

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**Criminal Appeal No.S-128 of 2023**

Appellants: Manthar son of Shafi Muhammad and Allah Ditto son of Muhammad Qasim both bycaste Mazari **through** Mr. Alam Sher Khan Bozdar, advocate.

The State: **Through** Aftab Ahmed Shar, Additional Prosecutor General.

Date of hearing 12-02-2024

Date of decision 12-02-2024

J U D G M E N T

IRSHAD ALI SHAH, J. It is alleged by the prosecution that the appellants and others made preparation and/or assembled to commit dacoity and then deterred the police party of PS Ubauro led by ASI Allah Jiwayo from discharging its lawful duty as public servants by making fires at them with intention to commit their murder and then made their escape good from the place of incident, for that they were booked and reported upon by the police. On conclusion of trial they were convicted and sentenced to undergo various terms of imprisonment spreading over seven years by learned Additional Sessions Judge Daharki, vide judgment dated 30-10-2023, which they have impugned before this Court by preferring the instant Crl. Appeal.

2. It is contended by learned counsel for the appellants that the appellants being innocent have been involved in this case falsely by the police and have been convicted on the basis of improper assessment of the evidence, which was doubtful in its character; therefore, they are entitled to their acquittal by extending them benefit of doubt, which is opposed by learned Additional P.G for the State by contending that the prosecution has been able to prove its case against the appellants beyond shadow of doubt.

3. Heard arguments and perused the record.

4. As per complainant ASI Allah Jiwaho and PW/mashir PC Ghulam Rasool, they went at the place of incident on information. If it was so, then they were under lawful obligation to have associated with them independent person to witness the incident, which they failed to associate, such omission on their party could not be overlooked. Admittedly the firing allegedly made by the appellants and police proved to be in effective one in all respect, which prima-facie suggests that no incident as alleged by the police has taken place. None was robbed. As per I.O/ASI Nawab Ali, the memo of place of incident was prepared by PC Noor Hassan, he has not been examined by the prosecution for no obvious reason, his non-examination could not be ignored. The appellants during course of their examination u/s 342 Cr.P.C have pleaded their innocence, such plea on their part could not be lost sight of.

5. The conclusion which could be drawn of the above discussion would be that the prosecution has not been able to prove its case against the appellants beyond shadow of reasonable doubt and to such benefit, they are found entitled.

6. In the case of *Muhammad Mansha vs. The State (2018 SCMR 772)*, it has been held by the Hon'ble 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 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; and shall be released forthwith, if not required to be detained in any other custody case.

8. The instant Criminal Appeal is disposed of accordingly.

J U D G E