

**IN THE HIGH COURT OF SINDH, BENCH AT
SUKKUR**

Criminal Jail Appeal No.S-84 of 2021

Appellants	Abdul Ghafoor son of Abdullah Larik and Gul Hassan son of Muhammad through M/s Ali Gul Abbasi and Muhammad Zohaib Azam advocates.
Complainant	Through Mr. Anwar Ali Lohar, advocate.
The State	Through Mr. Khalil Ahmed Maitlo, Deputy Prosecutor General.
Date of hearing	26-10-2023
Date of decision	26-10-2023

J U D G M E N T

IRSHAD ALI SHAH, J. It is the case of prosecution that the appellants with rest of the culprits after having formed an unlawful assembly and in prosecution of its common object caused hatchet and lathi injuries to complainant Sher Muhammad and PW Amanullah with intention to commit their murder in order to satisfy with them their dispute over *Karap*, for that they were booked and reported upon by the police. On conclusion of trial co-accused Imtiaz Ali, Muhammad Hassan @ Imran, Imdad, Qurban Ali, Muhammad Iqbal, Nawab Ali, Noor Hassan and Pir Bux were acquitted while the appellants were convicted to various terms of imprisonment, by learned 1st Additional Sessions Judge/(MCTC), Ghotki vide judgment dated 11-12-2020; same on being challenged by the appellants was set-aside by this Court vide judgment dated 24-05-2021 with direction to learned trial Court to call and examine medical officer and member of the Medical Board and then to make fresh disposal of the case against the appellants. It was

done and the appellants again were convicted and sentenced as under:

- (a) *Accused Abdul Ghafoor and Gul Hassan are convicted for the offence punishable u/s 324 r/w section 34 PPC and sentenced to undergo R.I for Ten years as Ta'zir and to pay fine of amount Rs. 100,000/- each and in case of non-payment of fine, they shall suffer S.I for four months more.*
- (b) *Accused Abdul Ghafoor and Gul Hassan are also convicted for the offence punishable u/s 337A(ii) r/w section 34 PPC for causing Shajjah-i-Mudihah on the person of injured complainant Sher Muhammad and sentenced to undergo R.I for five years as Ta'zir and both accused are further liable to pay Arsh individually, which shall be five percent of Diyat, to be paid to victim Sher Muhammad.*
- (c) *Accused Abdul Ghafoor and Gul Hassan, are also convicted for the offence punishable u/s 337A(ii) r/w section 34 PPC, for causing Shajjah-i-Mudihah on the person of injured PW Amanullah and sentenced to undergo R.I for five years as Ta'zir and both accused are further liable to pay Arsh individually, which shall be five percent of Diyat, to be paid to victim Amanullah.*
- (d) *Accused Abdul Ghafoor and Gul Hassan are also convicted for the offence punishable u/s 337F(ii) r/w section 34 PPC, for causing Ghayr Jaifah Badi'ah on the person of PW Amanullah and sentenced to undergo R.I for three years as Ta'zir and also to pay Daman of Rs. 50,000/- each to the victim Amanullah.*
- (e) *Accused Abdul Ghafoor and Gul Hassan are convicted for the offence punishable u/s 311 PPC r/w section 34 PPC and sentenced to undergo R.I for Ten years as Ta'zir.*

By learned 1st Additional Sessions Judge/ (MCTC) Ghotki vide judgment dated 11-10-2021, which the appellants have impugned before this Court by preferring the instant Criminal Jail Appeal.

2. It is contended by learned counsel of the appellants that the appellants being innocent have been involved in this case by the complainant party in order to satisfy with them their dispute over *Karap*; evidence of the PWs being doubtful in its character has been believed by learned trial Court without lawful justification and the appellants in collusion of remission

have already undergone more than seven years of imprisonment; therefore, they are entitled to be acquitted of the charge by extending them benefit of doubt, which is opposed by learned DPG for the State and learned counsel for the complainant by contending that the prosecution has been able to prove its case against the appellants beyond shadow of doubt and on arrest from them have also been secured hatchets, which were allegedly used by them in commission of the incident.

3. Heard arguments and perused the record.

4. It was *inter-alia* stated by complainant Sher Muhammad and PW Amanullah that on 21-08-2019, they on their motorcycle were going to purchase wood, when reached adjacent to Ara machine at Nau Kot, there at about 8:30 am came the appellants and rest of the culprits on five motorcycles, they caused them hatchet and lathi injuries to satisfy their allegation of *Karap* against Inayatullah and then fled away on their motorcycles; they went at PS Daharki, their injuries were examined by the police and then they were referred to Taluka Hospital Daharki for examination of their injuries, treatment and certificate and then on the same date at evening time, they lodged formal report of the incident with PS Daharki. The lodgment of the FIR of the incident at evening time which took place at morning time carries the presumption that it has been lodged after due consultation and deliberation. On asking, it was stated by the complainant that he got kept entry in roznamcha with regard to the incident. It has not been produced; its non-production could not be over looked. As per I.O/ASI Khair Muhammad, he examined the injuries of the complainant and PW Amanullah and then referred them to Taluka Hospital Daharki. On asking, he was fair enough to

admit that memo of injuries is under the hand of WPC Mazhar Shar; he being author of such memo has not been examined by the prosecution for no obvious reason, his non-examination as such could not be over looked. PW Barkat Ali has claimed to be present at the place of incident. On being asked as to why he was there; it was stated by him that he was with his buffalos, those were sitting in nearby water course. The memo of place of incident does not indicate availability of any water course adjacent to the place of incident, his as such presence at the place of incident under deception that he was with his buffalos could reasonably be judged with doubt. Mst. Sultana alias Hajul has been examined by the prosecution to prove that there was dispute between the parties over *Karap*. Her evidence is of little help to the case of prosecution. It was stated by Dr. Kailash Kumar that he examined the injuries of the complainant and PW Amanullah and issued such certificates. The certificates so issued by him on being challenged by the appellants were examined by a Medical Board. As per Dr. Mir Ghulam Ali the complainant and PW Amanullah were found sustaining two injuries on their person respectively, one injury on their person was not found co-related with their clothes; therefore, it was declared incorrect while other injury sustained by each of them was found to be falling u/s 337A(i) PPC. Those obviously are simple in nature. On asking, it was stated by him that the possibility cannot be ruled out with regard to injury sustained by PW Amanullah to be self-suffered. Be that as it may, simple injuries could hardly be caused to anyone with intention to commit his murder. Perhaps in that context it was contended by learned counsel for the appellants that the punishment awarded to the appellants u/s 337A(ii) and F(ii) PPC was contrary to record and it is misplaced together with the punishment u/s 324 PPC, which

was not attracted to the circumstances. It was stated by I.O/SIP Pir Bux that on investigation he visited the place of incident, prepared such memo, secured the USB, prepared such memo, arrested the appellants and recovered from them the hatchets allegedly used by them in commission of incident, prepared such memo and after usual investigation submitted challan of the case. On asking he was fair enough to say that almost all the memos were prepared by WPC/PC. If it was so, then he being author of said memos was to have been examined by the prosecution to prove the contents whereof; therefore, his non-examination could not be over looked. Apparently it was table investigation on the part of said I.O/ASI. Surprisingly PW/mashir Shahmir still insisted that those documents were prepared by I.O/ASI Pir Bux himself, which suggests his interest in present case. There is no forensic report with regard to USB allegedly secured in the present case. The provisions of section 311 PPC are hardly attracted to the facts and circumstances of the present case. The hatchets are alleged by the appellants have been foisted upon them by the police at the instance of the complainant party; such recovery even otherwise is not enough to maintain conviction against the appellants, when ocular account of evidence against them has been found to be doubtful. On the basis of same evidence, the above named co-accused have already been acquitted by learned trial Court by extending them benefit of doubt. In these circumstances, it would be safe to conclude that the prosecution has not been able to prove its case against the appellants too beyond the shadow of reasonable doubt and to such benefit they too are found entitled.

5. In case of *Mehmood Ahmed & others vs. the State & another* (1995 SCMR-127), it has been held 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”.

6. In case of *Muhammad Jamil vs. Muhammad Akram and others* (2009 SCMR 120), it has been held by the Apex Court that;

“When the direct evidence is disbelieved, then it would not be safe to base conviction on corroborative or confirmatory evidence.”

7. In case of *Sardar Bibi and others vs. Munir Ahmed and others* (2017 SCMR-344), it has been held by the Court that;

“When the eye-witnesses produced by the prosecution were disbelieved to the extent of one accused person attributed effective role, then the said eye-witnesses could not be relied upon for the purpose of convicting another accused person attributed a similar role without availability of independent corroboration to the extent of such other accused”.

8. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellants under impugned judgment are set aside, they are acquitted of the offence for which they were charged, tried, convicted and sentenced by learned trial Court, they shall be released forthwith, if not required to be detained in any other custody case.

9. Above are the reasons of short order of even date whereby the instant Criminal Jail Appeal was allowed.

J U D G E