

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Jail Appeal No. S-114 of 2023

Appellants: Asghar Ali and Wahid Bux both sons of Muhammad Idrees Rajper.
Through Mr. Abdul Raheem Ansari advocate.

The State: Mr. Shafi Muhammad Mahar, Deputy P.G for the State.

Date of hearing: 27-02-2024
Date of judgment: 27-02-2024

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellants with rest of the culprits after having formed an unlawful assembly and in prosecution of its common object caused fire shot injuries to PW Imtiaz @ Fateh Muhammad with intention to commit his murder, for that the present case was registered. At trial the appellants denied the charge and prosecution in order to prove the same, examined in all seven witnesses and then closed its side. The appellants in their statements recorded under section 342 Cr.P.C denied the prosecutions' allegation by pleading innocence; they did not examine anyone in their defence or themselves on oath. On conclusion of trial, they were convicted and sentenced to various terms of imprisonment spreading over 10 years, those were directed to run concurrently with benefit of section 382 (b) Cr.P.C by learned Ist Additional Sessions Judge/ MCTC, Naushahro Feroze vide judgment 07-10-2023, 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 create counter version of the incident whereby Sudheer lost his life and appellant Asghar Ali sustained fire shot injuries and such aspect of the case has not been considered by learned trial Court. By contending so, he sought for acquittal of the appellants by extending them benefit of doubt, which is opposed by learned DPG for the State by contending that the prosecution has been able to prove its case against the appellants beyond shadow of reasonable doubt.

3. Heard arguments and perused the record.

4. It is stated by complainant Mehtab Ali, PWs Imtiaz Ali @ Fateh Muhammad and Asad Ali that on the date of the incident when they went to take care of the water rotation, there came the appellants and others, at the instigation of accused Wali Muhammad, accused Sudheer and appellant Asghar Ali fired at them which hit to PW Imtiaz Ali @ Fateh Muhammad on his abdomen and other parts of the body. They took PW Imtiaz Ali @ Fateh Muhammad to PS Pateidan and then to Govt. Hospital at Pateidan, there from he was referred to Civil Hospital Nawab Shah. The evidence of the complainant and his witnesses suggests that PW Imtiaz Ali @ Fateh Ahmed was fired at allegedly by Sudheer and appellant Asghar Ali, whose fire actually hit him, it is uncertain and benefit of such doubt is to be extended in favour of appellant Asghar Ali. No active role in commission of the incident is attributed to appellant Wahid Bux; therefore, his

involvement in commission of incident on the basis of vicarious liability could reasonably be judged with doubt. It is noticed that appellant Asghar Ali has also sustained injuries while accused Sudheer has lost his life during same course of the incident for that a separate FIR was lodged against the complainant party of the present case. Be that as it may, the FIR of the present case has been lodged by the complainant with delay of about one day with no plausible explanation to such delay; therefore contention of learned counsel for the appellants that lodgment of the FIR of the present case with delay on the part of the complainant was an attempt to create counter version of the incident could not be lost sight of. The evidence of Medical Officer Dr. Muhammad Aslam is only to the extent that he examined the injuries of injured PW Imtiaz Ali @ Fateh Muhammad. On asking, he was fair enough to admit that as per police letter, the injured was found sustaining three injuries. No explanation to such discrepancy is offered by the prosecution; therefore, it could not be over looked. As per I.O/SIP Qurban Ali he recorded 161 Cr.P.C statements of the PWs on 10-03-2020, it was with delay of about five days, even to lodgment of the FIR of the present case, which was lodged on 05-03-2020, no explanation to such delay too is offered, which prima-facie suggests that the witnesses were managed. There is no recovery of empty from the place of incident. No incriminating article has been secured from the appellants. 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.

5. 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”.

6. In case of *Abdul Khaliq vs. the State* (1996 SCMR 1553), it has been held by Apex Court that;

“---S.161---Late recording of statements of the prosecution witnesses under section 161 Cr.P.C. Reduces its value to nil unless delay is plausibly explained.”

7. In case of *Muhammad Arif Vs. The State* (2010 SCMR 1122), it has been held by Apex Court that;

“6. From the evidence, it appears that as soon as the accused came out from the house, they started firing, but the complainant and PWs started running to save their lives. Therefore, in such state of affairs, it does not appeal to common sense that they would have in a position to distinguish and specify the weapon carried by each accused persons. It is also clear from the evidence that the general allegations have been leveled against the appellant along with other accused persons, as such it is also not known as to whether firearm shot fired by the appellant had hit the deceased. The medical evidence also does not help in specifying weapon used for causing the injuries; therefore the recovery of 8 mm rile creates

serious doubt in connecting the appellant with the commission of crime. As such there is no corroborated evidence to the ocular testimony, which requires strong and independent corroboration being interested and hostile, therefore, it is very unsafe to rely upon such evidence”.

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; the appellants shall be released forthwith if not required to be detained in any other custody case.

10. The instant Criminal Jail Appeal is disposed of accordingly.

JUDGE