

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Appeal No.S- **46** of 2023
(**Muhammad Bachal & others v. The State**)

Crl. Revision Application No.S- **45** of 2023
(**Qamaruddin Kalwar v. The State & others**)

M/s Mehfooz Ahmed Awan, Irshad Ali Soomro, Farhan Ali Shaikh and Ateeq-ur-Rehman Shaikh, Advocates for the appellants in Crl. Appeal No.S-46 of 2023 and for private respondents in Crl. Revision No.S-45/2023.

Mr. Shabbir Ali Bozdar, Advocate for applicant in Crl. Revision No.S-45/2023 and for complainant in connected Crl. Appeal a/w applicant/complainant and injured Bashir Ahmed.

Mr. Aftab Ahmed Shar, Additional P.G for the State.

Date of hearing(s): **06.11.2023, 11.12.2023, 12.01.2024 & 19.01.2024**
Date of decision: **02.02.2024**

J U D G M E N T

MUHAMMAD IQBAL KALHORO, J:- Appellants Muhammad Bachal, Farooq Ahmed alias Muhammad Farooq and Nazeer Ahmed along with others were tried by learned Additional Sessions Judge-1, Mirpur Mathelo in sessions case No.22 of 2020 (re: **State-Versus Muhammad Sachal and others**) arising out of crime No.286 of 2019, registered at P.S A-section, Ghotki and vide impugned judgment dated 03.05.2023, they have been convicted and sentenced as under:

- i. Accused Muhammad Sachal is convicted for offence u/s 337A(i) PPC for causing injures to complainant Qamaruddin to suffer S.I for six months with Daman of Rs.5000/-to be paid to complainant/injured.
- ii. Appellant Muhammad Bachal is convicted for offence u/s 337A(iii) PPC for causing injures to PW Bashir Ahmed to suffer R.I for five years and to pay Arsh amount equal to 10 percent of Diyat amount to be paid to PW Bashir Ahmed.
- iii. Appellant Farooq is convicted for offence u/s 337A(iii) PPC for causing injuries to PW Bashir Ahmed to suffer R.I for five years and to pay Arsh amount equal to 10 percent of Diyat to be paid to PW Bashir Ahmed.
- iv. Appellant Nazir Ahmed is convicted for offence u/s 337A(v) PPC for causing injuries to PW Bashir Ahmed to suffer R.I for

three years and to pay Daman of Rs.30,000/- to be paid to PW Bashir Ahmed.

In case of non-payment of Arsh or Daman amount, the accused persons have been ordered to remain in jail till payment of said amount. Benefit of section 382-B CrPC has also been extended to the accused.

2. As per brief facts in FIR registered on 07.12.2019 at about 1330 hours, on 04.12.2019 complainant along with his cousin Bashir Ahmed and nephew Hafiz Muhammad Abbas left his village in a car of Bashir Ahmed for Ghotki to run an errand. When at about 12:30 p.m, they reached a link road Khanpur near Byco Petrol Pump, six persons armed with weapons, on three motorcycles, identified as Muhammad Bachal, Muhammad Farooq, Nazir Ahmed with iron rods, Muhammad Sachal and three unidentified accused having lathis in their hands, waylaid them. They overpowered complainant party and got them off the vehicle. Accused Muhammad Bachal, Muhammad Farooq and Muhammad Sachal took out a pistol from fold of their shalwars respectively and snatched Rs.5000/- from complainant and Rs.10,000/-, CNIC and one wrist watch from PW Bashir Ahmed. On resistance by complainant party, accused Bachal caused butt blows on nose of Bashir Ahmed, while accused Farooq inflicted butt blows on mouth of PW Bashir Ahmed. Accused Nazir Ahmed gave an iron rod blow to PW Bashir Ahmed on his right hand, while accused Muhammad Sachal caused a butt blow on head of complainant. Thereafter, all accused fled away. Complainant went to P.S, obtained a letter for medical examination, treatment and certificate and went to Taluka Hospital, Ghotki, wherefrom injured Bashir Ahmed was referred to Civil Hospital Sukkur and then to Karachi. Consequently, above FIR was lodged.

3. To a formal charge, appellants pleaded 'not guilty' and claimed trial. Prosecution in order to substantiate its case examined as many as 07 witnesses. They have produced all necessary documents: FIR, memos of injuries, blood stained clothes of injured and arrest, medico-legal certificates of injured and complainant, x-ray reports, opinion of CMC Larkana, letters to M.S, Service Hospital and Civil Surgeon Karachi, roznamcha entry etc. In statements, recorded u/s 342 CrPC, appellants have denied allegations and pleaded innocence. Then, after hearing the parties, the trial Court vide impugned judgment has

convicted and sentenced the appellants in the terms, as stated above and acquitted accused Irfan and Waseem, whereas, on deposit of Diyat amount, the sentence awarded to accused Muhammad Sachal was treated as already undergone. Hence, this appeal against conviction and sentence, awarded to the appellants. Whereas, through Crl. Revision Application, complainant seeks enhancement of sentence awarded to the respondents.

4. Learned counsel in defence has argued that appellants are innocent and have been falsely implicated in this case; there are material contradictions in the evidence of witnesses rendering the case doubtful; learned trial Court has already disbelieved prosecution case vis-à-vis allegations of committing robbery by the appellants from complainant party and has convicted and sentenced them only for causing injuries which has materially undermined the prosecution story; witnesses are not trustworthy and in fact this a road accident case which has been reported by complainant party to the police as a case of assault; that medical certificate was challenged by accused party before the Special Medical Board comprising three Professors, two Associate Professors, two Assistant Professors and two Senior Doctors, in all nine senior doctors who after examining the injured had opined that possibility of accidental injuries could not be ruled out. However, such findings were challenged by the complainant party in a review application and then findings were reversed. However, this time Medical Board comprised only six Doctors i.e two Professors and four Junior Doctors; that story narrated in FIR depicts that this was a case of robbery in which on resistance, assault happened, but in fact there is a long-drawn enmity between the parties over issuance of dishonored cheques by the complainant party to the appellants party regarding which relevant cases were registered against them and hence allegations of robbery were totally absurd and unimaginable. In support of his contentions, he has relied upon cases reported as **Qaiser and another v. The State** (2022 SCMR 164) and **Ikramullah and others v. The State** (2015 SCMR 1002).

5. On the other hand, learned counsel for complainant has supported the impugned judgment with a request to enhance the period of sentence to the appellants in terms of Revision Application filed by him for the purpose.

6. Learned Additional P.G has, however, submitted that appellants appear to be first the offenders and they may be released by considering the period already suffered by them in jail as a period of sentence with directions to pay the Daman, as directed by the trial Court.

7. I have considered submissions of the parties and relevant record including the case law relied at bar. Record shows that appellants were charged under sections 395 and 397 PPC, and under relevant provisions for causing injuries, for committing robbery from complainant party. However, the trial Court while appreciating evidence of witnesses has acquitted them from the charge of robbery. It has observed in para-26 of the impugned judgment that prosecution case to the extent of allegation of robbery is dubious and creates a reasonable doubt. Apparently, to the extent of commission of robbery, the statements of witnesses have been disbelieved by the trial Court. It is only under the relevant provisions of PPC pertaining to injuries, appellants have been convicted and sentenced, as specified in para-1 of the judgment.

8. A perusal of evidence of witnesses evinces that there are certain variations and contradictions sufficient to undermine the prosecution case. For instance, complainant states that six persons riding on three motorcycles waylaid them when they were travelling in a car, out of whom, four were identified and two were unknown. They pulled them out of the car and committed robbery of certain amount from them. When they mounted resistance, appellant Muhammad Bachal armed with a pistol caused butt blow to nose of injured Bashir Ahmed and thereafter appellant Muhammad Farooq armed with a pistol caused butt blows on his mouth followed by accused Nazir Ahmed causing him iron rod blow on his right hand. Then he was given a butt blow on his head by accused Muhammad Sachal. However, injured Bashir Ahmed in his evidence has stated that as soon as accused pulled them out of the car. They beat him and complainant, on the parts, as specified above and thereafter committed robbery from them. It is not like complainant's claim that only on resistance to robbery they were beaten by the accused. He has further disclosed that after receiving injuries, they were driven by one Munshi of a petrol pump, from the place of incident to P.S, Ghotki, where Duty Officer had noted his injuries in presence of witnesses.

9. Contrary to which, complainant Qamaruddin and PW-3 Hafiz Muhammad Abbass have stated that PW Bashir Ahmed after receiving injuries had gone unconscious, meaning thereby neither he knew who had removed him in the car from the place of incident, nor he had any knowledge of being taken to P.S or his injuries noted down, as claimed by him. Then PW-3 Hafiz Muhammad Abbas has revealed in his cross-examination that from the place of incident up-to P.S, complainant had driven the vehicle. This is not what injured Bashir Ahmed has disclosed in his examination-in-chief that one Munshi of a petrol pump had driven the vehicle and brought them at P.S, Ghotki. As per evidence of injured, at P.S his injuries were noted down by the Duty Officer. However, memo of injuries shows that his injuries were recorded through a memo on 07.12.2019 after registration of FIR and not on 04.12.2019, the date of incident, when according to him, he was brought at P.S for the purpose of obtaining a letter for treatment.

10. Furthermore, it is also confusing that why complainant, injured and other eyewitness, namely, Hafiz Muhammad Abbas although went to P.S, got the letter for treatment, but did not report the matter accordingly to the police alleging commission of robbery from them by the appellants, already known to them. The alleged offence was cognizable one and merely obtaining a letter for treatment without disclosing the real story, naming the culprits and getting the FIR registered, did not fulfill the requirements of law that the complainant and the police both were obligated to follow. Registration of FIR after three days in such circumstances assumes importance, not least when it contains allegation of robbery, besides causing of injuries.

11. The fact that the prosecution failed to establish allegation of robbery against the appellants, the main thrust of the case, has a debilitating effect for the prosecution case. The truthfulness of the witnesses to the extent of leveling allegation of robbery against the appellants has been disbelieved by the trial Court on the one hand. And on the other hand, the trial Court has been influenced by the presence of injuries over PW Bashir Ahmed and complainant and the medical certificate issued by the MLO in convicting the appellants without, however, realizing that said medico-legal certificate, when challenged, was turned down by a Special Medical Board comprising senior doctors observing that possibility of accidental injuries could not be ruled out,

as compared to six not-as-senior doctors upsetting such findings. Therefore, the suspicion created by the opinion of the earlier Board would not simply go away by the findings in review by the subsequent Board. The procedure which was followed at the time of review does not appear to be satisfactory either. The application for review of findings of the earlier Special Medical Board should have been placed either before the same Board or before the Board comprising more members than the earlier one to give it precedence. The opinion of six doctors admittedly cannot outweigh or wash away the opinion of doctors senior to them. While taking into account such aspect of the case, the prosecution case does not appear to be free from a doubt on this point either.

12. The acquittal of appellants against the charge of robbery, delay in FIR and discrepancies in the evidence of prosecution witnesses, as highlighted above plus opinion of Special Medical Board have rendered the prosecution case as doubtful. When there is a weakness in prosecution case leading to formulation of a doubt in the mind, conviction and sentence to the accused would not be warranted. The prosecution under the law is bound to establish the case beyond a reasonable doubt through confidence inspiring evidence to help the Court reach a conclusion leading to guilt of the accused warranting his sentence. In absence thereof, as is the case here, appellants cannot be convicted and sentenced. It is settled that once a doubt seeps in the prosecution case, its benefit has to go to the accused not as a matter of grace but as a matter of right.

13. For foregoing discussions, I am of the view that the prosecution has not been able to prove the case against the appellants beyond a reasonable doubt, and they are entitled to its benefit. Accordingly, Crl. Appeal No.S-46 of 2023 is **allowed** and the appellants are acquitted of the charge. They shall be released from the jail forthwith, if not required in any other custody case. In view of such findings and reasons in support, the Crl. Revision Application No.S-45 of 2023 is **dismissed**.

JUDGE