

IN THE HIGH COURT OF SINDH AT KARACHI

CR. APPEAL NO.21/2015

Appellants : Rajab and Manzoor,

Respondent : The state,

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CR. APPEAL NO.23/2015

Appellants : Rafiq and Niaz,

Respondent : The State,

Date of hearing : 26.03.2019.

Date of short orders : 26.03.2019.

Appearance:

Mr. Faisal A. Memon advocate for appellants in Appeal No.21/2015.

Syed Jameel Ahmed Shah advocate for appellants in Appeal No.23/2015.

Mr. Faheem Hussain Panhwar, DPG.

Complainants present on date of hearing.

ORDER

SALAHUDDIN PANHWAR, J. Appellants have assailed judgments dated 31.01.2015 passed by the District and Sessions Judge, Thatta, in their respective cases as under:-

Judgment passed in S.C. No.135/2010 arising out of FIR No.92/2010, u/s 324, 506(2), 147, 148, 149, 114, 337-A(i), 337-A(ii), 337-L(2), 337-H(2) and 504 PPC, PS Sujawal, and

Judgment passed in S.C. No.133/2010, emanating from FIR No.89/2010, u/s 324, 147, 148, 149, 337-A(i), 337-A(ii), 337-F(i), 114, 337-L(2) and 506 PPC, PS Sujawal.

2. Brief facts of prosecution's case in Appeal No.21/2015 are that complainant Ahmed alleged that he brought some excavating machines at the site where he used to cultivate his land and started digging the watercourse on 28.06.2010, he and his brothers went to the house to eat meal and coming back at the site found that excavating machine was not digging proper watercourse, further accused Tayyab, Lakhadino, Rajab, Aftab, Ramzan, Aijaz, Qaidr Bukhsh, Manzoor, Rafiq, Photo Chang and 4/5 unknown persons were present there with pistols and *lathis*; then accused Tayyab Khaskheli instigated other aforementioned accused persons that do not spare the complainant party and kill them; on his instigation, accused Lakhadino Khaskheli made direct fire from his gun upon complainant with intention to commit his murder which got missed; Qadir Bukhsh made direct pistol fire at his brother Umer in order to commit his murder but that fire also missed; accused persons beaten the complainant party by causing *lathies*, hatchets and butt blows who received injuries at head and different parts of their bodies. Prosecution examined PW Complainant Ahmed Hathyar, Rafiq Hathyar, Umer Hathyar, Hussain Hathyar, Dr. Noorullah Larik, HC Ghulam Rasool Khoso, ASI Zahid Hussain Shaikh, Inspector Afzal Baaig Mughal were examined. Statement of accused persons were recorded under section 342 CrPC.

3. Concisely, prosecution in Appeal No.21/2015 alleged that on 29.06.2010 at 1130 hours complainant Lakhadino reported that he used to cultivate his land, on 28.06.2010 at night time complainant and his nephew Aijaz Ahmed Khaskheli were standing

on their land at about 1100 pm when accused Dawood Hathyar, Punhoon Hathyar, Abdul Khalique Munaro, Muhammad Hathyar, Umer Hathyar, Rafique Hathyar, Akbar Hathyar, Ahmed Hathyar, Nazeer Hathyar, Niaz Hathyar came there with pistols, hatchets and *lathies* and abused complainant party; that Abdul Khalique Munaro, Dawood Hathyar and Punhoon Hathyar instigated the remaining accused not to spare the complainant party and on their instigation accused persons with their weapons, *lathies* and hatchets gave blows to complainant on head and other parts, accused Rafique Hathyar conducted straight firing upon complainant's nephew Aijaz with intention to commit his murder which hit his abdomen, other accused also did straight firing to commit murder of complainant party which missed. Prosecution examined Lakhadino Khaskheli, Aijaz Ahmed, RAMzan Khaskheli, Umer Khaskheli, Dr. Noorullah Larik, ASI Zahid Hussain Shaikh and ASI Afzal Baig Mughal. Statement of accused persons were recorded under section 342 CrPC.

4. Heard and perused the record.

5. Case of the prosecution is that due to dispute over excavation of water course, two parties scuffled and received injuries hence two separate cases were registered; in one case being crime No.89/2010 Lakhadino and Ejaz received *lathi* and fire shot injury whereas in another case emanating from Crime No.92/2010 complainant Ahmed, PWs Umar and Rafiq received fire shot injuries; whereas medical report shows that he received pallet injury which cannot be caused with pistol.

6. That except injured, other witnesses have taken plea that accused Rafiq was having *desi* pistol in his hand but in FIR and in their statements this description is not mentioned hence it looks that they have improved their statements whereas against accused

Dawood, Punhoon and Abdul Khaliq it is stated that they caused *lathi* and hatchet injuries to Lakhadino which seem to be general allegations and not specific. Injured Lakhadino received two injuries whereas three persons are alleged and nature of weapon is hard and bulient substance however it is also stated that they caused hatchet injury, thus medical evidence is not confirming ocular account. In former case allegations are general that ten accused persons caused injury to three persons, injuries are simple to Ahmed and Rafiq only. Independent corroboration is lacking in both cases; enmity is also not disputed; accordingly in criminal administration of justice prosecution has to prove the case beyond shadow of doubt. Here false prosecution and exaggeration cannot be ruled out. Accordingly impugned judgment was set aside by short order dated 26.03.2019; appellants were on bail, their surety was discharged. Office shall return surety documents.

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