

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Appeal No. S-41 of 2021

Appellant: Farooque @ Farooque Ali son of Ali Murad **and** Dhani Bux @ Goro son of Hazaro both bycaste Arbani **through** Mr. Mohsin Ali Khan Pathan advocate.

The Complainant: Mr. Ubedullah Ghoto, advocate.

The State: Mr. Aftab Ahmed Shar, Additional P.G for the State.

Date of hearing: 27-11-2023

Date of judgment: 27-11-2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of the prosecution that the appellants with rest of the culprits in furtherance of their common intention, committed murder of Mir Ali by causing him fire shot injuries by alleging him to be *Karo*, for that the present case was registered. On conclusion of trial, co-accused Ghulam Nabi was acquitted while the appellants were convicted u/s 302 (b) r/w 34 PPC and sentenced to undergo rigorous imprisonment of life as *Tazir* and to pay compensation of Rs.500,000/- each to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for 06 months; they were further convicted u/s 337-H(ii) PPC r/w section 34 PPC and sentenced to undergo rigorous imprisonment for 03 months and to pay fine of Rs. 10,000/- each and in default whereof to undergo simple imprisonment for 01 month with benefit of section 382(b) Cr.P.C by learned Ist

Additional Sessions Judge/ MCTC, Ghotki vide judgment dated 02-06-2021, which they have impugned before this Court by way of instant criminal 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; the FIR of the incident has been lodged with unexplained delay of about 02 days; the appellants have been involved in commission of incident on the basis of allegation of aerial firing and the evidence of the P.Ws being doubtful in its character has been believed by learned trial Court without assigning cogent reasons, therefore, the appellants are entitled to be acquitted of the charge by extending them benefit of doubt.

3. Learned Additional 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 on arrest from the appellants have also been secured the unlicensed pistols, which they allegedly used in commission of incident and those were found matched with the empties secured from the place of incident.

4. Heard arguments and perused the record.

5. It was stated by complainant Suhno Khan, PWs Abdul Razzaq and Ghulam Muhammad that on 02-01-2020, they and the deceased were going on their motorcycles to village Muhammadpur for their personal work, when reached at link road, adjacent to village Nihal Qazi, there at about 1700 hours, they were confronted by the appellants and others; at the instigation of acquitted accused Ghulam Nabi, absconding accused Nabi Bux caused fire shot injury to Mir Ali, who by sustaining such injury on his ear fell down on the ground and died and then all the culprits went away; they took the dead body of the deceased to Taluka Hospital Ghotki, it was given back to them after postmortem and after its burial, they formally reported the incident to police on 04-01-2020. By such report they implicated the appellants and others for the alleged incident. It was contrary to roznamcha entry No. 17 dated 02-01-2020, which was kept with regard to the incident, whereby it was intimated to the police by the complainant on Cell phone that Nabi Bux and others have committed murder of his brother Mir Ali. The disclosure of the names of appellants and acquitted accused Ghulam Nabi by the complainant and his witnesses at later stage with delay of about 02 days by attributing the role of aerial firing to them prima-facie suggests deliberation and consultation. As per PWs Abdul Razzaq and

Ghulam Muhammad, the deceased died within 07 to 10 minutes of sustaining the fire shot injury. They in that respect are belied by medical officer Dr. Asif Hakeem by stating that death of the deceased was instantaneous, such in consistency has created reasonable doubt with regard to their availability at the place of incident. As per I.O/ASI Qurban Ali, on investigation, he recorded FIR of the present case, prepared requisite memos, arrested the appellants and secured from them the unlicensed pistols allegedly used by them in commission of the incident, which were found matched with the empties secured from the place of incident and then submitted challan of the case by declaring acquitted Ghulam Nabi as innocent. So for preparation of memos is concerned, he is supported by PWs/mashirs Abdul Qadir and Ghulam Akbar. The pistols and empties obviously have been sent the ballistic expert jointly, those ought to have been sent separately to maintain transparency, which has not been done, such omission on part of said I.O/ASI could not be over looked. Even otherwise, such dispatch was with delay of about 04 days to actual recovery of the pistols. No plausible explanation to such delay is offered. If for the sake of arguments, it is believed that the recovery of the pistols was actually made by the said I.O/ASI from the appellants, even than such recovery is not

found to be enough to maintain conviction against the appellants in the circumstances of the case, particularly when direct evidence against them has been found to be doubtful and untrustworthy as is discussed above. On the basis of same evidence co-accused Ghulam Nabi has already been acquitted by learned trial Court; his acquittal has attained finality. The appellants during course of their examination u/s 342 Cr.P.C had 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 prosecution has not been able to prove its case against the appellants beyond shadow of doubt and to such benefit they too are 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 Javed vs. The State (2016 SCMR 2021)*, it has been held by Apex Court that;

“....although a report of the Forensic Science Laboratory was received in the positive in respect of matching of the firearm recovered from the appellant's custody with a crime-empty secured from the place of occurrence yet the investigating officer (PW9) had clearly acknowledged before the trial court that the crime-empty had been sent to the Forensic Science Laboratory on the day when a carbine had been recovered from the custody of the appellant.”

9. In case of *Muhammad Jamil vs. Muhammad Akram and others* (2009 SCMR 120), it has been held by 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 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”.

11. 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”.

12. 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 they shall be released forthwith, if not required to be detained in any other custody case.

13. The instant Criminal Appeal is disposed of accordingly.

JUDGE

Nasim/P.A