

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Jail Appeal No.S- 294 of 2019

Appellants : Habibullah, Qaim, Talib, Asghar,
Dargahi and Abdul Ahad
Through Mr. Amanullah G. Malik,
Advocate

The State Through Syed Sardar Ali Shah,
Additional Prosecutor General for
the State

Date of hearing 22-11-2023
Date of decision 22-11-2023

J U D G M E N T

IRSHAD ALI SHAH, J. It is alleged that the appellants with rest of 12/13 culprits known/unknown after having formed an unlawful assembly and in prosecution of its common object committed murder of Khursheed Ahmed by causing him fire shot injuries for that the present case was registered. On conclusion of trial, the appellants were convicted u/s 302(b) r/w Section 149 PPC and sentenced to undergo imprisonment for life as *Ta'zir* and to pay compensation of Rs.300,000/- each 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 IIIrd. Additional Sessions Judge/(MCTC-II), Sukkur, vide judgment dated 06-12-2019, which the appellants have impugned before this Court by preferring the instant CrI. Jail Appeal.

2. It is contended by learned counsel for the appellants that the appellants being innocent have been involved in this case falsely by the complainant party and evidence of the PWs being doubtful in its character has been believed by learned trial Court without lawful justification, therefore, they are entitled to be acquitted by extending them benefit of doubt, which is opposed by learned Addl. PG for the State by contending that the prosecution has been able to prove its case against the appellants beyond shadow of doubt.

3. Heard arguments and perused the record.

4. It was stated by complainant Wahid Bux and PW Mashooque that on the date of incident they, PW Pathan and deceased Khursheed Ahmed were going to their village when reached adjacent to graveyard, were confronted by the appellants and 12/13 more culprits known/unknown, duly armed with Kalashnikovs and pistols; they fired at Khursheed Ahmed to avenge old enmity, who by sustaining such fires fell down and then died; they reported the incident to police; police came at the spot and took the dead body of the deceased to police station Duber and then to Taluka Hospital Rohri for postmortem. It was stated by the complainant that the deceased was his real brother but the parentage of the deceased as per postmortem report defers which appears to be strange. Apparently, complainant and PW Mashooque have attributed the role of causing fire shot injuries to the deceased to the appellants and rest of 12/13 known/unknown culprits. If their version to that extent is believed to be true then the deceased might have sustained at least 19 fire shot injuries. On postmortem as per medical officer Dr. Ghous Bux the deceased was found sustaining five injuries (entry and exit) which belie the complainant and PW Mashooque in their version that the appellants and 12/13 known/unknown culprits fired at the deceased. As per postmortem report Injury No.1 and 3 sustained by the deceased on his neck and chest were found individually to be cause of his death. None of the injury sustained by the deceased has been attributed by the complainant and PW Mashooque to either of the appellants or anyone else, which has made their presence at the place of incident to be doubtful. PW Pathan has not been examined by the prosecution for no obvious reason; the presumption which could be drawn of his non-examination in terms of Articles 129(g) of Qanoon-e-Shahdat Order, 1984 would be that he was going to support the case of prosecution. There is no recovery of any sort from the appellants. The report of Chemical Examiner has not been brought on record. The evidence of the I.O Inspector Riaz Hussain is only to the extent

that he conducted the investigation of the present case and then submitted its challan before the Court having jurisdiction through the SHO PS Duber. His evidence even if is believed to be true is not enough to improve the case of the prosecution. Evidence of PW/mashir Nawaz Khan is only to the extent of preparation of memos. He being cousin of the complainant was having reason to support the complainant. His evidence even otherwise is not enough to maintain conviction against the appellants. The appellants during course of their examination u/s 342, Cr.P.C, have pleaded innocence; such plea of innocence on their part could not be lost sight of in the circumstances of the case.

5. The discussion involved a conclusion that the prosecution has not been able to prove its case against the appellants beyond shadow of doubt and to such benefit they are found entitled.

6. In case of *Muhammad Arif Vs. The State* (2010 SCMR 1122), it has been held by Apex Court that;

“6. From the evidence, it appears that as soon as the accused came out from the house, they started firing, but the complainant and PWs started running to save their lives. Therefore, in such state of affairs, it does not appeal to common sense that they would have in a position to distinguish and specify the weapon carried by each accused persons. It is also clear from the evidence that the general allegations have been leveled against the appellant along with other accused persons, as such it is also not known as to whether firearm shot fired by the appellant had hit the deceased. The medical evidence also does not help in specifying weapon used for causing the injuries; therefore the recovery of 8 mm rile creates serious doubt in connecting the appellant with the commission of crime. As such there is no corroborated evidence to the ocular testimony, which requires strong and independent corroboration being interested and hostile, therefore, it is very unsafe to rely upon such evidence”.

7. In 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".

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; and 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.

Judge