

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Appeal No. S-101 of 2021

Appellant: Ali Dino son of Amanullah Mahar
through Mr. Rukhsar Ahmed Junejo
advocate.

The State: Mr. Zulfiqar Ali Jatoi, Additional
Prosecutor General.

Date of hearing: 25-01-2024
Date of judgment: 25-01-2024

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of the prosecution that the appellant with rest of the culprits after having formed an unlawful assembly and in prosecution of its common object committed murder of Ali Muhammad by causing him fire shot injuries, for that the present case was registered. At trial, the appellant denied the charge and prosecution to prove the same, examined in all nine witnesses and then closed its side. The appellant, in his statement recorded u/s 342 Cr.P.C denied the prosecution's allegation by pleading innocence; he did not examine anyone in his defence or himself on oath. On conclusion of trial, the appellant was convicted u/s 302 (b) r/w section 149 PPC and sentenced to undergo imprisonment for life as *Tazir* with fine of Rs. 200,000/- payable to the legal heirs of deceased as compensation and in default whereof to undergo simple imprisonment for six months; he was further convicted u/s 148 PPC and sentenced to undergo imprisonment for three years; both 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 17-11-2021, which the appellant has impugned 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 complainant party in order to satisfy its old enmity with him on the basis of vicarious liability and evidence of the P.Ws being doubtful in its character has been believed by learned trial Court without assigning cogent reasons, therefore, the appellant is entitled to be acquitted of the charge by extending him benefit of doubt.

3. None has come forward to advance arguments on behalf of the complainant; however learned Additional P.G for the State by supporting the impugned judgment has 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 reasonable doubt.

4. Heard arguments and perused the record.

5. It was stated by complainant Ali Raza and PW Talib Hussain that on the night of incident when they, PW Muhammad Arif and the deceased were asleep, they woke up on knock at the door of their house, went outside and found stating there six culprit, they were identified by them to be appellant with pistol, Amanullah, Muhammad Ali and Ahmed Ali with guns while rest of two culprits, they could not identify; out of them, accused Amanullah said to Ali Muhammad that he is not going to withdraw his case against them, therefore he would be murdered; by saying so, he fired at Ali Muhammad, which hit him on his left side of flank; accused Ahmed Ali fired at Ali Muhammad, which hit him at his right thigh, accused Muhammad Ali fired at Ali Muhammad, which hit him on his right ulna bone; Ali Muhammad by sustaining those fire shot injuries, fell down on the ground and died at the spot; all the

culprits then fled away; Ali Muhammad was then taken to Taluka Hospital Khanpur Mahar; the police came there; undertook usual formalities; the dead body of the deceased then was given back to them, which they took to their village, for burial purpose, it was buried accordingly and then they lodged report of the incident with police Station Khanpur Mahar. It was recorded by PW/ASI Ali Muhammad. Apparently, no active role in commission of incident is attributed to the appellant either by the complainant or by PW Talib Hussain; therefore his involvement in commission of incident on the basis of vicarious liability for simply being present at the place of incident, if is examined in the light of existing enmity between the parties is appearing to be doubtful. PW Muhammad Arif has not been examined by the prosecution; the presumption which could be drawn of his non-examination under Article 129 (g) of Qanun-e-Shahadat Order, 1984 would be that he was not going to support the case of the prosecution. Evidence of Dr. Jawahar Lal is only to the extent that he conducted the post mortem on the dead body of the deceased; the death of the deceased being unnatural is not disputed by anyone. Evidence of Tapedar Ali Asghar is only to the extent that he prepared sketch of place of incident; it does not indicate the place, where the complainant and his witnesses were said to be standing at the time of incident. Evidence of PW/ASI Liaquat Ali is only to the extent that he conducted initial investigation of the case; his evidence is of little help to the case of the prosecution. Evidence of I.O/SIP Iftikhar Ahmed is to the extent that he conducted the investigation of the case, apprehended the appellant and then submitted the charge sheet against him before the Court having jurisdiction. Nothing has been secured from the appellant even after his arrest. In these

circumstances it would be safe to conclude that the prosecution has not been able to prove its case against the appellant beyond shadow of a reasonable doubt and to such benefit he is found entitled.

6. 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".

7. 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.

8. Instant Criminal Appeal is disposed of accordingly.

JUDGE