

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Jail Appeal No.S-117 of 2022

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| Appellant | Gulzar Ali son of Hakim Ali bycaste Maitlo. Through Mr. Rukhsar Ahmed Junejo, Advocate |
| The State | Through Syed Sardar Ali Shah Rizvi, Additional P.G for the State. |
| Date of hearing | 18-10-2023 |
| Date of decision | 18-10-2023. |

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of the prosecution that the appellant with rest of the culprits after having formed an unlawful assembly and in prosecution of its common object, committed murder of Ghulam Rasool by causing him fire short injuries, for that the present case was registered. On conclusion of trial, the appellant was convicted under Section 302 (b) PPC and sentenced to undergo rigorous imprisonment for fifteen years as Ta'azir, which ought to have been imprisonment for life at least and to pay compensation of Rs. 200,000/- (two lacs) to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for six months with benefit of section 382-(b) Cr.P.C by learned Ist Additional Sessions Judge/MCTC, Khairpur vide judgment dated 01-12-2022, which he has impugned before this Court by preferring the instant Crl. Jail Appeal.

2. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the complainant party in order to satisfy with him its dispute over landed property; the FIR of the incident has been lodged with delay of about 15 hours and evidence of the PWs

being doubtful in its character has been believed by learned trial Court without assigning cogent reason, therefore the appellant is entitled to be acquitted of the charge by extending him benefit of doubt.

3. None has come forward to advance arguments on behalf of the complainant. However, learned Additional P.G for the State by supporting the impugned judgment has sought for dismissal of instant Crl. Jail Appeal by contending that the prosecution has been able to prove its case against the appellant beyond shadow of reasonable doubt.

4. Heard arguments and perused the record.

5. It was stated by complainant Shakeel Ahmed, PWs Saleem Ahmed and Nadeem Ahmed that on the night of incident they and deceased Ghulam Rasool working at their land, there came the appellant, co-accused Shadi Khan and three unknown culprits they were having guns, they raised *Hakal* and thereafter the appellant grappled deceased Ghulam Rasool and he then was fired at by co-accused Shadi Khan, who on sustaining such fire shot injuries died at the spot; on their cries the appellant and co-accused ran away; they reported the incident to police. If for the sake of arguments, the evidence of the complainant and his witnesses is believed to be true, then the specific role of committing death of the deceased by causing him fire shot injuries is attributed to co-accused Shadi Khan, who now has died. The role attributed by them to the appellant in commission of incident is only to the extent that he grappled the deceased at the time of incident. On asking, it was stated by PW Nadeem Ahmed that when the deceased was fired at by co-accused Shadi Khan, the appellant was not in grappling position with him and was standing at the distance of two paces. If it is believed to be so, then it prima-facie suggests that

complainant party has widened the net to involve all the persons with whom they were having dispute over the landed property by assigning one or other role in commission of incident. As per I.O/SIP Muhammad Ali he recorded 161 Cr.P.C statements of PWs Muhammad Saleem and Nadeem Ahmed on 29-07-2016. It was with delay of one day even to the lodgment of the FIR of the present case. No plausible explanation to such delay is offered. The appellant in his statement recorded u/s 342 Cr.P.C has denied the prosecution's allegations by pleading his innocence. In order to prove his innocence, he has examined Mst. Kaz Bano and Fida Hussain in his defence, they happened to be his mother and brother as well as of the deceased. It was stated by them that the appellant was with them at the time of incident; on hearing of cries, they went at the house of the complainant and found the deceased lying dead. If the appellant would have been a real culprit of the incident, then they would not have deposed in his favour. If the evidence of the DWs if is taken into consideration in juxtaposition with the evidence of the PWs, then it appears to be somewhat sound and believable, which supports the plea of innocence of the appellant. In these circumstances, it would be safe to conclude that the prosecution has not been able to prove its case against the appellant beyond shadow of reasonable doubt and to such benefit he is found entitled.

6. In case of *Mehmood Ahmed & others vs. the State & another* (1995 SCMR 127), it was observed by the Apex Court that;

"Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate".

7. In the case of *Muhammad Mansha vs. The State* (2018 SCMR 772), it was held by the 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 the facts and reasons discussed above, the conviction and sentence awarded to the appellant under impugned judgment are set aside, consequently, he is acquitted of the offence for which he was charged; tried, convicted and sentenced by learned trial Court and shall be released forthwith, if not required to be detained in any other custody case.

9. The instant Criminal Jail Appeal is disposed of accordingly.

J U D G E