

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Jail Appeal No. S-102 of 2021

Appellants: Jatoi S/o Bago Shar, Farman S/o Achar Shar and Meero alias Mir Hassan S/o Jumo Shar, all **through** M/s Shamsuddin N.Kobhar and Alam Sher Khan Bozdar, Advocates

Complainant: Sanjar Shar through Mr. Khan Muhammad Sangi, Advocate

The State: through Syed Sardar Ali Shah, Additional P.G for the State

Dates of hearing: 04.03.2024 and 12.03.2024

Date of judgment: 19.03.2024

J U D G M E N T

IRSHAD ALI SHAH, J- Facts in brief necessary for disposal of instant appeal are that the appellants with rest of the culprits are alleged to have committed murder of Dodo by causing him fire shot injuries, for that the present case was registered. On denial of the charge by the appellants, the prosecution examined in all eight witnesses and then closed its side. The appellants during course of their examination u/s 342, CrPC denied the prosecution allegations by pleading innocence, they did not examine themselves on oath, however, they examined Hafiz Abdul Qadir and Ghulam Ali Jumani in their defence. On conclusion of trial, the appellants and co-

accused Akber and Ali Murad were convicted under Section 302(b) r/w section 149 PPC and sentenced to undergo imprisonment for life 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 06 months with benefit of section 382(b) CrPC by learned IIIrd Additional Sessions Judge/MCTC-II Camp at Central Prison, Sukkur vide judgment dated 20-11-2021, which the appellants and co-accused Akber and Ali Murad impugned before this Court by preferring instant criminal jail appeal.

2. During course of hearing of appeal, co-accused Akber and Ali Murad were acquitted by way of compromise while it remained pending against the appellants.

3. It is contended by learned counsel for the appellants that they being innocent have been involved in this case falsely by the complainant party without lawful justification and evidence of the PWs being doubtful in its character has been relied upon by learned trial Court without assigning cogent reason, therefore, the appellants are entitled to be acquitted of the offence for which they were charge by extending them benefit of doubt. In support of their contentions, they relied upon the cases of *Farman Ahmed vs. Muhammad Inayat & others*

(2007 SCMR 1825) and *Muhammad Sharifan Bibi vs. Muhammad Yasin & others* (2012 SCMR 82).

4. 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 prosecution has been able to prove its case against the appellant beyond shadow of doubt. In support of their contentions, they relied upon the cases of *Naseer Ahmed vs. The State* (2003 SCMR 350) and *Abdul Wahid vs. The State* (2003 SCMR 1278).

5. Heard arguments and perused the record.

6. It was stated by complainant Sanjar and PW Abdul Rehman that deceased Dodo purchased the land in Deh Vijnot which annoyed the appellants and others and they were oftenly threatening him. On the date of incident when they, deceased and PW Khadim Hussain were going on their Jeep, which was being driven by the deceased when reached at kacha sarak adjacent to village Allahyar Shaikh, there on 15.08.2014 at about 1:00 am time they were confronted by nine culprits who were identified by them under the light of Jeep to be Jatoi with G-3 Rifle, Farman with G-3 Rifle, Murado with G-3 Rifle, Miro with Kalashnikov, Ali Murad with Kalashnikov, Makno with Gun,

Akber and two unknown culprits. At the instigation of Akber, Dodo was dragged out from the Jeep and he then instigated others to fire at Dodo. On his instigation, Jatoi fired at Dodo, which hit on him on his chest, fire made by Farman hit him under his armpit, fire made by Murado hit him on his wrist, fire made by Miroo hit him on his left side of chest, fire made by Ali Murad hit him on his belly while two unknown culprits made aerial firing. Then the accused ran way towards their houses. The incident was reported by them to police; they shifted the dead body of the deceased to Taluka Daharki for post-mortem and then lodged report of the incident with PS Khenjoo at about 6:00 pm. It was lodged with delay of about 17 hours to actual incident. It was recorded by I.O /ASI Abdul Razak. He also conducted initial investigation of the case. No plausible explanation to delay in lodgment of FIR by 17 hours is offered by the complainant which prima facie suggest reflection and deliberation. The 161 Cr.P.C statements of PW Abdul Rehman as per I.O Inspector Qaimuddin was recorded on 16.08.2014 it was with delay of one day even to FIR. No explanation to such delay is offered by the prosecution; therefore, such delay having not been explained plausibly could not be overlooked. PW Khadim Hussain has not been examined by the prosecution for no obvious reason. The

presumption which could be drawn of his non-examination in terms of Article 129 (g) of Qanun-e-Shahadat Order, 1984 would be that he was going to support the case of prosecution. No Jeep as per I.O/ Inspector Qaimuddin was found available at the place of incident. It has never been secured as case property. If for the sake of arguments, it is believed that the appellants were actually identified by the complainant party at night time being known to each other even then it would be hard to believe that they were able to specify the each and every injury to the deceased to each and every appellant. The circumstances suggest that the complainant and his witnesses were actually not available at the place of incident. If they would have been available then they would have offered resistance to the death of the deceased which they failed to put up or alternatively they too would not have been let to go by the appellants unharmed to involve them in case like present one. As per PW/Medical Officer Dr. Liaquat Ali, the dead body of the deceased was identified by Ghulam Hyder and Shahzado being his brother and cousin. The identity of the dead body of the deceased other than the complainant and his witnesses also reflects adversely on the version of the complainant that he and his witnesses were available at the place of incident and they shifted the dead body of Taluka Hospital Daharki. As per

I.O/Inspector Rab Nawaz on investigation, he let off accused Ali Murad, Akber and Makhno by placing their names in column No.II of the charge sheet. Evidence of PW/mashir PC Mumtaz Ali is only to the extent that he handed over the dead body of the deceased to Medical Officer at Taluka Hospital Daharki. His evidence being formal in nature hardly needs a discussion. It was stated by PW/mashir Kaloo that from place of incident were secured five empty shells. He in that respect is belied by I.O/Inspector Qaimuddin by stating that from place of incident were secured six empty shells. None of the empty shells has been subjected to forensic examination. The further investigation of the case as per I.O/Inspector Qaimuddin was conducted by DSP/Hakim Ali Mithani. He has not been examined by the prosecution. His non-examination has prejudiced the appellants in their defence seriously. There is no recovery of any sort from the appellants even after their arrest/surrender. The appellants have pleaded innocence by denying the prosecutions' allegations against them; their plea of innocence could not be lost sight of in the circumstances of the case.

7. The conclusion which could be drawn of the above discussion would be that the prosecution has not been able to

prove its case against the appellants beyond shadow of doubt and to such benefit they are found entitled.

8. 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”.

9. 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.”

10. 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".

11. The case law which is relied upon by learned Addl. PG for the State and learned counsel for the complainant is on

distinguishable facts and circumstances. In those cases the deceased after sustaining injuries died in hospital, it was found to be cause of delay being natural. In the instant case the deceased has died at the spot as such delay in lodgment of FIR was found to be unnatural.

12. 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.

13. Instant Criminal Jail Appeal is disposed of accordingly.

Judge

ARBROHI