

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD**

Criminal Appeal No.S-201 of 2012

Appellant: Mirchoo Mal through Mr. Parshotam K. Khatri, Advocate.

Complainant: Raju through Mr. Muhammad Jameel Ahmed, Advocate.

Respondent: The State through Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Date of hearing: 25.01.2024.

Date of Decision: 19.02.2024.

J U D G M E N T

AMJAD ALI SAHITO, J. Through this Criminal Appeal, the appellant has challenged the judgment dated 15.06.2012, passed by learned 2nd Assistant Sessions Judge, Umerkot in Sessions Case No.01 of 2012 whereby he was convicted and sentenced for the offences u/s 324 P.P.C to suffer R.I for five years and under section 337-F(vi) P.P.C to undergo R.I for four years and to pay Daman amounting to Rs.10,000/- if same recovered be paid to injured Kishore and in default whereof, to suffer S.I for three months in crime No.137/2011 u/s 324, 506(2), 504, 34 337-F(vi) PPC, registered at PS Umerkot. However, the benefit of section 382-B Cr.P.C. was extended to the appellant.

2. Precisely, the facts of the prosecution case are that over an existing old dispute of agricultural land, on 04.10.2011, appellant Mirchoomal with co-accused Saroopchand, Assan and Gordhan arrived at the house of the complainant, abused and threatened them to withdraw from land and Court cases otherwise they will be killed and went away. Thereafter, Nek-Mard Ranomal was informed regarding the issuance of threats by the accused who advised the complainant party to take legal course. On the same date, the complainant and his witnesses

Kishwar and Dileep after attending the Court proceedings were returning to home, at 02:12 p.m. they were chased by accused Mircho Mal, Assan, Saroop and unknown culprits who stopped their motorcycles in front of the complainant party near Lajpat Floor Mill and took out pistols from their folds while issuing threats of murder appellant Mirchomal made a straight fire at Kishore hitting him on his right leg fell down on the ground. Other accused persons also made straight firing intending to kill but the complainant party saved themselves by lying on earth and they saw injured Kishore having received fire shot on his right leg and was bleeding, hence he was taken to Umerkot Civil Hospital and instant FIR was registered.

3. After completion of the usual investigation, the investigation officer submitted a report under section 173 Cr.PC before the competent Court of law and thereafter the case papers were supplied to the accused under receipt.

4. The charge against the present appellant and other accused were framed at Exh.5, to which they pleaded not guilty and claimed trial vide their pleas recorded at Ex.5/A to 5/D respectively.

5. To establish the accusation against the present appellant and other accused, the prosecution examined PW-01 complainant Raju at Exh.07, he produced FIR at Exh.06/A. PW-02 injured witness Kishore at Exh.07. P.W-3 Dr. Chainomal at Ex.09, he produced provisional medical certificate, police letter & Final medical certificate at Ex.09/A to 09/C. P.W-4 witness Dileep Kumar at Ex.10. P.W-5 mashir Pehlaj at Ex.11, he produced mashirnama of injury, mashirnama of place of incident, mashirnama of arrest of accused Mirchomal and mashirnama of recovery at Ex.11/A to 11/D respectively and P.W-6 ASI Khursheed at Ex.13, he produced FIR u/s 13-E, entry No.3 and ballistic expert report at Ex.13/A to Ex.13/C. Thereafter, learned State Counsel closed the side of prosecution vide statement kept on record at Exh.14.

6. The appellant and other accused in their statement recorded U/S 342 Cr.P.C, denied the allegations leveled against them by pleading their innocence. However, they did not examine themselves on oath nor led any evidence in their defence.

7. Learned trial Court on evaluation of evidence and after hearing counsel for the parties, convicted and sentenced appellant Mircho Mal vide **Judgment dated 15.06.2012**, which he has impugned before this Court by filing instant Criminal Appeal.

8. Learned counsel for the appellant after going through the entire prosecution evidence pointed out certain contradictions in the deposition recorded before the trial Court. According to him, the prosecution could not establish the allegations against the appellant through their evidence even the evidence of the complainant and his witnesses is not in the line which is very much contradictory with the ocular evidence as medical evidence concerning the stand taken by the complainant does not support him. The appellant in his statement on oath established his innocence and his evidence could not be shaken by the prosecution but the trial Court has ignored the same. He placed reliance on the cases of Muhammad Banaras v. The State [2002 SCMR 1855], Muhammad Akram v. The State [2012 SCMR 440], Amin Ali and another v. The State [2011 SCMR 323], Umer v. The State [2009 P.Cr.L.J 1119], Ali Nawaz v. The State [2010 P.Cr.L.J 1345], Fida Hussain v. The State [2013 YLR 2147] and Abdul Ghafor alias Multani [2013 MLD 509].

9. On the other hand, learned Assistant Prosecutor General Sindh has supported the conviction and sentence awarded to the appellant by stating that there was litigation between the parties and the accused party tried to force the complainant party to withdraw the earlier case pending against him but since failed, he committed the alleged offence.

10. I have heard the learned counsel for the respective parties and have gone through the evidence with their able assistance.

11. On careful perusal of the material brought on record it appears that the case of the prosecution is full of contradictions and discrepancies, even the prosecution witnesses are not supporting their version recorded before the police. The case of the prosecution is that on 04.10.2011 at about 1440 hours the complainant Raju appeared at the police station and lodged the F.I.R. by stating therein that they have an old enmity with the appellant Mirchoomal over agriculture land and cases have been lodged against each other which are pending in the Court of law. On the date of the incident viz. 04.10.2011 at about 7:00 am. The accused Mirchoomal, Saroopchand, Assan and Gordhan Malhi came to the house of the complainant and threatened him to withdraw from the cases, or else he would be killed. At about 2:15 pm when the complainant reached Lajpat Floor Mill where above named accused persons came by motorcycle and took out their pistols from their fold of shalwar while issuing threats of murder the appellant Mirchoomal made a straight fire on Kishor intending to kill who had received firearm injury and fell down and other accused persons also made straight fire with intention to kill the complainant party. The injured was shifted to Civil Hospital and the complainant lodged the F.I.R against the accused persons.

12. The complainant and his PWs have stated in their examination in chief that the present appellant made five (05) fires but in the F.I.R [Exh-6-A] alleged that the present appellant has made only one (01) fire. Both the PWs namely Dileep and injured Kishore admitted in their cross-examination that in their 161 Cr.P.C statement they stated that the appellant Mirchoomal had made only one (01) fire. The PWs have stated in their examination in chief that the pistol is being used in the commission of the offence but a perusal of the Provisional Medical Certificate (Exh-9-A) issued by the Doctor District Head Quarter Hospital Umerkot, reflects that the kind of weapon used in the commission of offence is Rifle, which shows that there are major contradictions between the ocular and medical evidence. The pistol so used in the commission of the offence was sent to the office of Forensic Sciences Laboratory Hyderabad and as per

opinion two 30-bore crime empties now marked as "C-I" & "C-II" were not fired from the said 30-bore pistol bearing No.10227 in question, in view of following major points i.e. striker pin marks, breech pin marks and ejector pin marks etc are dissimilar.

13. Furthermore, vide judgment dated 02.12.2013, the appellant Mirchoomal has already been acquitted from the Crime No.141 of 2011 registered u/s 13 (e)AO at Police Station Umerkot, on the ground that the prosecution has failed to prove the case of alleged recovery against the appellant.

14. The complainant and his witnesses in their evidence have also failed to disclose about the morning incident to believe the series of offence. However, the complainant claims that the place of incident was Lajpat Floor Mill but the Investigating Officer claims that the incident took place near Sufi Floor Mill. The complainant deposed that the Lajpat Floor Mill is situated in northern side of the road, whereas PW Kishore deposed that Lajpat Floor mill is situated on western side of the road. PW Kishore admitted that 6/7 peoples were gathered but the other PWs stated that no one were gathered, shops were closed as such no independent person was joined as mashir.

15. The statement recorded u/s 161 Cr.P.C of the PW injured with the delay of seven (07) days for which no plausible explanation has been furnished by the prosecution. Mashir Pehlaj in his examination in chief (Exh.11) stated that he saw injuries of injured at about 0200 or 0215 hours at the hospital however, as per F.I.R. the incident took place at 02:15 pm. During cross-examination, the witness deposed that they went to the house of the appellant on the day of recovery at about 0950 hours however, as per mashirnama of recovery (Ex.11-D) wherein the time of recovery was shown as 0900 hours. The prosecution also failed to prove the crime weapon against the appellant as stated above as such the appellant was acquitted by the trial Court vide judgment dated 02.12.2013. The Investigating Officer has also failed to secure the blood-stained clothes of the alleged incident nor he has sent the same to the Chemical Examiner/Forensic Laboratory.

16. It is noted that while recording 342 Cr.P.C statement of the appellant, the learned trial Court did not ask the question about the alleged recovery from the appellant Mirchoomal. It is also an admitted position that at the time of the alleged incident, the houses, shops, and hotels were lying open and seven independent persons were present but police did not join them as witnesses even then no statement or enquiry was conducted from them. All the prosecution witnesses are close relatives to the complainant injured.

17. From the entire scenario of the instant case, the presence of the appellant at the place of the incident is doubtful and the witnesses made improvements in their statements dishonestly to strengthen the prosecution case. The prosecution has to establish the case against the accused beyond the shadow of a doubt but in the instant case, irrespective of illegalities, as well as contradictions, pointed out above, when the factual matrix of the case is judged by considering the ocular evidence keeping the medical evidence in juxtaposition, the case against the appellant appears to be not free from doubt. The false implication has to carry such irreparable stigma throughout the life of the accused and its shadow on the next generation leaves dark impressions. It would not be out of place for people to make a false accusation for having a feeling of enmity towards someone being jealous, getting rid of someone, or taking revenge; such people after making a false accusation busy with their matters but the person against whom false accusation has been made falls into disgrace and infamy for the rest of his life when such person is not involved in the commission of offence with which he is alleged.

18. I am also fortified with the decision in the case of **'MUNIR AHMED and others v. The STATE and others'** [2019 SCMR 2006], whereby the Hon'ble Supreme Court has held as under:-

“Notwithstanding the magnitude of loss of lives, the totality of circumstances, unambiguously suggest that the occurrence did not place in the manner as is alleged in the crime report; argument that number of assailants has been hugely exaggerated, as confirmed by the acquittals of the co-accused with somewhat identical roles, though without specific

attributions, is not entirely beside the mark and in retrospect calls for caution. It would be unsafe to maintain the convictions. Consequently, Jail Petitions are converted into appeals and allowed; impugned judgment is set aside; the appellants are acquitted from the charge and shall be released forthwith, if not required in any other case.”

19. It is a settled proposition of law that the prosecution is bound to prove its case beyond a shadow of a doubt. If a reasonable doubt arises in the prosecution case, the benefit of the same must be extended to the accused not as grace or concession, but as a matter of right. Likewise, it is also a well-embedded principle of criminal justice that it is not necessary that there must be so many doubts in the prosecution case if there is a reasonable doubt arising out of the prosecution evidence pricking the judicious mind, the same would be considered sufficient for giving its benefit to the accused. In this respect, reliance can be placed upon the case of **‘MOHAMMAD MANSHA V. THE STATE’ [2018 SCMR 772]**:-

*“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.” Reliance in this behalf can be made upon the cases of *Tarique Parvez v. The State* (1995 SCMR 1345), *Ghulam Qadir and 2 others v. The State* (2008 SCMR 1221), *Mohammad Akram v. The State* (2009 SCMR 230) and *Mohammad Zaman v. The State* (2014 SCMR 749).”*

20. For what has been discussed above, the instant Cr. Appeal is **allowed** and the appellant Mirchoomal is acquitted of the charge. The appellant is present on bail, his bail bond stands cancelled and surety discharged.

JUDGE