

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
Criminal Appeal No. S-297 of 2019

Appellant: Manzoor Ahmed son of Imam Bux  
bycaste Kosh **through** Mr. Ali Ahmed  
Khan advocate.

The Complainant: Mr. Muhammad Tarique Panhwar,  
advocate.

The State: Mr. Shafi Muhammad Mahar, Deputy  
P.G for the State.

Date of hearing: 20-11-2023

Date of judgment: 20-11-2023

**J U D G M E N T**

**IRSHAD ALI SHAH, J-** It alleged that the appellant with rest of the culprits after having formed an unlawful assembly and in prosecution of its common object committed murder of Akram alias Gulsher by causing him fire shot injuries, for that the present case was registered. The appellant joined the trial and on its conclusion was convicted under Section 302(b) PPC and sentenced to undergo rigorous imprisonment of life as *Ta'zir* and to pay compensation of Rs.100,000/- to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for 06 months with benefit of section 382(b) Cr.P.C by learned Additional Sessions Judge/ MCTC, Ubauro vide judgment dated 05-12-2019, which the appellant has impugned before this Court by way of instant criminal 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 police at the instance of the complainant party; the FIR has been lodged with delay of about one month and the evidence of the PWs being doubtful in its character has been believed by learned trial Court without lawful justification;

therefore, the appellant is entitled to be acquitted of the charge by extending him benefit of doubt.

3. Learned Deputy P.G for the state and learned counsel for the complainant by supporting the impugned judgment have sought for dismissal of the instant criminal appeal by contending that the prosecution has been able to prove its case against the appellant beyond shadow of doubt.

4. Heard arguments and perused the record.

5. It was stated by complainant Ali Gul that on 12-04-2010 he, deceased, PWs Banhon and Ali Hassan when were standing at the crop by the side of village Bori, there came the appellant and 19 others persons, known/known, out of them at the instigation of accused Muhammad Nawaz, the appellant fired at the deceased and then fled away; the deceased died on his way to Taluka Hospital Ubauro and after postmortem and his dead body was handed over to him for burial, subsequently on 10-05-2010 he lodged report of the incident with PS Ubauro, it has been lodged with delay of 28 days. No plausible explanation to such scandalous delay is offered, therefore, same could not be over looked, it is reflecting consultation and deliberation, which has made his version to be doubtful. PW Banhon has attempted to support the complainant in his version. As per record his 161 Cr.P.C statement was recorded on 23-05-2010, it was with further delay of 13 days, even to FIR. No explanation to such delay is offered; therefore, his version too could hardly be relied upon to maintain conviction. PW Ali Hassan has not been examined by the prosecution; the presumption which could be drawn of his non-examination in terms of Article 129 (g) of Qanun-e-Shahadat Order, 1984 would be that he was not going to support the case of

prosecution. The evidence of PW/mashir Ghulam Rasool is only to the extent of preparation of memos of lash chakas form, danistnama, recovery of clothes of the deceased and inspection of place of incident. If his evidence is believed to be true, even then it is not enough to improve the case of the prosecution. The evidence of Dr. Liaquat Ali is only to the extent that he examined the dead body of the deceased. The death of the deceased being un-natural is not disputed by anyone. It was stated by I.O/HC Ghulam Yaseen that on the date of incident he was intimated by medical officer Taluka Hospital Ubauro that dead body of the deceased and injured PW Riaz Ahmed have been brought at Taluka Hospital Ubauro, he therefore kept such entry in roznamcha at Sr. No. 08/dated 12-04-2010. Injured PW Riaz Ahmed has not been made witness to the present incident, perhaps knowingly; such aspect of the case could not be lost sight of. It was stated by I.O/SIP Ghulam Hussain that on 12-04-2010, on receipt of information with regard to availability of the dead body of the deceased at Taluka Hospital Ubauro, he went there, prepared lash chakas form, danistnama, recovered the clothes of the deceased and then delivered the dead body of the deceased to the complainant for burial and on 10-05-2020 he recorded FIR of the incident as per verbatim of the incident on appearance of the complainant at police station and further investigation of the case was conducted by I.O/SIP Muhammad Din. As said above, FIR of the incident is lodged by the complainant with delay of about 28 days. The incident was within notice of the I.O/SIP Ghulam Hussain, if the complainant was found reluctant for any of the reason to lodge report of the incident promptly, then it was obligatory upon him to have lodge the FIR of the incident on behalf of the State on the basis of

information which he was having, such failure on his part could not be over looked. I.O/SIP Muhammad Din has not been examined by the prosecution on account of his death, instead of him, has been examined ASI Hazar Khan to identify his signatures. His examination could hardly satisfy the requirement of law. Report of chemical examiner has been brought on record through WHC Nawab Ali, the perusal whereof reveals that bloodstained earth etc has been dispatched to the chemical examiner on 06-09-2019; it was with delay of about 09 years. No explanation to such delay is offered. As such no reliance could be placed upon report of chemical examiner. Co-accused Sahib Ali Khan 13 others have already been acquitted by learned trial Court by resorting to provision of section 265-K Cr.P.C and their acquittal has not been impugned by anyone before any forum. There is no recovery of any sort from the appellant even after his surrender/arrest. In these circumstances, the plea of innocence raised by the appellant during course of his examination u/s 342 Cr.P.C could not be lost sight of in the circumstances of the case.

6. The conclusion which could be drawn of the above discussion would be that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt and to such benefit he is found entitled.

7. In case of *Imran Ashraf and others vs. the State (2001 SCMR-424)*, it has been held by Apex Court that;

*“Section 154, Cr.P.C. lays down procedure for registration of an information in cognizable cases and it also indeed gives mandatory direction for registration of the case as per the procedure. Therefore, police enjoys no jurisdiction to cause delay in registration of the case and under the law is bound to act accordingly enabling the machinery of law to come into play as soon as it is*

*possible and if first information report is registered without any delay it can help the investigating agency in completing the process of investigation expeditiously”.*

8. In case of *Abdul Khaliq vs. the State* (1996 SCMR 1553), it has been held by Apex Court that;

*“---S.161---Late recording of statements of the prosecution witnesses under section 161 Cr.P.C. Reduces its value to nil unless delay is plausibly explained.”*

9. In the case of *Muhammad Mansha vs. The State* (2018 SCMR 772), it has been 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".*

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

11. The instant Criminal Appeal is disposed of accordingly.

JUDGE