

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Appeal No.S-26 of 2018

Date of hearing: **04-12-2023**

Date of decision: **04-12-2023**

Appellant: **Sadoro Maitlo,**
Through Mr. Irshad Hussain Dharejo,
Advocate.

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

J U D G M E N T

MUHAMMAD IQBAL KALHORO, J.- Appellant Sadoro Maitlo was tried by learned Additional Sessions Judge, Pano Akil in sessions case No.332 of 2011 (re: ***State-Versus Deedar & others***) arising out of crime No.25 of 2011, registered at P.S, Cantt-Sukkur, and through impugned judgment dated 24.01.2018 convicted under section 302(b) PPC to suffer life imprisonment as Tazir, under section 324 PPC, to suffer five years with fine of Rs.5000/- and in case of default thereof, to suffer S.I for two months more, under section 337F(v) PPC, to suffer three years with daman of Rs.5000/- to be paid to injured PW Gul Muhammad and in case of default thereof, he was ordered to be dealt with accordingly.

2. Complainant Ghulam Hussain Maitlo reported in FIR an incident that occurred on 20.04.2011 at 12:10 p.m, in which, according to him, on account of previous matrimonial enmity, appellant along with absconding accused Deedar, Gulzar alias Gajo, Ali Nawaz alias Fakiro, Muhammad Nawaz and Shah Baig alias Shahoo, duly armed with weapons, travelling on two motorcycles waylaid complainant party comprising complainant himself, his brother Ghulam Qadir, cousins Gul Muhammad, Mir Hassan and Hubdar near bricklin of Abdul Rahim Maitlo, on a road of Pir Musafir. No sooner they came than absconding accused Muhammad Nawaz instigated other accused to commit murder of Ghulam Qadir. Thereupon, absconding accused Deedar, Gulzar alias Gujoo and Ali Nawaz alias Fakeero made straight fires on Ghulam Qadir critically

injuring him. When PW Gul Muhammad tried to resist, appellant armed with a pistol and absconding accused Shah Baig, armed with a shotgun, made straight fires upon him. When people of nearby areas, attracted on fire shots, appeared at the scene, the accused made their escape good. Complainant's brother Ghulam Qadir having multiple injuries was found dead; whereas, PW Gul Muhammad was found having injuries on his left hand, left side of belly on ribs and left elbow. Complainant subsequently appeared at P.S and registered the FIR, as above.

3. None of the accused was arrested in investigation. Appellant after some time voluntarily appeared and joined the trial. Then the remaining accused were declared after due process as proclaimed offenders. When the charge was framed against appellant and he pleaded 'not guilty', the prosecution examined complainant as PW-1, he has produced FIR in support of his case. PW-2 Gul Muhammad, who was injured at the spot, PW-3 Mir Hassan, an eyewitness, PW-4 Hamal Khan, who assisted in bringing dead body of Ghulam Qadir to hospital for postmortem report, PW-5 Mashir Imran Ahmed, before whom injuries on dead body and injured PW-2 were examined and other documents including memo of place of incident were prepared, which he has produced in his evidence. PW-6 is I.O of the case, who had visited place of incident and collected two empties of .12 bore and two of .30 bore and noticed footprints of six persons on the spot, had issued letters for preparation of site plan and has recorded statements of witnesses under section 161 CrPC, and submitted Challan by showing co-accused as absconders. He has submitted relevant documents including lab reports in respect of blood stained earth and blood stained clothes of deceased. PW-7 is Medico-legal Officer, he has examined injured and conducted postmortem of deceased Ghulam Qadir, which he has produced in evidence.

4. After the evidence, 342 CrPC statement of appellant was recorded, in which he has denied the allegations and pleaded innocence. He has examined two defence witnesses, namely, Shabir Ahmed and Abdul Aziz, who have deposed that appellant was not present at the spot on the date of incident. He is a Suzuki driver and was driving Suzuki at the relevant time. Then, after hearing the

parties, the trial Court vide impugned judgment has convicted and sentenced the appellant, as above.

5. Learned counsel for the appellant submits that the case of the prosecution is full of contradictions; the only role assigned to him is that he and absconding accused Shah Baig had fired at PW Gul Muhammad hitting various parts of his body including left hand, left side of belly on ribs and left elbow, but the medical evidence shows that he had received only one firearm injury that too on his left palm, whereas, injuries No.3&4 were simple contusion and abrasion respectively on elbow joint and left lumber region which are minor in nature and have been opined as other hurts (337L(ii) PPC) punishable upto two years, whereas, firearm injury has been opined as 337F(v) PPC, punishable upto five years, but it has not come specifically in evidence that out of three persons: appellant, absconding accused Shah Baig and Muhammad Nawaz whose fire had hit PW Gul Muhammad; appellant did not cause any injury to the deceased and did not repeat fire at PW Gul Muhammad, therefore, vicarious liability on his part is not established and his conviction and sentence under section 302(b) PPC is not sustainable in law. He further submits that from place of incident, two empties of TT pistol and two empty cartridges were recovered, which recovery does not match with the prosecution story, as in the same, it is stated that four persons armed with TT pistol had fired multiple shots.

6. Learned Additional P.G admits that in FIR and evidence, appellant is not stated to have fired at the deceased. He is said to have fired at injured but the injured is also said to have been fired by two other absconding accused, whereas, the only firearm injury he has sustained is on his left palm, which is not a vital part of body. He has conceded that appellant is not said to have attempted to make a second fire although it was within his domain, therefore, his vicarious liability is a question that has not been properly answered.

7. I have heard learned counsel for both the parties. Complainant and his counsel have chosen to remain absent without any intimation. The prosecution case is based primarily upon evidence of three witnesses i.e. complainant, one injured and PW Mir Hassan,

who was allegedly present at the spot. All these witnesses have reiterated the story stated in FIR, and have assigned the role of causing death of deceased Ghulam Qadir to absconding accused Deedar, Gulzar and Ali Nawaz. The motive of the offence as described by them is an old matrimonial dispute. The appellant is alleged to be armed with a pistol and fired at PW Gul Muhammad, so too absconding accused Shah Baig, who was armed with a shotgun. In the end of FIR, complainant has saddled another absconding accused, namely, Muhammad Nawaz with the role of firing upon deceased Ghulam Qadir and PW Gul Muhammad.

8. The medical evidence in respect of injuries sustained by PW Gul Muhammad is totally different to the ones narrated by these PWs. As per medical evidence, injured Gul Muhammad had sustained only one firearm injury on left palm i.e. half c.m. in diameter into muscle deep on back of left hand, which is wound of entry, with a wound of exit on the other side of the hand. Besides, he was found to have contusion near elbow joint and abrasion on lateral side of left lumber region, which, keeping in view their nature, can be said to have been caused to him by falling on the ground or during the scuffle. Nowhere in evidence, the witnesses have said that all the accused, six in number, had come with a common object of causing murder of deceased Ghulam Qadir. Although, it has been claimed that deceased was murdered on account of previous matrimonial dispute, but nowhere, they have stated that they had enmity with appellant or that appellant had previously threatened them of murdering the deceased. All that has been stated by these witnesses in their depositions and in FIR is that they had an old dispute with accused Deedar.

9. Undisputedly appellant, although armed with a pistol, did not cause any injury to the deceased, nor even he is said to have attempted to make any fire on the deceased, although it was within his reach to actively participate and/or facilitate the main accused in murdering the deceased. Even, the question of his being armed with a pistol and firing at PW along with co-accused in view of only one injury on injured (Gul Muhammad) has not been properly answered and the prosecution has not succeeded in establishing satisfactorily

that it was in fact appellant who actually caused that injury to him. In FIR, atleast three accused are said have fired at the injured. But he has sustained only one injury. It is not specifically clear as to whose fire had hit PW Gul Muhammad on his palm. Therefore, , it is unclear whether the fire made by appellant had injured PW Gul Muhammad or fire of two remaining accused. Looking at the evidence from this angle, when appellant's role of causing injury to PW is not free from a doubt, the conclusion that appellant is vicariously liable for committing murder of the deceased is a farfetched idea without any convincing evidence supporting it. Appellant had voluntarily appeared and nothing was recovered from him in investigation so there is no supporting evidence to confirm the role assigned to him by the prosecution. The entire evidence against appellant is an account of three eyewitnesses, which however is not reinforced by other evidence i.e. recovery/medical evidence. From the medical evidence, the only fact that the injured has sustained one firearm injury is established, but without any specification identifying the appellant with the alleged injury.

10. I, therefore, agree with learned APG that as far as vicarious liability of committing murder of appellant is concerned, it has not been specifically established. The appellant can be saddled, at a stretch, only for causing an injury by fire arm to PW Gul Muhammad under section 337F(v) PPC, the most serious injury, which is punishable only for five years. But since that injury was caused by a fire arm, section 324 PPC is palpably attracted. Jail roll of appellant received today shows that appellant has remained in jail for 09-years, 06-months and 19-days and the remissions earned by him is 09-years,03-months and 20-days, the total period, the appellant has undergone, is 18-years,10-months and 09-days. The maximum punishment under section 324 PPC, given to the appellant by the trial Court is five years with fine of Rs.5000/- in default thereof, one month more, three year under section 337F(v) PPC with Daman of Rs.5000/-.

11. From the above discussion, it is affirmed that appellant's punishment under section 302(b) PPC is not sustainable in law and accordingly is set aside. By means of a short order dated 04.12.2023,

the same was ordered to be set aside and the conviction and sentence of appellant under sections 324 and 337F(v) PPC were maintained and converted into the period already undergone by the appellant. He was ordered to be released forthwith on payment of Daman amount, if is not required in any other custody case. The above are the reasons of the same.

The appeal is accordingly **disposed of**.

JUDGE

Ahmad