

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Jail Appeal No.S-46 of 2021

Appellants	Muhammad Azeem and Muhammad Ayoob both sons of Muhammad Bux Bullo through M/s Rukhsar Ahmed Junejo and Khan Muhammad Sangi advocates.
The Complainant	Through Mr. Hidayatullah Baloch, advocate.
The State	Through Mr. Khalil Ahmed Maitlo, Deputy Prosecutor General.
Date of hearing	01-11-2023
Date of decision	01-11-2023

J U D G M E N T

IRSHAD ALI SHAH, J. It is alleged that the appellants with rest of the culprits in furtherance of their common intention committed murder of Amjad Ali and Mst. Firdos by declaring them to be *Karo-Kari*. On the basis of such allegation a complaint was filed by complainant Azad, it was brought on record and on conclusion of trial, the appellants were convicted u/s 302(b) PPC and sentenced to undergo imprisonment for life as *Ta'zir* on two counts and to pay compensation of Rs. 200,000/- (Two lacs) each to the legal heirs of Amjad Ali alone 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-I) Sukkur vide judgment dated 14-06-2021 which they have impugned before this Court by preferring the instant CrI. Jail Appeal.

2. It is contended by learned counsel(s) for the appellants that the complaint has been filed by the complainant with delay

of more than 09 months with ulterior motives and the evidence of the complainant and his witnesses being doubtful in its character has been believed by learned trial Court without assigning the cogent reasons; therefore, the appellants are entitled to be acquitted by extending them benefit of doubt. In support of their contention, they relied upon case of *Muhammad Imran Vs. The State (2020 SCMR 857)*.

3. Learned DPG for the State and learned counsel for the complainant by supporting the impugned judgment have sought for dismissal of instant CrI. Jail Appeal by contending that the delay in filing of the complaint is well explained and from the appellants have been secured the rope and hatchet, which they allegedly used in commission of incident.

4. Heard arguments and perused the record.

5. Initially, the FIR of the incident bearing Crime No. 21/2018 u/s 302, 311, 120/B and 34 PPC was lodged by ASI Hadi Bux Mangi, on behalf of the State with PS Cantt; a report therein u/s 173 Cr.P.C was also submitted by the police before the Court having jurisdiction, for the prosecution of the appellants and others. Later-on, another FIR bearing Crime No. 28/2018 u/s 302 PPC for the same incident was lodged by one Shuhabuddin against unknown culprits; same on investigation was recommended by the police to be disposed of under "C" class and was disposed of accordingly by the Magistrate having jurisdiction. Perhaps, being dis-satisfied with the above said events, complainant Azad filed a complaint on 27-02-2019; it was with delay of more than 09 months to the incident which prima-facie suggests that it has been filed after due deliberation and consultation. On preliminary inquiry the complainant produced Muhammad Qasim and Aijaz Ahmed as his

witnesses; they actually were examined in preliminary inquiry on 08-04-2019, it was with delay of more than one month even to the filing of such complaint. No plausible explanation to such delay is offered. On preliminary inquiry, it was reported by the Magistrate conducting inquiry that prima-facie no case for taking cognizance is made out. Such report of inquiry could hardly be overlooked in the circumstances. However, cognizance of the incident on complaint was taken by learned trial Court. At trial, it was stated by the complainant and both of his witnesses that on the date of incident, they and their mother Mst. Nasim were cutting the grass while their brother Amjad Ali was grazing the cattle(s); there came the appellants and absconding accused having hatchets and rope, they by raising slogan of *Karo-Kari* caused hatchet injuries to Amjad Ali by saying that they have already killed Mst. Firdos to be *Kari* with Amjad Ali and then dragged the dead body of Amjad Ali towards minor. If for the sake of arguments, it is believed that the complainant and his witnesses were actually were available at the place of incident, then they ought to have resisted the murder of their brother, which they failed to resist, which prima-facie suggest that that actually were not available at the place of incident. It was further stated by them that in the meanwhile, there came the police party and then culprits fled away. On asking PW/mashir ASI Wazir Ahmed, stated that no private person had come at the spot when he and other police officials reached their on receipt of spy information with regard to the incident. If his version is believed to be so, then it also makes the presence of the complainant and his witnesses at the place of incident to be doubtful. Mst. Nasim being mother of the deceased allegedly available at the place of the incident has not been examined by the complainant. The inference which could be drawn of her non-examination in terms of Article

129 (g) of Qanun-e-Shahdat Order 1984 would be that she was not going to support the case of the complainant. PWs Shuhabuddin and ASI Hadi Bux, who lodged FIRs of the above said incident, one after other, prior to the instant complaint too have not been examined by the complainant; perhaps knowingly to deprive the appellants of the benefit which they likely were going to take from their evidence. As per Inspector Shoukat Ali, who conducted the investigation of the case in FIR lodged on behalf of the State by ASI Hadi Bux, he arrested the appellants and recovered from them the rope and hatchet, which allegedly were used by them in commission of incident, those the appellants have claimed to have been foisted upon them by the police. If for the sake of arguments, it is believed that such recovery was there; even then it is not enough to maintain the conviction against the appellants when ocular account of evidence against them has been found to be doubtful. The appellants in their statements recorded u/s 342 Cr.P.C have pleaded innocence; such plea on their part 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 complainant has not been able to prove its case against the appellants beyond shadow of doubt and to such benefit, they are found entitled.

7. 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”.

8. In case of *Abdul Khaliq vs. the State* (1996 SCMR 1553), it was observed by Hon'ble 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 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."

10. 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".

11. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellants under impugned judgment are set aside, consequently, 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.

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

J U D G E