

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No. 173 of 2010

Criminal Appeal No. 182 of 2010

Appellants: Afaq Ahmed through Mr. Muhammad Farooq advocate

Muhammad Aamir Khan through Syed Mahmood Alam Rizvi advocate

The State/complainant: Mr. Muhammad Ashraf Kazi Special Prosecutor

Mr. Faheem Hussain Panhwar, Deputy Prosecutor General Sindh

Date of hearing: 08.09.2022

Date of judgment: 08.09.2022

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellants with rest of the culprits after having formed an unlawful assembly and in prosecution of their common object, not only fired at complainant Muhammad Ismail Qureshi with intention to commit his murder, but by resorting to looting neighbourers in vicinity, abducted Khalid Jameel, Salaman Ahmed, Farooq Bhai, Mateen Ahmed, Sajid, Muhammad Yousuf, Rashid Ali, Moeen, Shahid Pasha, Nisar Atif, Shahid Farooqui, Faheem Baig and Saeed Ahmed, said to be workers of a political party, kept them confined illegally, maltreated them and then committed murder of Farooq Bhai by causing him fire shot injuries, when he attempted to flee from the captivity; for that they were booked and reported upon by the police.

2. After due trial, the appellants were found guilty for offence punishable under Section 302(b)/34 PPC and were sentenced to undergo imprisonment for life with benefit of section 382-B Cr.P.C. by IV-Additional Sessions Judge, Karachi East, vide judgment dated 07.04.2010, which is impugned by the appellants before this Court by preferring two separate appeals.

3. It is contended by learned counsel for the appellants that the appellants being innocent have been involved in this case falsely by the police at the instance of a political party, that too on the basis of unjustified re-investigation of the case; even otherwise, no specific role in commission of incident is attributed to the appellants and evidence of the prosecution witnesses being inconsistent and doubtful in its character has been believed by learned trial Court without assigning cogent reasons, therefore, they are entitled to be acquitted by extending them benefit of doubt.

4. Learned Special Prosecutor for the State/complainant did not support the impugned judgment. However, learned DPG for the state by supporting the impugned judgment has sought for dismissal of the instant appeals by contending that the appellants are vicariously liable for causing death of the deceased.

5. Heard arguments and perused the record.

6. FIR of the incident was lodged in year 1992. Initially Iqrar Ali, Arshad @ Rashid @ Masroor and Dildar Ali were challaned by the police and they one after other, after due trial were acquitted by learned trial Court vide judgments dated 29.11.1997 and 31.05.2000 respectively. Subsequently, on re-investigation of the case, conducted by IO/Inspector Faqeer Muhammad Jatoy, in year 2004, with lapse of about 12 years the appellants were challaned. Complainant Muhammad Ismail Qureshi has attempted to support the contents of his application u/s 154 Cr.P.C, which he allegedly moved with the police. His evidence is suggestive of the fact that there is political rivalry of his party with the appellants. The appellants admittedly were charged for various penal sections. On conclusion of the trial, they have been punished only for an offence punishable under Section 302/34 PPC. In that way the appellants have been acquitted impliedly even by learned trial Court for rest of the penal sections for which they were so charged. The role attributed to the appellants for committing murder of the deceased as per P.Ws Sajid Ali, Attaullah, Muhammad Haroon, Irfan Ali and Abdul Qadeer is only to the extent that at their

instance, the deceased was done to death by Mustafa alias Tashfeen and others by causing him fire shot injuries. Involvement of the appellants on the basis of instigation/ instance, if is examined in the light of political rivalry between the parties is appearing to be doubtful. No memo of place of incident has been brought on record. There is no recovery of any sort from any of the appellant. No postmortem report on the dead body of the deceased was conducted. As per medico legal certificate, which is brought on record by the prosecution through Medical Officer Dr. Pertab, the deceased died by firing by unknown persons. Perhaps in that context it is being contained by learned counsel for the appellant that their involvement in this case is based on deliberation and consultation. In these circumstances, it could be concluded safely that the prosecution has not been able to prove its charge even for murder of the deceased against appellants beyond shadow of doubt.

7. In case of *Muhammad Mansha vs The State (2018 SCMR 772)*, it has been held by the Hon'ble Apex Court 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".

8. In view of 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 were convicted by learned trial Court, they are present in Court on bail, their bail bonds are cancelled and sureties are discharged.

9. The instant appeals are disposed of accordingly.

JUDGE