

IN THE HIGH COURT OF SINDH AT KARACHI

Present: Omar Sial, J

Criminal Appeal No. 14 of 2010

Appellants : 1. Muhammad Shahid;
2. Fakhruddin @ Fakhroo;
3. Naseeruddin @ Nasroo
through Mr. Habib Ahmed, Advocate.

Respondent : The State
through Mr. Hussain Bux Baloch, Addl.P.G.

Complainant : through Mr. Muhammad Ramzan, Advocate

Date of judgment: 13th December, 2021

JUDGMENT

Omar Sial, J.: On 20-6-2001 at 2:10 p.m., F.I.R No. 102 of 2001 was registered at the Landhi police station under sections 302 and 34 P.P.C. The complainant was Muhammad Irshad Malik who reported an incident which had occurred at 3:00 a.m. the same day. He recorded that on 19-6-2001 a group of people, which included him, was going from Karachi to Hyderabad in a bus for a wedding. An altercation between the complainant and a fellow traveler (Imran) occurred on the journey to Hyderabad but the same was amicably settled on the intervention of the other group members. On the way back from Hyderabad to Karachi the group of people travelled in two buses. When they reached Karachi and the passengers were disembarking, Naseeruddin, Fakhruddin and Shahid (the three appellants in these proceedings) caught hold of the complainant's father by his collar and beat him with an iron rod and a piece of wood and then forcibly put the father under the wheel of the bus due to which the father died.

2. The three appellants were charged under section 316 P.P.C. (qatal-shibh-i-amd), however they pleaded not guilty and claimed trial. At trial, the prosecution examined 13 witnesses. **Muhammad Irshad Malik (PW-1)** was the complainant and an eye-witness to the incident. He testified that when they were on their way to Hyderabad, he had wanted to drink water but that one Imran had his legs on the water cooler. On his objection, Imran kicked the complainant. When the bus

reached Karachi and the passengers were disembarking, the three accused beat his brother Siraj as he came down the bus. Upon the complainant's father (Ghafoor) intervening, Naseeruddin hit him with a knife he carried whereas Shahid hit the father with an iron pipe. This was the first time that the complainant introduced the story of his brother Siraj also being beaten by the accused and that of Naseeruddin striking the father (Ghafoor) with a knife. In the F.I.R he had lodged, there was no mention of the father being struck by a knife or, as a matter of fact, that there was any knife involved in the incident. Similarly, there was no mention about his brother Siraj being beaten. Material improvements have been made by the complainant in his statements which adversely impact his credibility. I also do not believe the story narrated by the complainant regarding how his father got injured by the bus. According to the complainant when he got off the bus, Naseeruddin said that the father had died and now he (Ghafoor) should be put under the bus. Ghafoor (the father) was put under the wheel of the bus but the complainant managed to pull Ghafoor out before the bus could drive over him and took him home. Ghafoor was taken to a hospital where he was pronounced dead. I find it extremely unusual that the complainant (according to his own admission at trial) did not go to report the incident at the police station but returned home and waited until surprisingly a policeman (S.I. Habibur Rehman) came to his house and said that he had come to investigate as there had been a report from the Jinnah Hospital that a person had died there earlier. Later, an S.I. (Abdul Ghafoor) summoned the complainant to the police station but the complainant did not go. The police had concluded that the death of the father (Ghafoor) had been caused due to a road accident. I find it odd that the alleged altercation was between one Imran and the complainant but that his father (Ghafoor) was killed by the three appellants. The connection between the two incidents was not explained by any witness. By his own admission, the complainant was accompanied by three brothers of his. It is unusual that none of the four did anything to save their father from harm. Contrary to what the complainant stated in his examination-in-chief, during his cross examination he admitted that his father had received injuries from the wheels of the bus. The bus had also been impounded by the police in a traffic accident case.

3. **Mst. Munni (PW-2)** was one of the passengers of the other bus (not the one in which the other players in this incident were). Her testimony reveals that she did not see the incident see Ghafoor being struck by anybody. According to her, Fakhruddin had held her son Irshad; Naseeruddin had abused her whereas she assigned no role to Shahid. Her testimony was of not much help to the prosecution case in fact in essence went against the allegations raised by the complainant and further weakened the prosecution's case.

4. **Muhammad Yaseen (PW-3)** was one of the passengers on the bus. He had his own story to add to the incident, which had neither been revealed in the F.I.R. or the testimony of the complainant. According to this witness he had seen Naseeruddin and Fakhruddin beat Ghafoor whereas the sons of Naseeruddin and Fakhruddin were fighting with the brothers of the complainant, namely, Riaz, Siraj and Mairaj. He too did not see Ghafoor being struck with a knife. In his cross-examination, this witness stated that he had seen Naseeruddin with an iron rod and Shahid with a wooden piece while Fakhruddin was empty handed. His account does not tally with that given by Irshad (PW-1) or Munni (PW-2). He admitted that he had read in the newspaper about the road accident in which Ghafoor had died. He also admitted that the driver of the bus Jehangir had been arrested by the police in connection with the road accident. His testimony like that of PW-1 and PW-2 also weakened the prosecution's case.

5. **Muhammad Siraj Malik (PW-4)**, was the complainant's brother and a passenger on the bus. He assigned Fakhruddin the role of strangling his father, though none of the other witnesses had stated this. He too admitted that after the funeral had taken place the police declined to register the F.I.R. and had told the family that it was a road accident case. His statement was recorded after six days of the incident and no reason was given for the delay. His testimony becomes doubtful due to the improvements contained in it as well as the late recording of his section 161 Cr.P.C. statement without any reason being assigned for the same.

6. **Syed Manzar Hasnain (PW-5)** was a Motor Vehicle Inspector who testified that on 21-6-2001 while he was posted at the Accident Reporting Center he had received a call from the Landhi police station informing him of a road accident and that he had gone to inspect the bus involved in the accident, which he had

found to be mechanically fit and undamaged. His testimony was also of little help to the prosecution.

7. **Allah Bux Malik (PW-6)** was a passenger on the bus, however, his testimony does not add any value to the prosecution case, as according to him he reached at the spot after the incident and only saw an injured Ghafoor and helped in taking him to the hospital.

8. **Moula Bux (PW-7)** was a witness to the memo of inspection of dead body, inquest report, memo of inspection of place of incident. He denied that he had signed the memo of place of incident at the place of the incident. I notice that the memo of inspection of the dead body as well as the inquest report both state that the death of Ghafoor has occurred due to an accident. Both documents also do not show any knife injuries sustained by the deceased.

9. **Muhammad Jehangir (PW-8)** was the driver of the bus. He testified that he was carrying 65 to 70 passengers and that all of them started to fight inside the bus. He confirmed that the police had arrested him and that the bus was also seized by the police.

10. **Muhammad Azeem Ahmed (PW-9)** was a passenger in the bus but his evidence was hearsay.

11. **Habib-ur-Rehman Qureshi (PW-10)** was the police officer who conducted the initial investigation. Nothing in his testimony was material to the prosecution case.

12. **Muhammad Aslam (PW-11)** was a person sleeping nearby. He testified that he had heard that a man Abdul Ghafoor had died by being hit by a bus.

13. **Yameen Malik (PW-12)** was a labourer nearby who had helped take the injured Ghafoor to the hospital, he however, testified that he had not seen the incident.

14. **Muhammad Abid (PW-13)** was a burger seller close by. He too did not see the incident.

15. The accused recorded their section 342 Cr.P.C. statements in which they pleaded innocence.

16. On 6-1-2010 the 1st Additional District Judge, Karachi East announced his judgment in which he sentenced the appellants to five years in prison and directed him to pay diyat of Rs. 200,000. It is this judgment which has been impugned in these proceedings.

17. I have heard the learned counsels for the appellants as well as complainant and the learned Additional Prosecutor General. While their respective arguments are not being reproduced here the same are reflected in my observations and findings below.

18. After a re-appraisal of the evidence produced at trial, I am of the view that the prosecution failed to prove its case against the appellants. My reasons for so concluding are as follows:

19. I do not believe that the eye-witnesses, in particular, the complainant told the truth (due to the observations made above). Significant material improvements, as noted above, were made at trial. The eye-witnesses did not corroborate each other's narration of events. The testimony of the eye witnesses was not trust worthy nor confidence inspiring. To the contrary it appears to me that the same was manipulated and twisted in order to serve the complainant's purpose. Muhammad Siraj Malik (PW-4) the brother of the complainant who was supposedly an eye witness and was beaten in the whole episode recorded his section 161 Cr.P.C. statement after 6 days of the incident. No reason for the delay was given thus no weight can be given to his testimony. A conviction in the present cases, due to the contradictory and materially improved testimonies of the alleged eye witnesses, cannot solely be based on the testimony of the eye witnesses and their testimony requires corroboration, which was not made.

20. The cause of death was never proved. However the police all along maintained that Abdul Ghafoor's death was due to a road accident and was not a murder. There was no medical report on record. No post mortem took place. No doctor was examined at trial. No reason for the absence of this material evidence was given. To the contrary, all other evidence which was produced in shape of police documents reflected that Ghafoor had died of a traffic accident.

21. The investigating officer of the case was not examined at trial. No reason for his absence was given at trial. No substitute was examined who could have at least verified the signatures of the investigating officer on various documents.

22. In view of the above based on the evidence produced, the prosecution was unable to prove its case against the appellants beyond a reasonable shadow of doubt. The appeal is therefore allowed and the appellants acquitted of the charge. They are already on bail therefore their bail bonds stand cancelled and surety discharged.

JUDGE