

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Jail Appeal No. S-20 of 2022

Appellant: Gullan @ Gulo @ Gulbahar son of
Muhammad Urs Kandhro **through** Ms.
Rizwana Jabeen Siddiqui advocate.

The Complainant. Hadi Bux in person.

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

Date of hearing: 28-11-2023

Date of judgment: 28-11-2023

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, caused fire shot injuries to complainant Hadi Bux a police official, with intention to commit his murder and then went away by taking with them his motorcycle, for that the present case was registered. On conclusion of trial, co-accused Papu @ Muhammad Jumman, Inayat Ali and Mukhtiar were acquitted while the appellant was convicted u/s 395 PPC and sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs. 30,000/- and in default whereof to undergo simple imprisonment for three months; he was further convicted u/s 324 PPC and sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs. 20,000/- payable to the complainant and in case of default whereof to undergo simple imprisonment for two months; he was further convicted u/s 337F(iii) PPC and sentenced to undergo rigorous imprisonment for three years and to pay *daman* of Rs. 10,000/- to the complainant; he was further convicted u/s 337A(i) PPC and sentenced to undergo rigorous imprisonment for three years and to pay *daman* of

Rs. 10,000/- to the complainant. All the sentences were directed to run concurrently with benefit of section 382(b) Cr.P.C by learned IIIrd Additional Sessions Judge, Khairpur vide judgment 16-03-2022, which the appellant has impugned before this Court by way of instant criminal jail 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 complainant; the FIR of the incident has been lodged with unexplained delay of about one day and the evidence of the P.Ws being doubtful in its character has been believed in respect of the appellant by learned trial Court without assigning cogent reasons and on the basis of same evidence certain co-accused have been acquitted; 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, who is assisted by the complainant by supporting the impugned judgment has sought for dismissal of the instant criminal jail 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 is stated by complainant Hadi Bux that he being police official undertook an encounter with one Fayaz Kandhro, who happened to be brother of absconding accused Zamir @ Zamoo Kandhro; who was oftenly insisting him support his brother at trial, which he refused, which annoyed him. On 29-05-2019, he, PWs Muhammad Yousif and Amanat were going to attend ATC Court at Khairpur, when reached at link road adjacent to date-palm garden of Atta Muhammad Sohu, they were

confronted by the appellant and others, who were armed with guns, Kalashnikovs and pistols, they with no loss of time, fired at him and his witnesses, those fires he sustained, then they went away by taking with them his motorcycle; he was taken by his witnesses to Taluka Hospital Kotdiji for examination of his injuries, treatment and certificate; and on the next date he lodged report of the incident with PS Kotdiji. PW Muhammad Yousif has attempted to support the complainant in his version. On asking he contradicted the complainant by stating that it was the appellant and absconding accused Zamir @ Zamoo, who fired at the complainant and his witnesses. Such contradiction could not be lost sight of. If the version of the complainant is believed to be true, then it was case of indiscriminate firing at him and his witnesses with general role, yet none excepting him sustained the fire shot injuries, which appears to be surprising. As per referral letter, the complainant was found sustaining two injuries. As per mashirnama of injuries, he was found sustaining three injuries. As per medical certificate, he was found sustaining four injuries. The inconstant number of injuries allegedly sustained by the complainant could not be over looked; it smells of some foul play. On asking, it was stated by medical officer Dr. Imdad Ali that the injuries of like nature might be caused from fall of motorcycle. No empty or even the blood mark was found at the place of incident, which suggests that the incident if any has taken place in a manner other than the one alleged by the complainant. Nothing has been brought on record by the complainant, which may prove his ownership over motorcycle allegedly taken away by the appellant and others during course of incident. None of the independent person, who attracted to incident has been examined by the prosecution. PW Amanat

Ali, who allegedly was with the complainant at the time of incident, too 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 the prosecution. No plausible explanation to delay in lodgment of FIR even by one day is offered by the complainant, which reflects deliberation. On asking, it was stated by I.O/ASI Akhtiar Hussain that all the memos were written by WPC Riaz Hussain on his dictation. There is nothing in any of the memo which may suggest that those were written by WPC Riaz Hussain at the dictation of I.O/ASI Akhtiar Hussain. In that situation, it could be concluded safely that the participation by I.O/ASI Akhtiar Hussain in investigation of the present case was only to the extent of table, which could hardly be relied upon. No recovery of any sort has been made from the appellant even after his arrest. On the basis of same evidence, co-accused Papu @ Muhammad Juman, Inayat Ali and Mukhtiar have already been acquitted by learned trial Court, while the appellant has been convicted, which appears to be surprising. The appellant during course of his examination u/s 342 Cr.P.C has pleaded innocence; such plea on his part could not be ignored 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 too 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 *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”.

9. 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”.

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

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

JUDGE

Nasim/P.A