

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Jail Appeal No. S-34 of 2020

Appellant: Haibat @ Habibullah, Dargahi, Qaim, Abdul Ahad, Lal Bux and Zulfiqar Ali, all sons of Ali Mardan Jagirani, Asghar son of Raham Ali **through** M/s Sohail Ahmed Khoso and Abdul Qadeer Khoso advocates.

The Complainant: **Through** M/s Rukhsar Ahmed Junejo and Raja Iftikhar Hussain Ansari, advocates.

The State: **Through** Mr. Shafi Muhammad Mahar, Deputy Prosecutor General.

Date of hearing: 05-03-2024
Date of judgment: 05-03-2024

J U D G M E N T

IRSHAD ALI SHAH, J- It 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 committed murder of Ghulam Hyder by causing him fire shot injury and then went away by making aerial firing to create harassment, for that the present case was registered. At trial, the appellants did not plead guilty to the charge and prosecution to prove the same examined the complainant Awais Ahmed and his witnesses and then closed its side. The appellants during course of their examination u/s 342 Cr.P.C denied the prosecutions' allegation by pleading innocence. In order to prove their innocence, they examined Mansoor Ahmed and Muhammad Kashif in their defence; they however did not examine themselves on oath. On conclusion of trial, they were convicted under Section 302(b) r/w 149 PPC and sentenced to undergo life imprisonment as *Ta'zir* and to pay compensation

of Rs.300,000/- each to the legal heirs of the deceased and in default in payment whereof to undergo simple imprisonment for six months; they were further convicted u/s 337-H(ii) PPC and sentenced to undergo simple imprisonment for two months and to pay fine of Rs.5000/- each and in default in payment whereof to undergo simple imprisonment for two months. All the sentences were directed to run concurrently with benefit of section 382(b) Cr.P.C by learned IIIrd Additional Sessions Judge/(MCTC-II) Sukkur vide judgment dated 12-03-2020, 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 police at the instance of the complainant party with whom they were disputed over landed property and the evidence of the P.Ws being doubtful in its character has been believed by learned trial Court without assigning cogent reasons, therefore, they are entitled to be acquitted of the charge by extending them benefit of doubt.

3. Learned Deputy P.G for the State and learned counsel for the complainant were fair enough to say that they would be having no objection to the acquittal of the appellants excepting appellant Haibat @ Habibullah, who alone is attributed the specific role of committing death of the deceased by causing him fire shot injury.

4. Heard arguments and perused the record.

5. It was stated by complainant that on the date of incident he and his brother Ghulam Hyder were grazing their cattle at the place of incident, there came the appellants and others, out

of them appellant Haibat @ Habibullah by saying that we are not going to settle their dispute with them over landed property, instigated rest of the culprits to take away our cattle, which we resisted, in the meanwhile there came PWs Rahim Bux and Bashir Ahmed; thereafter, appellant Haibat @ Habibullah fired at Ghulam Hyder with his Kalashnikov, who by sustaining such fire at left side of his chest fell down on the ground and then accused went away by making fires, which they managed to save; then they took the dead body of the deceased to Taluka Hospital Rohri; the post mortem whereupon was conducted by Dr. Pervez Akhtar and he then lodged report of the incident with PS Dubar, it was recorded by I.O/SIP Saeed Ahmed, he also conducted the initial investigation of the case. PW Bashir Ahmed has attempted to support the complainant. If their evidence is believed to be true, then it prima-facie suggests that it was appellant Haibat @ Habibullah who alone has committed murder of the deceased by causing him fire shot injury and then has defeated the recovery of crime weapon from him by preferring to go in absconsion. No cattle was taken away and no fire shot injury was sustained by the complainant or his witnesses during course of the alleged incident. The evidence of I.O/SIP Nisar Ahmed is relating to final investigation of the case, it is formal in nature; therefore, same hardly needs discussion.

6. The conclusion which could be drawn of above discussion would be that the prosecution has been able to prove its case against appellant Haibat @ Habibullah beyond shadow of doubt. However, the prosecution has failed to prove its case against appellants Qaim, Zulfiqar, Lal Bux, Asghar, Dargahi and Abdul Ahad as they have been involved in

commission of incident, only on the basis of vicarious liability; which could reasonably be judged with doubt.

7. In view of the facts and reason discussed above, the instant appeal to the extent of appellants Qaim, Zulfiqar, Lal Bux, Asghar, Dargahi and Abdul Ahad is allowed, they are acquitted of the offence, with which they were charged, tried, convicted and sentenced by learned trial Court and they shall be released forthwith if not required to be detained in any other custody case. However, it is dismissed in respect of appellant Haibat @ Habibullah.

8. Above are the reasons of short order of even date whereby the instant Crl. Jail Appeal was disposed of.

Judge