

THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No. 902 of 2019

Appellant: Gul Hassan @ Guloo through M/s. Shabir Ahmed Kumbhar and Muhammad Nawaz, advocates

The State: Mr. Khadim Hussain Khuharo, Additional Prosecutor General Sindh along with complainant Ali Akbar

Date of hearing: 26.09.2023

Date of judgment: 26.09.2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellant with rest of the culprits in prosecution of their common object committed murder of Ali Nawaz by causing him hatchet injuries, for that the present case was registered. Appellant, co-accused Dilawar @ Porho, Maqbool @ Maqo, Ramoo @ Bijli and Muhammad Hassan were charged for the said offence, which they denied and prosecution to prove the same examined in all 07 witnesses and then closed its side. The appellant and the said co-accused in their statements recorded under Section 342 Cr.PC denied the prosecution's allegation by pleading innocence; they examined none in their defence or themselves on oath. On conclusion of trial, the said co-accused were acquitted while the appellant was convicted u/s 302(b) PPC and sentenced to undergo rigorous imprisonment for life as *Tazir* and to pay compensation of Rs.100,000/- to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for six months with benefit of Section 382(b) by learned Ist-Additional Sessions Judge/MCTC, Thatta vide judgment dated 06.12.2019,

which he has impugned before this Court by preferring the instant Crl. 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 and on the basis of same evidence, above named co-accused have already been acquitted by learned trial Court. By contending so, he sought for acquittal of the appellant by extending him benefit of doubt, which is opposed by learned Addl. PG for the State, who is assisted by the complainant by contending that the prosecution has been able to prove its case against the appellant beyond shadow of doubt and his case is distinguishable to that of acquitted accused.

3. Heard arguments and perused the record.

4. It was stated by the complainant that on 15.11.2016, he, the deceased Ibrahim, PWs Ibrahim, Gulzar and Jumo were going back to their village, when reached at Kari Mori, there came the appellant and other on two motorcycles, they at the instance of accused Ramoo @ Bijli caused hatchet injuries to the deceased on various parts of his body, who by sustaining such injuries died; the appellant and others then went away; the dead body of the deceased was taken to RHC Chohar Jamali for postmortem; it was conducted by Dr. Mushtaq Ahmed and he then lodged report of the incident with PS Chohar Jamali on 16.11.2016, it was recorded by I.O/ASI Qamarud-Din Magsi, it was lodged with delay of 01 day. Such delay has not been explained plausibly by the complainant, therefore, it could not be overlooked; it is reflecting consultation and deliberation. Admittedly, the deceased was brother of the complainant, if he would have been available at the time of incident then he would have prevented/resisted the death of the deceased, which he failed to do, which prima facie suggests that he was not available at the time of incident. PW Muhammad Ibrahim on account of his failure to support the case of prosecution was declared hostile; therefore, his

evidence is of little help to the case of prosecution. PW Gulzar has attempted to support the case of prosecution but on asking he was fair enough to admit that he already filed a statement/affidavit before Sessions Court, which is part of the record, perusal whereof reveals that by way of such statement/affidavit whereby he declared all the culprits involved in the incident innocent. If such affidavit/statement is taken into consideration then it makes his evidence to be untrustworthy. PW Jumo has not been examined by the prosecution. The inference 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. The sketch of wardat prepared by Tapedar Allah Dito is not indicating the availability of the complainant and his witnesses at the place of incident. There is recovery of hatchet allegedly used in the commission of the incident by the appellant as is indicated in evidence of P.W/mashir Muhammad Vikyal and I.O/ASI Qamaruddin, but such recovery is not enough to improve the case of the prosecution. On the basis of same evidence, the above named co-accused have already been acquitted by learned trial Court. 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 doubt and to such benefit he too is found entitled.

5. In case of *Mehmood Ahmed & others vs. the State & another* (1995 SCMR 127), it was observed by the Apex Court that;

“Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.

6. In case of *Muhammad Jamil vs. Muhammad Akram and others* (2009 SCMR 120), it has been observed by the Apex Court that;

“When the direct evidence is disbelieved, then it would not be safe to base conviction on corroborative or confirmatory evidence.”

7. In case of *Sardar Bibi and others vs. Munir Ahmed and others* (2017 SCMR 344), it has been held by the Apex 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”.

8. 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”.

9. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellant are set aside, consequently, 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.

10. The above are the reasons of the short order of even date whereby instant Criminal appeal was allowed.

JUDGE