the same trial, then the Court must search for independent corroboration on material particulars as has been held in number of cases decided by the superior Courts. Reference may be made readily to the case of **Sarfraz alias Sappi and 2 others v. The State 2000 SCMR 1758**, relevant para therefrom is reproduced here-in-below;*

*"thus the proposition of law in criminal administration of justice namely whether a common set of ocular account can be used for recording acquittal and conviction against the accused persons who were charged for the same commission of offence is an over-worked proposition. Originally the opinion of the Court was that if a witness is not coming out with a whole truth his evidence is liable to be discarded as a whole meaning thereby that his evidence cannot be used either for convicting accused or acquitting some of them facing trial in the same case. This proposition is enshrined in the maxim falsus in unoflasus in*

*omnibus but subsequently this view was changed and it was held that principle enshrined in this maxim would not be applicable and testimony of a witness will be acceptable against one set of accused though same has been rejected against another set of accused facing same trial. However, for safe administration of justice a condition has been imposed namely that the evidence which is going to be believed to be true must get independent corroboration on material particulars meaning thereby that to find out credible evidence principle of appreciation of evidence i.e sifting chaff out of grain was introduced as it has been held in the cases of Syed Ali Bepari v. Nibaran Mollah and others (PLD 1962 SC-502).....”*

10. The complainant and PW Aftab Ahmed have stood at their version, on all material points with regard to death of the deceased at the hands of appellant, despite lengthy cross examination and their evidence to that extent takes support from the ancillary evidence, which has been produced by the prosecution. The parties were already disputed and known to each other well; therefore there was no issue of mistaken identity of the appellant in commission of incident. No doubt PW Ghulam Muhammad has not been examined by the prosecution but his non-examination is not enough to disbelieve the complainant and PW Aftab Ahmed so far the case of the appellant is concerned. On arrest from the appellant has been secured by the police the incriminating repeater gun and same as per Forensic Report produced by I.O/ASI Asghar Ali has been found matched/similar with two empties secured from the place of incident, which appears to be strong circumstantial evidence connecting the appellant with the commission of incident. In these circumstances, it would be safe to conclude that the prosecution has been able to prove its case against the appellant beyond shadow of doubt.

11. In case of *Allah Bux Vs. Shammi and others (PLD 1980 SC-225)*, it has been held by the Honourable Court that;

*“Conviction, even in murder cases, held, can be based on testimony of a single witness if Court satisfied as to witness being reliable-Emphasis, held*

*further, laid on quality of evidence and not on its quantity”.*

12. In case which is relied upon by learned counsel for the appellant it has been held that the benefit of a single doubt appearing in evidence is to be extended to the accused. In that instant case, no doubt is appearing which could legally be extended in favour of the appellant.

13. In view of the facts and reasons discussed above, it is concluded safely that no interference with the impugned judgment is called for by this Court by way of instant appeal, it is dismissed accordingly.

JUDGE

Muhammad Danish\*