

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

Cr. Jail Appeal No.D-213 of 2019

[Confirmation Case No.51 of 2019]

[Ilmuddin and Others versus The State]

DATE

ORDER WITH SIGNATURE OF JUDGE

BEFORE:

**MR. JUSTICE MUHAMMAD KARIM KHAN AGHA
JUSTICE MRS. KAUSAR SULTANA HUSSAIN**

Appellants : Through M/s Syed Tarique Ali Shah and Ammar Ahmed advocates

Complainant: Through Mr. Asif Ali Talpur advocate

The State : Through Mr. Shahzado Saleem Nahiyoon A P G

Date of hearing: 28.02.2023

Date of judgment: 16.03.2023

J U D G M E N T

KAUSAR SULTANA HUSSAIN, J: Through this appeal, appellants have impugned the Judgment dated 27.11.2019 penned down by learned Additional Sessions Judge-II/MCTC Jamshoro @ Kotri in Session Case No.52 of 2017 [**Re: The State versus Ilmuddin & Others**], outcome of Crime No.03 of 2016 registered at P.S Kotri for offences punishable under Sections 302, 324, 147, 148, 149 and 114 PPC, whereby, they have been convicted and sentenced as follows:

I, therefore, convict the accused 1) Ilamuddin, 2) Ali Ghulam @ Kak Ali, 3) Sahib Ali and 4) Rasool Bux u/s 265-H (2) Cr.PC for the offence punishable u/s 302 (b) P.P.C read with section 149 PPC and they are sentenced to death on three counts each. They shall be hanged till their death. They shall also pay compensation of Rs.5,00,000/ (Five lacs) each to LRs of deceased Piyaro, deceased Uris and deceased Sain Bux as provided u/s 544-A Cr.PC. In default of payment of compensation amount, each accused will have to further undergo for three month more S.I.

The accused 1) Ilamuddin, 2) Ali Ghulam @ Kak Ali, 3) Sahib Ali and 4) Rasool are also convicted for the offence punishable u/s 324 P.P.C read with section 149 P.P.C for causing murderous assault on complainant party and they are sentenced to suffer Rigorous imprisonment for 10-years each as Tazir. They are also fined in the sum of Rs.10,000/- in default of payment of fine, each accused will have to further undergo for two month more S.I.

The accused 1) Ilamuddin, 2) Ali Ghulam @ Kak Ali, 3) Sahib Ali and 4) Rasool are also convicted under section Section 334, 337-R P.P.C. read with section 149, P.P.C and they are sentenced to suffer Rigorous imprisonment for 10-years each as Tazir. They shall be liable to payment of Arsh, which is half of the Diyat amount. The Diyat amount in this case come to Rs.23,20,202, half of which comes to Rs.11,60,101. As number of accused in the case is four, therefore, the accused are liable to payment of 1/4th of half or the Diyat amount of Arsh to the injured Jamal. One-fourth of the, same would thus come to Rs.580050.50, in case of failure to pay Arsh they shall be dealt with as provided u/s 337-X P.P.C. The amount of Arsh if paid by the convicts shall be paid to the injured Jamal.

The accused 1) Ilamuddin, 2) Ali Ghulam @ Kak Ali, 3) Sahib Ali and 4) Rasool are also convicted for the offence punishable u/s 337-F(ii) read with section 149 P.P.C for injury of the person of witness Jamal, they are sentenced to suffer Rigorous imprisonment for three years each as Tazir, they are also directed to pay Daman in the sum of Rs.10,000/- each to the injured P.W Jamal, in case of failure to pay daman they shall be dealt with as provided u/s 337-Y PPC. The amount of daman if paid by the convicts shall be paid to the injured Jamal.

The accused 1) Ilamuddin, 2) Ali Ghulam @ Kak Ali, 3) Sahib Ali and 4) Rasool are also convicted for the offence punishable u/s 148, P.P.C. They are sentenced to suffer Rigorous imprisonment for two years each as Tazir, they are also fined in the sum of Rs.5000/- each. In default of the same, each accused will have to further undergo one month more S.I.

All the sentences shall run concurrently. The benefit of section 382-B Cr.P.C is extended to the accused. Accused Ali Ghulam @ Kak Ali and Sahib Ali are produced from Special Prison Nara Hyderabad while the accused Illamuddin and Rasool Bux are present on bail, their bail bond stands cancelled and surety stands discharged and they are taken into custody. All the accused are remanded to jail with conviction slips and warrants to carry out the sentence into execution so awarded to them in accordance with law.

The death sentence of accused 1) Ilamuddin, 2) Ali Ghulam @ Kak Ali, 3) Sahib Ali and 4) Rasool Bux shall not be executed till confirmation of the Honourable High Court. Let the reference be made to Honourable High Court U/S 374 Cr.PC.

2. Brief facts of the prosecution case, per FIR lodged by Complainant Zulfiqar Ali, are that there was a dispute between them and accused party over measurement of land; on 29-11-2016, he along with his brother Noor Ali, uncle Piyaro, cousin Uris Ali, Sain Bux, Jamal and Zakir Hussain was working in the land, when, Ilmuddin (**appellant No.1**), having Kalashnikov, Talib having Kalashnikov, Ali Mohammad having gun, Golai @ Kak Ali (**appellant No.3**) having hatchet all sons of Quraban Khoso, Sahib Ali (**deceased appellant No.4**) having Kalashnikov, Ali Banho armed with gun both sons of Kevro Khoso, Talib s/o Ghulam Rasool having gun, Motio S/o Jan Mohammad with hatchet,

Mashoq S/o Jan Mohammad with hatchet and Rasool Bux s/o Anb (**appellant No.2**) with pistol came over there at 2.30 p.m and restrained them from working in the lands; Ilmuddin instigated others not to spare the complainant party and he made Kalashnikov fires upon Piyar Ali, which hit him on his chest and both abdomens; Talib made fire of Kalashnikov upon Uris Ali, which hit him on his chest and hand and he also fell down; Sahib Ali made straight fires of Kalashnikov upon Sain Bux, which hit him on his left thigh; Golai @ Kak Ali caused hatchet blow to Jamal on his right leg foot joint. Motio caused hatchet blow on the back of Jamal; Talib s/o Ghulam Rasool made gun fire shot upon him (Complainant), he fell down on the ground and such fire hit to Ilmuddin and then accused persons taking Ilmuddin went away towards southern side while making firing; thereafter dead bodies and injured were taken with the help of relatives to LUMHS, Jamshoro and also informed to police, however, Sain Bux succumbed to his injuries in hospital; police came in hospital and issued letters for medical treatment of injured and postmortems of dead bodies; after burial and funeral ceremonies, Complainant lodged FIR that accused with deadly weapons, in furtherance of their common object, committed murder of Piyaro, Uris and Sain Bux and severally injured Jamal.

3. After registration of FIR investigation was conducted and then challan was submitted before the learned Magistrate concerned, who took cognizance of the matter and sent the R&Ps to learned District Judge. Thereafter copies were supplied to present appellants, while rest of the accused persons were shown as absconders. Then formal Charge was framed against present appellants at **Ex.07**, to which they pleaded not guilty and claimed trial vide their pleas at **Ex.07/A to 07/D**. In order to prove the charge prosecution examined seven (07) witnesses at Ex.11 to 17, who exhibited and recognized certain documents at **Ex.11/A to 17/E**, the prosecution closed its side at **Ex.18**. Statements of appellants, as required under Section 342 Cr.P.C were recorded at **Ex.19 to 22**, wherein they denied the allegations of the prosecution witnesses and alleged false implication, however, Neither they examined themselves on Oath nor produced any witness in their defense. Finally learned trial Court after hearing the arguments of the learned counsel for the parties convicted and sentenced the present appellants, as reproduced supra, and also sent reference to this Court under Section 374 Cr.P.C for confirmation of death sentence awarded to the appellants. We therefore, decide the fate of captioned appeal as well as reference by this single judgment.

4. In present appeal, appellant Sahib Khan has already expired, as such no legal representative has any interest to pursue this appeal on behalf of deceased appellant Sahib Khan, therefore, case against deceased appellant Sahib Khan is

abated and the present appeal is dismissed to the extent of deceased appellant Sahib Khan.

5. Learned counsel for the appellants, inter-alia, contended that impugned judgment is entirely against the norms of law; that there are material contradictions in the evidence of Complainant and his witnesses; that the FIR is delayed more than 24-hours and no explanation has been given by the Complainant party, therefore, false implication cannot be ruled out; that there are counter case between both the parties pending before this Court in respect of the same incident; that the day, time and place of incident mentioned in both counter FIRs are same; that the place of incident (land-in-question) is not on the name of the Complainant party; that all the three deceased namely Piyaro, Urs Ali, Sain Bux and injured Jamal as well as the Complainant Zulifquar Ali are the nominated accused persons in counter FIR No.06/2016 of P.S Rajri, in which the present accused are the witnesses against them; that the eye-witnesses of the instant crime have not been shown in a sketch prepared by Tapedar; that the mashirs are not residents of the place (place of incident, place of arrest of appellants, places of recoveries of weapons alleged to be recovered from the present appellants); that alleged recoveries of crime weapons were not effected from exclusive possession of the appellants persons; that no finger prints were found on the alleged crime weapons as well as no effort was taken to get the same also by the I.O; that no entries were kept at Police Station when first information was given by the one Kambar Ali in respect of instant crime; that it is admitted fact that the clothes of P.Ws were not included in the investigation; that no cross match report and blood group was collected or obtained by the I.O in respect of the blood of deceased persons and injured; that the alleged empties recovered from the place of incident were kept at the police station till the arrest of the appellants and weapons recovered from them, and such malkhana entry of keeping empties and weapons at the police station was not submitted by the police during the investigation as well as trial; that infact the complainant party was an aggressor and became the cause of instant unpleasant incident; that Complainant party only leveled allegations against the appellant Rasool Bux but has not specified any action against him and no injury has been attributed to appellant Rasool Bux; that motive is not proved by the Complainant party; that due to firing from the Complainant side appellant Illamuddin was paralyzed; that the evidence of investigation officer and medico-legal officers does not connect the appellants with the charge of allegation, therefore, the prosecution has miserably failed to prove its charge against the appellants. He relied upon the case laws reported in (i) 2018 MLD 422 Sindh, (ii) 2006 YLR 359, (iii) 2020 MLD 776 Sindh, (iv)

2019 MLD 1713, (v) PLD 2006 Karachi 377, (vi) 2020 MLD 952 Sindh, (vii) 2017 SCMR 486, (viii) PLD 2019 SC 64 and (ix) PLD 2021 SC 600

6 Learned Additional P.G, duly assisted by learned counsel for the Complainant vehemently opposed the appeal and argued that the appellants are nominated in the FIR with the specific role of causing injury on the persons of three deceased persons; that the motive behind the occurrence is over the land which has also been admitted by the appellants in their statements u/s 342 Cr.PC and so also such suggestion have also been put by the defence counsel; that there are no contradictions in the prosecution evidence; that the appellants have committed a heinous act causing murders of three innocent persons and made one person permanently disabled; that ocular evidence is supported through the medical evidence; that chemical reports also support the prosecution story; that the medical evidence is also on same line and supports the version of the Complainant; that the recovery of weapons of offence has been proved; that the prosecution has produced ample evidence which connect the appellants with commission of murders of three deceased; that the Complainant party in the connected case have been acquitted by the trial Court; that all the appellants with their common intention committed murders of three deceased and also amputated the organ of injured person. Therefore, they are liable for capital punishment for the offence. In support of their contentions they relied upon (i) 2009 P Cr. L.J 300, (ii) PLD 2021 Lahore 805 and (iii) 2017 YLR 2052.

7. We have heard the learned counsel for the parties as well as learned Additional P.G and have also perused the material available on record. Since some of the co-accused persons are still absconders and they have not yet joined the trial, therefore, we would like to confine our observations and findings to the extent of present appellants only.

8. Case of the prosecution is that present appellants alongwith absconder accused persons caused death and injuries to complainant party. In present case three persons viz: (i) Piyaro, (ii) Uris and (iii) Sain Bux have lost their lives while one Jamal had sustained injuries. The dead bodies were examined by Dr. Yousuf Soomro, who stood retired at the time of trial, however, his documents and signatures were verified by duly authorized Dr. Waqar Ahmed, who was examined as PW-7 at Ex.17. In order to simplify the matter, the opinion of Medico Legal Officer in respect of each deceased and injured is reproduced below:

(i) **DECEASED URS**

INJURIES:

1. A small punctured wound about 3 cm in diameter margins of wound inverted that is the discharge of firearm and wound of entry at mid of sternal area of chest.
2. A small punctured lacerated wound about 05 cm at the back of dead body at sixth intra costle and area that is exit. Margins of wound are everted.

REMARKS: Deceased received firearm injuries.

OPINION:

Death occurred due to rupture of heart and lungs, hypovolemic shock, neurogenic shock, cardio pulmonary arrest, coma.

(ii) DECEASED PIYARO KHAN**INJURIES:**

1. A small punctured wound 3 cm in diameter at left nipple of the chest, margins of the wound inverted, that is discharge of firearm and wound of entry.
2. A small punctured lacerated wound at the right side fifth rib, margin of wound are everted, that is wound of firearm and wound of exit.
3. A lacerated wound about 5cm at the right side elbow joint, deep upto skin caused by hard and blunt substance.

REMARKS: Deceased died of firearm injuries.

OPINON:

Death occurred due to rupture of heart and lungs, hypovolemic shock, neurogenic shock, cardio pulmonary arrest, coma.

(iii) DECEASED SAIN BUX**INJURIES**

1. A small punctured lacerated wound at lower abdominal at right side of abdomen above the hip area at lower abdomen margins of wound and inverted, that is discharge of firearm and wound of entry.
2. A small punctured lacerated wound below the umbilicus margin of wound are everted, that is wound of firearm and wound of exit.

REMARKS: Deceased died of firearm injuries.

OPINON

Death occurred due to hemorrhage of kidney and abdominal aorta damaged, deceased going hypovolemic and hemorrhage shock which caused cardio pulmonary arrest which lead to coma and death.

INJURED JAMAL

INJURIES:

1. Swelling about 4cm x 4cm at right thigh. X-ray shows fracture on right femur bone.
2. Lacerated wound about 03 cm back rightside below scapula. 3x1 cm back, muscle deep.

Nature of injury No.1 was Ghayar Jaifah Hashmia 337 F(v) PPC.

Nature of injury No.2 was Ghayar Jaifah Badiyah 337 F(i) PPC.

However, the said Medical Legal Officer issued corrigendum, whereby he declared the injury No.1 as Itlaf-udw 334 and also stated that kind of weapon was sharp cutting.

9. Now it is to be seen that who had caused the death and injuries to aforesaid persons. We have before us evidence of Complainant and other two eyewitnesses. Complainant Zulfiqar Ali, who was examined as PW-1 at Ex.11, deposed that there was dispute between them and accused party over some piece of land and on 29.11.2016 he alongwith his brother Noor Ali (**PW-2/eye witness**), uncle Piyaro Ali (**deceased**), cousin Urs Ali (**deceased**), Sain Bux (**deceased**), Jamal (**injured PW**) and Zakir Ali was working on the disputed land when present appellants alongwith absconder accused persons, duly armed with deadly weapons, came over there and the appellant Ilmuddin instigated other accused and he made straight fire from his Kalashnikov upon Piyaro which hit him on his front side of chest as well as on side of ribs; accused Talib made fire from his Kalashnikov at Urs Ali which hit him on his chest and hand, while appellant Sahib Khan made straight fire from his Kalashnikov on Sain Bux which hit him on left side of his upper hip; appellant Ali Ghulam @ Kak Ali inflicted hatchet blow to Jamal which hit him on the below right side of knee; accused Talib made direct fire upon Complainant and he saved himself and the said fire hit to appellant Ilumuddin thereafter appellants/accused persons went away by taking appellant Ilumuddin alongwith them. The prosecution also examined two eyewitnesses i.e Noor Ali and injured Jamal, who also deposed on parallel lines as that of Complainant.

10. Since case against deceased appellant Sahib Khan has been abated, therefore, discussion on his role is fruitless. However, from the evidence of eyewitnesses it appears that one firearm injury received by deceased Piyaro has been attributed to appellant Ilmuddin and the said injury, as opined by the Medico Legal Officer, resulted in his death, therefore, we find that prosecution has fully established its case against appellant Ilmuddin. Accordingly conviction and sentences awarded to him by the learned trial Court through impugned Judgment dated 27.11.2019 passed in Session Case No.52 of 2017 [**Re: The State versus Ilmuddin & Others**] is maintained and confirmation reference to his extent is answered in **Affirmative** and captioned appeal to his extent is dismissed accordingly.

11. Evidence of above eyewitnesses further shows that injuries received by injured PW Jamal has been attributed to appellant Ali Ghulam @ Kak Ali and the weapon i.e hatchet has also been recovered from accused Ali Ghulam, as such he has rightly been convicted and sentenced for said injuries by the learned trial Court. So far as awarding death sentence to accused Ali Ghulam @ Kak Ali and Rasool Bux is concerned, record reflects that both these appellants have not been alleged by any of the prosecution witness that they had made firearm injury to any of the deceased person, however, both these appellants have failed to deny their presence at the place of incident, hence their common intention and common object is very much available in the case. Therefore, keeping in view this aspect of the matter, impugned Judgment dated 27.11.2019 passed in Session Case No.52 of 2017 [**Re: The State versus Ilmuddin & Others**] to their extent is modified, thereby rest of the sentences awarded to them are maintained, however, their death sentences are converted into life and confirmation reference to their extent is answered in **Negative**. Accordingly captioned appeal to the extent of both these appellants is partly allowed.

12. Captioned appeal stands disposed of accordingly alongwith listed confirmation reference.

JUDGE

JUDGE