

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.
Crl. Appeal No. S-99 of 2022

Appellants: Hakim Ali, Muhammad Nawaz, Zulfiquar Ali all sons of Allah Wadhayo Narejo, Abdul Rasheed and Azizullah both sons of Ghulam Drigh **Through** M/s Shoukat Ali Makwal and Safeer Ali Jagirani.

The State: Through Mr. Aftab Ahmed Shar Additional P.G for the State.

Date of hearing: 11-03-2024.

Date of decision: 11-03-2024.

J U D G M E N T

IRSHAD ALI SHAH, J. It is 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 beside causing fire shot injuries to PWs Mst. Badshahzadi, Kirir alias Noor Muhammad and Bakhat Ali, committed murder of Ahmed Ali by causing him fire shot injuries, for that the present case was registered. On conclusion of trial, the appellants were acquitted for committing murder of Ahmed Ali and causing injuries to PWs Kirir alias Noor Muhammad and Bakhat Ali under compromise, however, they were convicted without specifying the Penal section for conviction and sentenced to undergo rigorous imprisonment for seven years and to pay *Daman* of Rs. 10,000/- to PW Mst. Badshahzadi and in default in payment whereof to undergo simple imprisonment for three months with benefit of section 382(b) Cr.P.C by learned Ist Additional Sessions Judge (MCTC-I) Khairpur vide judgment dated 19-10-2022, 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 by the police and they have been convicted and sentenced by learned trial Court on the basis of misappraisal of evidence; therefore, they are entitled to be acquitted of the offence for which they have been convicted and sentenced, which is opposed by learned Additional P.G for the State by supporting the impugned judgment.

3. Heard arguments and perused the record.

4. Complainant Muhammad Pannah could not be examined by the prosecution on account of his death. On remand, PWs Muhammad Sallah, and Bakhat Ali could not be examined by the prosecution for the reason that they have won over by the complainant party. No justification is advanced for non-examination of PW Kirir alias Noor Muhammad. However they together with the legal heirs of deceased Ahmed Ali pardoned the appellants by filing their respective affidavits. The only evidence which was left with the prosecution on ocular premises was that of PW Mst. Badshahzadi; she without attributing injury stated that she received firearm injury on right side of her foot. As per Medical Officer Dr. Ghulam Rasool, the injury sustained by PW Mst. Badshahazadi was caused to her with some hard and blunt substance and possibly it could have been self-suffered. By stating so, he has belied PW Mst. Badshahzadi that it was fire shot injury, which she allegedly sustained during course of the incident. In such situation evidence of PW Mst. Badshahzadi being untrustworthy and doubtful in its character could hardly be relied upon to maintain conviction against the appellants.

5. The conclusion which could be drawn of 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.

5. In case of *Faheem Ahmed Farooqui vs. The State (2008 SCMR 1572)*, it is held by Apex Court that;

“Single infirmity creating reasonable doubt regarding truth of the charge makes the whole case doubtful”.

6. For what has been discussed above, the conviction and sentence awarded to the appellants by way of impugned judgment are set-aside, they are acquitted of the offence for which they were charged, tried, convicted and sentenced by learned trial Court, their bail bonds, if any, are cancelled and sureties are discharged.

7. The instant Crl. Appeal is disposed of accordingly.

JUDGE