

# IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No. 531 of 2018

Appellants: Zaheerullah, Hameedullah & Muhammad Khan through Mr. Ali Gohar Masroof, advocate

The State: Mr. Muhammad Anwar Mahar, DDPP

Complainant: In person

Date of hearing: 04.09.2023

Date of judgment: 04.09.2023

## J U D G M E N T

**IRSHAD ALI SHAH, J-** It is the case of prosecution that the appellants with rest of three unknown culprits after having formed an unlawful assembly and prosecution to its common object not only caused dagger injuries to complainant Jehangir with intention to commit his murder but also made firing, whereby PWs Haroon Khan, Nadir Khan, Awais and Fatima sustained fire shot injuries while Zohaib lost his life, for that the present case was registered. At trial, the appellants were acquitted for committing murder of Zohaib and causing fire shot injuries to PWs Awais and Fatima, both minors, by way of compromise. The case proceeded and on its conclusion, they were convicted u/s. 324 PPC for causing injuries to the complainant with intention to commit his murder and sentenced to undergo rigorous imprisonment for 05 years; additionally they were sentenced to simple imprisonment for 01 year and to pay *Daman* to the complainant; all the sentences were directed to run concurrently with benefit of Section 382(b) Cr.P.C by learned IXth-Additional Sessions Judge, Karachi West vide judgment dated 13.10.2018, which they have impugned before this Court by way of the instant Appeal.

2. It is contended by learned counsel for the appellants that the appellants being father and sons have been involved in this case falsely by the complainant who is having a criminal record; they

have already undergone major portion of their sentence and the evidence of the PWs being doubtful in its character has been believed by the learned trial Court without lawful justification, therefore, they are entitled to be acquitted by extending them benefit of doubt, which is opposed by learned DDPP for the State, who is assisted by complainant Jehangir Khan by supporting the impugned judgment by contending that they have already been dealt with leniently by learned trial Court.

3. Heard arguments and perused the record.

4. Admittedly, the appellants have already been acquitted for committing murder of Zohaib and causing fire shot injuries to PWs Awais and Fatima by way of compromise. PW Haroon has not been examined by the prosecution. The inference which could be drawn of his non-examination under any pretext in terms of Article 129(g) of Qanun-e-Shahadat Order, 1984, would be that he was not going to support the case of prosecution. The appellants have already been acquitted impliedly even by learned trial Court for causing fire shot injuries to PW Nadir. No injury to any of the appellants has been scribed by the complainant specifically. As per him, his statement u/s. 154 Cr.PC was not read over to him by the police and it was not signed by him. If it was so, then no much reliance could be placed upon such statement of the complainant. SIP Malik Nobahar who has conducted and completed the investigation of the present case has not been examined by the prosecution on account of his death. There is no recovery of any sort from the appellants; they have also pleaded innocence during course of their statements u/s. 342 Cr.PC. In these circumstances, it would be safe to conclude that the prosecution has not been able to prove its case against the appellants beyond shadow of doubt and to such benefit they are found entitled.

5. 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".*

6. 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; they are present in Court on bail, their bail bonds are cancelled and sureties are discharged.

7. The instant Criminal Appeal is disposed of accordingly.

JUDGE