

# IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No.692 of 2019

Appellants: Qasim and Iqbal through M/s. Mohammad Ashraf kazi, Irshad Ahmed Jatoi and Imtiaz Ali Jatoi, advocates

The State: Mr. Muhammad Anwar Mahar, DDPP for the State

Complainant: through M/s. Shabir Ahmed Kumbhar and Mohammad Nawaz Tahiri, advocates

Date of hearing: 03.10.2023

Date of judgment: 09.10.2023

## J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of prosecution that the appellants with rest of the culprits after having formed an unlawful assembly and in prosecution of its common object not only committed murder of Sharif but caused fire shot injuries to PW Noor Hassan and hatchet injuries to P.W Akram with intention to commit their murder; by such injuries, PW Akram lost his right hand and index finger of left hand, for that the present case was registered. The appellants, co-accused Juman and Zulfiqar were charged for the said offence, which they denied and the prosecution to prove the same, examined in all 08 witnesses and then closed its side. The appellants and above named co-accused in their statements recorded u/s 342 Cr.PC denied the prosecution's allegation by pleading innocence; they did not examine anyone in their defence or themselves on oath. On conclusion of trial, co-accused Juman and Zulfiqar were acquitted, while the appellants were convicted and sentenced by learned I-Additional Sessions Judge/MCTC, Thatta vide judgment dated 30.09.2019 in following terms:

*“18. In view of the foregoing discussion, I am of the opinion that offences under section 302 and 334, PPC are established against accused Iqbal Dall and Qassim Dall for causing death of deceased Muhammad Sharif son of Ibrahim Dall and causing injuries to injured Akram son of Ibrahim Dall. As for as injured Noor Hassan Dall is concerned, he allegedly received firearm injuries and pellet injuries but since both accused Zulfiqar Dall and Muhammad Juman Dall has been extended benefit of doubt and acquitted, I am not inclined to convict accused Qasim Dall and Iqbal Dall for injuries caused to injured Noor Hassan. Deceased Sharif Dall received firearm injury and the Medico Legal Officer has noted such injury and thus the medical evidence supported the ocular version. Such fire shot has been attributed to accused Qassim Dall. Moreover, accused Iqbal Dall has been attributed the role of causing hatchet blow to injured Akram Dall, who got his hand amputated at right wrist joint and such hurt was declared by the medical Officer as Itlaf-e-UDW punishable under section 334, PPC. Since both of the deceased was caused and injuries to injured Akram Dall and Qassim Dall, they are liable for all such offences under section 34, PPC. I, therefore, convict both accused Qassim Dall and Iqbal Dall under section 302(b), P.P.C. as Tazir and, sentence them to undergo imprisonment for life. They are also required to pay Rs.1,00,000/- each as compensation payable to the legal heirs of the deceased Sharif Dall. Such compensation shall be recoverable as arrears of land revenue. However, in case of default in payment of such compensation or its non-recovery, the convict shall undergo simple imprisonment for six months. I also convict them under section 334, PPC for Itlaf-e-UDW as defined under section 333, PPC and sentence them to pay half of Diyat to the injured. They shall also be liable to pay compensation to injured Muhammad Akram son of Ibrahim Dall to the tune of Rs.50,000/- each and in case of default in payment of such compensation or its non-recovery, the convict shall undergo simple imprisonment for three months. Both the convict are extended benefit of Section 382-B, Cr.P.C.”*

2. It was in these circumstances the appellants have preferred instant criminal appeal before this Court challenging the conviction and sentences awarded to them by learned trial Court.

3. It is contended by learned counsel for the appellants that the appellants being innocent have been involved in this case

falsely by the complainant party in order to satisfy its dispute with them over landed property; FIR of the incident has been lodged with delay of about one day which reflects consultation and deliberation; on the basis of same evidence co-accused Juman and Zulfiqar have already been acquitted by learned trial Court, therefore, the appellants are also entitled to their acquittal by extending them benefit of doubt, who as per them inclusive of remission have already undergone round about 18 years of the sentence. In support of their contentions, they relied upon cases of (i) *Notice to Police Constable Khizer Hayat son of Hadait Ullah on account of his false statement* (PLD 2019 S.C 527), (ii) *Ghulam Sikandar and another vs. Mamaraz Khan and others* (PLD 1985 S.C 11), (iii) *S.A.K Rehmani vs. The State* (2005 SCMR 364), (iv) *Amjad and another vs. The State and another* (2020 SCMR 2084), (v) *Muhammad Rafique and others vs. The State and others* (2010 SCMR 385) and (vi) *Muhammad Imran vs. The State* (2020 SCMR 857).

4. It is contended by learned DDPP for the State and learned counsel for the complainant that the appellants are neither innocent nor have been involved in this case falsely by the complainant party; the delay in lodgment of the FIR is well explained; there was counter version of the incident which suggests involvement of the appellants in commission of the present incident and acquittal of co-accused Juman and Zulfiqar has been impugned by the complainant before this Court by preferring an acquittal appeal. By contending so, they sought for dismissal of the instant criminal appeal. In support of their contentions, they relied upon cases of (i) *Muhammad Bashir and another vs. The State and others* (2023 SCMR 190), (ii) *Sheeraz Khan vs. The State* (2010 SCMR 1772) and (iii) *Anwar Shamim and another vs. The State* (2010 SCMR 1791).

5. In response to above, it is stated by learned counsel for the appellants that the acquittal appeal has already been dismissed by this Court for non-prosecution.

6. Heard arguments and perused the record.

7. It was stated by complainant Munir that on 12.07.2015, he, his brothers Sharif, Akram and relative Noor Hassan left their houses for work at their land; he was working in the land while Sharif, Akram and Noor Hassan were sitting on Mori. P.Ws Bashir, Ghulam and Usman were also doing work in their land, in the meanwhile at about 7:00 am time, he heard commotions and found accused Juman with DBBL gun, accused Qasim with pistol, accused Iqbal and Allah Dino with hatchets and accused Zulfiqar with repeater gun, they all were abusing his brothers; later on accused Juman made straight fire at his brother Sharif, which hit on his head. As per Medical Certificate produced by Dr. Muhammad Amin, deceased Sharif was found sustaining single entry and exit wound on his temporal region, same is attributed by the complainant to accused Juman, who has already been acquitted by learned trial Court. It was further stated by the complainant that accused Juman also made straight fire at Noor Hassan, which hit on his abdomen, chest and other parts of the body; accused Qasim made straight fire at his brother Sharif. There is nothing in his evidence, which may suggest that the fire made by appellant Qasim hit to Sharif. If hit to him, then on which part of his body it hit. It was further stated by the complainant that accused Iqbal then caused hatchet blow to Akram with intention to commit his murder which hit on his right hand resultantly his hand was cut down and it was found connected with skin. Accused Allah Dino then caused hatchet blow to PW Akram which hit him on his left thumb, resultantly

it was cut down; he also received head injury. Accused Zulfiqar made fires with his repeater gun. It was further stated by the complainant that he, P.Ws Usman, Ghulam and Bashir rushed to the place of incident and begged to the accused to leave his brothers, they then went away and he then took his brothers Sharif, Akram and P.W Noor Hassan to Rural Health Centre Jhirk; his brother Sharif died in his way to hospital; the police arrived at Rural Health Centre Jhirk; the injured and the deceased then were referred to Civil Hospital Thatta. The dead body of the deceased after postmortem was given to them for burial purpose, while, injured were referred to Civil Hospital Hyderabad for further management of their injuries. On 13.07.2015, he lodged report of the incident at PS Jhirk. It was stated by P.W Akram that on the date of incident, he, the complainant, deceased Sharif and P.W Noor Hassan left their houses for their work at their land, he, Sharif and P.W Noor Hassan were sitting on Mori, while the complainant was working at the land, there at about 7:00 a.m. time, came accused Juman with DBBL gun, accused Qasim with pistol, accused Iqbal with hatchet, accused Allah Dino with hatchet and accused Zulfiqar with Repeater Gun; they started to abuse them, thereafter, accused Juman made fire which hit to Sharif and P.W Noor Hassan; accused Qasim made fire with pistol which hit to Sharif. On which part of body, Sharif sustained such injury? It is not disclosed by him in his examination-in-chief. It was further stated by him that accused Iqbal then caused hatchet below to him, which he sustained on his right hand, resultantly, it was amputated. Thereafter, accused Allah Dino caused hatchet below to him, which hit on his left index finger. As per Medical Officer Dr. Muhammad Amin, it was on left thumb of the injured. It was further stated by P.W Akram that the

complainant then arranged for the vehicle, took him, Sharif and P.W Noor Hassan to R.H.C Jhirk; Sharif died on his way to Hospital. He and P.W Noor Hassan were provided medical aid at R.H.C Jhirk and then were referred to Civil Hospital Hyderabad for further management. On asking, he stated that his 161 Cr.P.C statement was recorded on 17.07.2015. By stating so, he voluntarily stated it was got recorded to police by his brother. If it was so, then it was strange. It was stated by P.W Noor Hassan that on the date of incident, he went to the complainant at his house and therefrom, he, the complainant, his brothers Sharif and Akram went at their land for work; the complainant was working in the field, while he, Sharif and P.W Akram were sitting on Mori, there at about 7:00 a.m. time, came accused Juman with DBBL gun, accused Qasim with pistol, accused Iqbal with hatchet, accused Allah Dino with hatchet, accused Zulfiqar with repeater gun and abused us. Thereafter, accused Juman made fire, which hit to Sharif on his temporal region. It was the only injury with entry and exist, which Sharif was found sustaining on his medical examination; same is attributed by P.W Noor Hassan to accused Juman, who as said above has already been acquitted by learned trial Court. It was further stated by him that he sustained pellet injuries on his arm and backside of the abdomen and shoulder. It is contrary to the complainant who stated that the injuries were sustained by PW Noor Hassan on his abdomen, chest and other parts of his body. On asking, it was stated by him that he was *hari* of the complainant over the disputed land for five years. He in that respect was belied by P.W Akram by stating that the disputed land prior to the incident was under cultivation of accused Juman. It was stated by P.W Usman that on the date of incident, he, Bashir, Ghulam and Munir were working at the land while

Sharif, Akram and Noor Hassan were sitting on Mori there at about 07:00 a.m. time there came accused Juman with DBBL gun, accused Qasim with pistol, accused Iqbal and Allah Dino with hatchets while accused Zulfiqar with repeater gun, accused Juman and Qasim abused Sharif, P.Ws Akram and Noor Hassan; they made straight fires which hit to Sharif and P.W Noor Hassan; both of them after sustaining injuries fell down. On which part of the body, Sharif and P.W Noor Hassan sustained such injuries? His evidence is silent. It was further stated by him that accused Iqbal then caused hatchet blow to PW Akram resultantly his right hand was amputated; accused Allah Dino caused hatchet blow to PW Akram, it hit to him on his head cutting his left thumb. Evidence of PW Akram is silent with regard to sustaining any injury on his head. It was further stated by him that accused Zulfiqar then made aerial firing and all the accused then went away. P.Ws Ghulam and Bashir who are appearing to be independent witnesses to the incident have been given up by the prosecution. The inference, which could be drawn of their non-examination in terms of Article 129(g) of Qanun-e-Shahadat Order, 1984 would be that they were not going to support the case of prosecution. There might be a counter version of the incident but it is not suggested in FIR of the present case or even by the complainant and his witnesses so far their examination-in-chief is concerned. By awarding no punishment to the appellants under Section 324 and 504 PPC, they impliedly have been acquitted for such allegation even by learned trial Court. Injury to P.W Akram on his left index finger or thumb is attributed to accused Allah Dino, who is still absconding. It was stated by I.O/SIP Muhammad Hassan that on investigation, he apprehended Qasim, Iqbal and one more culprit and they on interrogation admitted before him to have

committed the present incident. If for the sake of arguments, it is believed that such admission was actually made by them before the said I.O/SIP, even then same in terms of Article 39 of the Qanun-e-Shahadat Order 1984 could not be used against them as evidence. It was further stated by the said I.O/SIP that accused Iqbal, Qasim and Juman then led to recovery of hatchet, pistol and DBBL gun, which he sent for forensic report. Those were sent together with the empties secured from the place of incident; those ought to have been sent separately to maintain transparency. Recovery of the pistol from appellant Qasim was from jungle, it was not in his exclusive possession. The recovery of the hatchet has been made from appellant Iqbal on 3<sup>rd</sup> day of his arrest; such delay could not be lost sight of. Even otherwise, it would unsafe to maintain conviction on the basis of corroboratory evidence when ocular evidence is found to be inconsistent and doubtful. The appellants have also been convicted and sentenced under Section 334 PPC for such offence they were never charged. Perhaps, in that context, it was contended by the learned counsel for the appellants that they in terms of Section 225 Cr.PC have been misled in their defence which has occasioned in failure of justice and is contrary to the mandate contained by Article 10-A of the Constitution of Islamic Republic of Pakistan 1973, which prescribes right of fair trial. If the prosecution/complainant party was intending to take benefit of counter version of the incident, if any, then such fact ought to have been proved by them in the present case by producing such evidence. Evidence recorded in some other case cannot be used in present case to maintain conviction against the appellants. On the basis of same evidence, co-accused Juman and Zulfiqar 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 appellants beyond shadow of doubt.

8. In case of *Mehmood Ahmed & others vs. the State & another* (1995 SCMR127), it was observed by the Hon'ble 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".*

9. 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".*

10. In the case of *Asad Rehmat vs. The State and others* (2019 SCMR 1156), it has been held by the Apex Court that;

*"Though the casings tallied with the gun, however, these were dispatched on a date subsequent to appellant's arrest and thus this piece of evidence also lost its significance."*

11. 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."*

12. 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".*

13. The case law which is relied upon by learned DDPP for the State and learned counsel for the complainant is on distinguishable facts and circumstances. In case of *Muhammad Bashir and another (supra)* the incident was reported to police on the same date within shortest possible time. In the instant case, the incident was reported to police with delay of one day. In the case of *Sheeraz Khan (supra)*, the evidence was consistent. In the instant case the complainant and his witnesses have been found inconsistent with regard to causing of fire shot injury to the deceased. In the case of *Anwar Shamim and another (supra)*, it was held that relationship of the witnesses and the deceased may not be taken enough to discard their evidence. In the instant case issue of relationship of the witnesses with the deceased is not involved, they have been found to be inconsistent with regard to the manner of causing injury to the deceased.

14. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellants under impugned judgment are set aside, consequently, they are acquitted of the offence for which they were 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.

15. The instant appeal is disposed of accordingly.

**JUDGE**