

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Jail Appeal No. S-71 of 2019

Appellants: Qadir Bux, Mumtaz and Noor Muhammad,
all bycaste Mirani **through** Mr. Ali Ahmed
Khan advocate.

The Complainant: Through Mr. Rukhsar Ahmed Juenjo,
advocate.

The State: Syed Sardar Ali Shah Rizvi, Additional
Prosecutor General.

Date of hearing: 20-02-2024

Date of judgment: 20-02-2024

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of the prosecution that the appellants with rest of the culprits after having formed an unlawful assembly and in prosecution of its common object, besides committing murder of Ranjhan by causing him fire shot and hatchet injuries, caused fire shot, hatchet and lathi injuries to PWs Sudher, Umed Ali @ Bablu and Ghulam Mustafa @ Shahnawaz with intention to commit their murder and then they went away by taking with them gold chain, mobile phone, wrist watch of the deceased, PWs Peral and Sudheer by making fires in air to create harassment, for that the present case was registered. On conclusion of trial, co-accused Amir Bux and 18 others have been acquitted while the appellants have been convicted under Section 302 (b) PPC and sentenced to undergo imprisonment for life as *Ta'zir* and to pay fine of Rs.100,000/- each to the legal heirs of the deceased and in default in payment whereof to undergo simple imprisonment for 03 months with benefit of section 382(B) Cr.P.C by learned Ist Additional Sessions Judge/MCTC, Sukkur vide judgment dated 04-05-2019, which they have impugned before this Court by preferring the instant Criminal Jail 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 complainant party only to satisfy with them its dispute over property; the FIR of the incident has been lodged with delay of about one day; there was conflict between medical and ocular account of evidence and on the basis of same evidence co-accused Allah Wassayo and 18 others have already been acquitted by learned trial Court and such acquittal has attained finality on account of withdrawal of Acquittal Appeal by the complainant. By contending so, he sought for acquittal of the appellants by extending them benefit of doubt. In support of his contention, he relied upon case of *Yousif Vs. The State (PLD 1988 Karachi 521)*.

3. Learned Additional P.G for the state and learned counsel for the complainant by supporting the impugned judgment have sought for dismissal of the instant Criminal Jail Appeal by contending that the case of the appellants is distinguishable to that of acquitted accused and the prosecution has been able to prove its case against them beyond shadow of doubt.

4. Heard arguments and perused the record.

5. It was stated by complainant Bashir Ahmed, PWs Umed Ali @ Bablu, Ghulam Mustafa @ Shahnawaz and Sudheer that they were having dispute with appellants and others over plot. No such proof in writing has been brought on record by them. It was further stated by them that on 26-05-2010, when they and the deceased after visiting such plot were going back to their houses and reached at the shop of Abdul Jabbar Mirbahar, there they found accused Haji Hakeem empty handed, Nooral (appellant) with pistol, Qadroo (appellant) with repeater gun, Mamtu (appellant) with pistol and Sharfoo with hatchet. On instigation of Haji Hakeem, the appellants fired at Ranjhan, who by sustaining those fires on his chest and other part of the body fell down on the ground, he then was caused hatchet blows by accused Sharfoo on his neck. In the meanwhile there came accused Qasim with repeater gun, Alim with gun, they opened fires, those hit to PW Sudheer. On fire shot reports, accused

Peeral, Allahyar, Akber, Eiso, Mooso, Muhammad Nawaz, Aijaz, Mushtaque, Liaquat, Amanullah, Ali Gul, Abdul Rehman, Amir Bux, Sharif, Pir Bux and two others came at the place of incident and they also participated in commission of incident by causing hatchet and lathi blows to PWs Umed Ali @ Bablu and Ghulam Mustafa @ Shahanawaz and then they went away towards their houses. The police party came at the place of the incident and then they were referred to Hospital, Ranjhan was declared dead and then they lodged report of the incident with PS C-Section Sukkur. The only independent witness was Abdul Jabbar Mirbahar, the shop keeper, he has not been examined, such omission on part of prosecution could not be overlooked. As per charge sheet, in all 45 persons were involved in commission of incident by the complainant party. The FIR of the incident was lodged by the complainant on 27-05-2010, it was with delay of about one day to the incident. As per medical officer Dr. Muhammad Yaseen all the injuries caused to the deceased were from discharge of firearm, which prima-facie suggests that no hatchet injury was caused to the deceased, which is alleged by the complainant party to have been caused to him by co-accused Sharfoo. On asking, it was stated by the above named medical officer that the deceased was found sustaining pellet injuries, which prima-facie suggest that those were caused to the deceased with repeater gun. By stating so, he has contradicted the complainant and his witnesses that the deceased was also fired at with pistols by appellants Mumtaz and Noor Muhammad. Obviously it was false allegation. Such conflict between the medical and ocular account of the evidence has made the evidence of the complainant and his witnesses untrustworthy to be relied upon to maintain conviction against the appellants. The delay in lodgment of FIR by the complainant party by one day with no plausible explanation could not be over looked in the circumstances of the case; it apparently is reflecting consultation and deliberation. Evidence of PW/mashir Arbab Ali is only to the extent of

preparation of the memos. It hardly needs any discussion. Evidence of PW Asghar Ali Shah is only to the extent that he identified the signature of PW/PC Sakhi Alam the corps bearer; his evidence is of little help to the prosecution. Evidence of Tapedar Zaheer-ud-Din Shah is only to the extent of preparation of sketch of place of incident, it does not indicate the place where the complainant at the time of incident was said to be standing. I.O/SIP Murad Ali Shah was fair enough to admit that writing on FIR, different memos and sealed parcels is of different Munshies/WHCs/WPCs. If it was so, then the investigation of the present case on his part was only to the extent of table. Evidence of I.O/SIP Wajid Ali is only to the extent that after usual investigation he submitted challan of the case. His evidence is silent as to under what circumstance, at least 11 of the persons involved in incident were let off by him while submitting the challan of the present case. Obviously it was casual investigation on his part. There is no recovery of any sort from the appellants even after their arrest. By awarding no punishment to the appellants for allegedly having committed the offence punishable u/s 395, 324 r/w section 147, 148, 149 PPC and 337H(ii) r/w 114 PPC, they have already been acquitted, such activity on the part of learned trial Court could not be lost sight of. Perhaps in these circumstances a Revision Application was filed by the complainant for awarding proper sentence to the appellants. It too was withdrawn at later stage by the complainant. By withdrawing his Revision Application, the complainant has accepted the implied acquittal of the appellants for allegedly having committed the offence punishable u/s 395, 324 r/w section 147, 148, 149 PPC and 337H(ii) r/w 114 PPC. At trial, 19 of the co-accused have already been acquitted by learned trial Court obviously on the basis of same evidence. 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 reasonable doubt and to such benefit, they too are found entitled.

6. In case of *Imran Ashraf and others vs. the State* (2001 SCMR-424), it has been held by Apex Court that;

“Section 154, Cr.P.C. lays down procedure for registration of an information in cognizable cases and it also indeed gives mandatory direction for registration of the case as per the procedure. Therefore, police enjoys no jurisdiction to cause delay in registration of the case and under the law is bound to act accordingly enabling the machinery of law to come into play as soon as it is possible and if first information report is registered without any delay it can help the investigating agency in completing the process of investigation expeditiously”.

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

10. Above are the reasons of the short order of even date, whereby the instant Criminal Jail Appeal was allowed.

JUDGE

Nasim/P.A