

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Appeal No. S-113 of 2023

Appellant: Shahzeb son of Muhammad Amanullah
(Confined at Central Prison Sukkur) **through**
Mr. Rukhsar Ahmed Junejo advocate.

The Complainant: Mr. Aalam Sher Khan Bozdar, advocate.

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

Date of hearing: 08-04-2024

Date of judgment: 08-04-2024

J U D G M E N T

IRSHAD ALI SHAH, J- It alleged that the appellant with rest of the culprits in furtherance of their common intention caused injuries to complainant Aijaz Ahmed on his back side with country made pistol with intention to commit his murder and then went away by insulting him, for that the present case was registered. On conclusion of trial, the appellant was convicted u/s 324 r/w 34 PPC and sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs. 50,000/- and in default in payment whereof to undergo simple imprisonment for six months; he was further convicted u/s 337A(ii) r/w section 34 PPC and was sentenced to undergo rigorous imprisonment for three year and to pay *Daman* of Rs. 100,000/- to the complainant and in default in payment whereof to undergo simple imprisonment for one month. Both the sentences were directed to run concurrently with benefit of section 382 (b) Cr.P.C by learned IInd Additional Sessions Judge, Mirpur Mathelo, which the appellant has impugned before this Court by preferring the instant criminal appeal.

2. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the complainant party in order to satisfy with him its dispute over inheritance of the property; the FIR of the incident has been lodged with delay of about five days, such delay has not been discussed plausibly and the evidence of the P.Ws being doubtful in its character has been believed by learned trial Court without assigning cogent reasons, therefore, the appellant is entitled to be acquitted of the charge by extending him benefit of doubt.

3. 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 appeal by contending that after rejection of his pre arrest bail by Apex Court, he went in absconsion and surrendered before learned trial Court after acquittal of the co-accused.

4. Heard arguments and perused the record.

5. It is stated by complainant Aijaz Ahmed that on 22-04-2019 was going back to his house on his motorcycle, when reached adjacent to his house, there at about 1:30 pm he was confronted by the appellant and others, out of them the appellant fired at him with his country made pistol with intention to commit his murder, which hit him on back side of his waist; on his cries PWs Hassan Jan, Muhammad Hanif and others came at the place of the incident, the appellant and others then went away; the said PWs took him to PS Mirpur Mathelo and was referred to District Head Quarter Hospital Mirpur Mathelo

and then was referred to Rahim Yar Khan for further management of his injuries and then on 07-04-2019 he lodged report of the incident with PS Mirpur Mathelo, it was with delay of about five days to actual incident. PWs Muhammad Hanif and Hassan Jan during course of their examination were fair enough to say that on hearing of fire shot report, they went at the place of incident and found the complainant lying on the ground; it prima-facie suggest that they reached at the place of incident, when the incident was virtually over; therefore, their evidence is of little help to the case of prosecution. It was stated by ASI Behram Ali that on the date of incident; the complainant was brought at PS Mirpur Mathelo by PWs Muhammad Hanif and Muhammad Hassan, he was found sustaining injuries on his back with country made pistol; entry in *Roznamcha* was recorded at Sr. No. 35 dated 02-04-2019 and he then was referred to District Head Quarter Hospital Mirpur Mathelo for management of his injuries. Such *Roznamcha* entry does not contain the name of the appellant or any other culprit involved in the incident, which appears to be surprising. In such situation lodgment of the FIR of present incident by the complainant with delay of about five days even after his discharge from Hospital at Rahim Yar Khan on next day of the incident suggests deliberation and consultation. In that context the suggestion made to the complainant that he has involved the appellant in this case falsely to satisfy his dispute with him over property after receipt of fire shot injuries at the hands of unknown culprits when they attempted to rob him of his motorcycle, could not

be lost sight of. On asking Medical Officer Dr. Safdar Hussain was fair enough to admit that no fracture was observed on location of injuries sustained by the complainant and no pellet was recovered by his body. Where those pellets have gone? No explanation of it is offered by the prosecution. AS per I.O/SIP Mir Muhammad at the time of incident there was no street light at the place of incident. If it was so, then identity of the appellant at night time by the complainant when he was fired at from back side too is appearing to be doubtful. The appellant during course of his examination u/s 342 Cr.P.C has denied the prosecutions' allegation by pleading innocence, such plea on his part could not be over looked in existence of the dispute between him and the complainant party over inheritance of the property.

6. 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 appellant beyond shadow of reasonable doubt and to such benefit he is found entitled.

7. 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”.

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 appellant under impugned judgment are set aside, he is acquitted of the offence for which he was 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.

10. Above are the reasons of the short order of even date, whereby the instant Criminal Appeal was allowed.

JUDGE