

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
Criminal Appeal No. S-79 of 2021

Appellant:                   Suhrab Ali son of Bahawal Din Tagar  
  **through** Mr. Noor Hassan Malik  
  advocate.

The Complainant:       Mr. Ubedullah Ghoto, advocate.

The State:                   Mr. Zulfiqar Ali Jatoi, Additional P.G  
  for the State.

Date of hearing:         16-11-2023

Date of judgment:      16-11-2023

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

**IRSHAD ALI SHAH, J-** It is alleged that the appellant with rest of the culprits after having formed an unlawful assembly and in prosecution of its common objection committed murder of Mushtaque Ahmed by causing him fire shot injuries and then went away by making aerial firing to create harassment, for that he was booked and reported upon. At trial, the appellant denied the charge and prosecution to prove it examined in all 09 witnesses and then closed its side. The appellant in his statement recorded u/s 342 Cr.P.C denied the prosecution's allegations by pleading innocence, he did not examine himself on oath or anyone in his defence. On conclusion of trial he was convicted under Section 148 r/w 149 PPC and sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs. 20,000/- and in default whereof to undergo simple imprisonment for one month; he was further convicted u/s 302(b) r/w 149 PPC PPC and sentenced to undergo rigorous imprisonment for life as *Ta'zir* and to pay compensation of Rs.500,000/- to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for 06

months; he was further convicted u/s 337 H(ii) r/w 149 PPC and sentenced to undergo rigorous imprisonment for 03 months and to pay fine of Rs. 10,000/- and in default whereof to undergo simple imprisonment for 15 days. All the sentences were directed to run concurrently with benefit of section 382(b) Cr.P.C by learned Ist Additional Sessions Judge (MCTC), Ghotki, vide judgment dated 01-09-2021, which is impugned by the appellant before this Court by preferring the 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 and the evidence of the P.Ws 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 the complainant in FIR that on 13-03-2014 when he, PWs Nisar Ahmed, Mumtaz Ali and deceased Mushtaque Ahmed were going to their village on their respective motorcycles; at about 2:30 when they reached at link road adjacent to village Jeewan Kolachi, they were confronted by the appellant and co-accused Mansoor, who by taking pistols from fold of their shalwars signaled them to stop; they

stopped, in the meanwhile there came accused Maqsood, Ghous Bux and Rasool Bux on another motorcycle, they also took out the pistols from fold of their shalwars and then encircled deceased Mushtauqe Ahmed; later-on at the instance of accused Rasool Bux, the appellant and above named co-accused fired at Mushtaque Ahmed with intention to commit his murder and then went away on their motorcycles by making fires in the air to create harassment; Mushtaque Ahmed died at the spot, they took his dead body to Taluka Hospital Ghotki through police and then lodged report of the incident with PS Ghotki, it was lodged 13-03-2014; it was with delay of about one day to actual death of the deceased. No plausible explanation to such delay is offered; therefore, same could not be overlooked. At trial in earlier round of litigation against above named co-accused, the complainant, PWs Nisar Ahmed and Mumtaz Ali did not name any of the culprit involved in the incident excepting the appellant; they even failed to recognize the above named co-accused and on account of their such activity, were declared hostile which resulted in acquittal of the above named co-accused such acquittal has never been challenged by anyone. On arrest of the appellant, the complainant, PWs Nisar Ahmed and Mumtaz were again called and examined; it was *inter-alia* stated by them that except appellant, they could not identify rest of the culprits involved in the incident. It was contrary to their FIR and 161 Cr.P.C statements, wherein they have fully implicated the appellant and the above named co-accused in commission of the incident with their names and parentage. Why they did so, apparently with some hidden object. In that situation, the evidence of the complainant and his witnesses could hardly be relied upon to maintain conviction against the appellant being untrustworthy

and doubtful in its character. Evidence of the Tapedar Ali Gohar is only to the extent that he prepared the sketch of wardhat; his evidence of little importance. Evidence of PW/PC Ghulam Qadir is only to the extent that he took the dead body of the deceased to Taluka Hospital for postmortem; his evidence too is of little importance. Evidence of Dr. Muhammad Hassan Shah is only to the extent that he conducted postmortem on the dead body of the deceased; the death of the deceased being un-natural is not disputed by anyone. SIP Ali Nawaz Dayo was examined by the prosecution to identify the signatures of I.O/SIP Qurban Ali Kalhoro on account of his death; his evidence could hardly be made substitute of evidence of late I.O/SIP Qurban Ali Kalhoro. PW/Mashir Aftab Ahmed though resident of Karachi made himself available to be utilized to be mashir by the police in event of need; he did so probably being nephew of the complainant, which suggests his interest in the case. The appellant has pleaded his innocent, such plea on his part which 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 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".*

9. 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; the appellant shall be released forthwith if not required to be detained in any other custody case.

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

JUDGE

Nasim/P.A