

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Appeal No. S – 112 of 2021

(*Imam Ali Solangi and another versus The State*)

Dates of hearing : **04.03.2024 & 25.03.2024**

Date of announcement : **30.04.2024**

Mr. Sabir Hussain Samo, Advocate for appellants.
Mr. Zulfiqar Ali Panhwar, Advocate along with complainant.
Mr. Shafi Muhammad Mahar, Deputy Prosecutor General.

J U D G M E N T

Muhammad Iqbal Kalhoro, J. – Appellants, having been convicted through impugned judgment dated 08.12.2021, passed by learned Additional Sessions Judge, Kandiaro in Sessions Case No.28 of 2004 (*Re: State v. Imam Ali Solangi and others*), emanating from Crime No.08 of 2003, registered at Police Station Bhago Dero, District Naushahro Feroze U/S 302, 337-A(ii), 337-F(ii), 34 PPC, and sentenced to suffer as detailed below, have filed this appeal challenging the same:

- For offence U/S 302(b) PPC read with Section 34 PPC: committing qatl-i-amd of deceased Muhammad Qasim, to suffer rigorous imprisonment for life as Ta'zir with payment of compensation of Rs.50,000/- (Rupees fifty thousand) each to the legal heirs of deceased in terms of Section 544-A CrPC as well as fine of Rs.50,000/- (Rupees fifty thousand), or in default thereof, to suffer SI for one year more.
- For offence U/S 337-A(i) PPC, to suffer RI for one year with payment of daman of Rs.5,000/- to injured Aijaz Ali.
- For offence U/S 337-F(i) PPC, to suffer RI for one year with payment of daman of Rs.2,000/- to complainant / injured Muhammad Umer.
- For offence U/S 337-L(2) PPC, to suffer RI for one year with payment of daman of Rs.2,000/- each for three injuries to complainant / injured Muhammad Umer.
- For offence U/S 337-F(v) PPC, to suffer RI for two years with payment of daman of Rs.10,000/- to injured Aijaz Ali.
- For offence U/S 337-F(v) PPC, to suffer RI for two years with payment of daman of Rs.10,000/- to injured Mst. Kareema.
- For offence U/S 337-F(vi) PPC, to suffer RI for three years with payment of daman of Rs.10,000/- to complainant / injured Muhammad Umer.
- The amount of daman has been directed to be paid in terms of Section 337-Y PPC in lump sum or in installments spread over a period of five years from date of judgment, or in case of failure thereof, the accused shall not be released until and unless said amount is to be paid.

- All the sentences have been ordered to run concurrently with benefit of Section 382-B CrPC extended to the accused.

2. As per brief facts, complainant Muhammad Umer Solangi, a *hari* of Haji Siddique and Piyaro Mashori, had suspected appellants and co-accused as involved in theft of cotton crop from land of Piyaro Mashori committed few days back to the main incident. With that mindset, he approached Imam Ali and others for resolving the dispute but they got annoyed, on the contrary. On 14.12.2003 at about 06:00 p.m. when he was walking home, he came across Imam Ali, Jhando, Razaque and Muhammad Mithal alias Khadim, armed with sticks (*lathis*). They verbally abused him and then Imam Ali struck him multiple times with a stick, causing injuries to different parts of his body. Hearing his cries for help, his wife Mst. Kareema and sons Muhammad Qasim and Aijaz Ali, present in the home, rushed to the spot. But they too were subjected to physical violence by the accused -- and hence sustained multiple injuries. The commotion attracted people of nearby area, who intervened and rescued the complainant party. The accused then fled the scene. Complainant then transported his injured family members to the hospital in Darbelo for treatment. Subsequently, he registered the FIR against the accused. His son Muhammad Qasim however succumbed to injuries the following morning at 5:00 a.m. and expired in the hospital. Complainant promptly gave such information to the police, who arrived at the hospital and carried out necessary formalities: examining the dead body, etc. Afterwards a postmortem examination of his body was conducted, and then it was handed over to the complainant for burial.

3. During investigation, appellants were arrested on 09.01.2004, and on the same date, in interrogation, they admitted the guilt and produced two sticks, used in the offence, from the place where they had concealed the same i.e. clump of *khobar* trees. After usual investigation, the Challan u/s, among others, 302 PPC was submitted and appellants along with co-accused, declared proclaimed offenders, were referred to the court for a trial, where a formal charge against them was framed.

4. Prosecution then led evidence of all the necessary witnesses, nine in number, who produced all the relevant papers including police letter, inquest report, memos of injuries, place of incident, clothes of deceased, arrest and recovery of incriminating articles from the appellants etc. The Medico Legal Officer has produced medical reports/certificates as well as postmortem report of deceased stating that he died due to shock and hemorrhage and that all injuries, ante-mortem in nature, and caused by hard and blunt substance, are collectively the reason of death of deceased. Further that injury No.1 was

sufficient to cause death in ordinary course of life. After the prosecution's evidence, the appellants' statements u/s 342 CrPC were recorded. They have denied the allegations and pled their innocence but did not lead any evidence in defense or examine themselves on oath. The trial Court by means of the impugned judgment has convicted and sentenced the appellants as above, and kept the case of absconder accused on dormant file till their arrest or surrender before the concerned Court.

5. Learned defense counsel has argued that the appellants are innocent, have been falsely implicated in this case; there are material contradictions in the evidence of witnesses, which have been totally ignored by the learned trial Court while convicting the appellants; the story narrated by the complainant in FIR and the witnesses in their 161 CrPC statements is quite different to the one disclosed by them in their evidence; medical evidence is in conflict with the ocular account; the trial court ignored the fact that no independent person has been cited in the case as a witness; and that all the witnesses are closely related to each other and interested in the outcome of the case against the appellants, who they have alleged in the FIR were inimical to them on account of suspicion of theft of crop cast upon them by the complainant.

6. On the other hand, learned Counsel for the complainant and learned deputy prosecutor general have supported the impugned judgment stating that the prosecution case is established from unimpeachable evidence of the witnesses.

7. I have considered arguments of parties and perused material available on record. The only ground taken in defense for acquittal by the appellants is that there are variations in the story of FIR and the evidence qua role performed by each appellant -- and the absconders -- in causing injuries to the members of the complainant party, particularly the deceased. Record indicates that the complainant has named four accused including the two appellants in FIR, who being annoyed on being suspected by him for committing theft of cotton crop, accosted him in a street nearby his house, and started beating him with clubs (*Lathis*). It is further revealed by him that on his cries, when his family comprising his two sons and a wife came out of house to rescue him, they were also beaten by them.

8. In his evidence and evidence of PWs: his wife Mst. Kariman and his son Ajaz, presence of four known accused armed with clubs in the street nearby house of complainant, their thrashing to the complainant with clubs, emerging of his family members from the house to save him, and their severe beating by

them in the course of which, are the facts that are in precise alignment with the story of FIR. There is not a slight difference in them as long as identity of the accused, the weapons they were armed with, the date and time of incident and place of incident is concerned. The factum of injuries received through *lathis* are supported by medical evidence confirming nature of such injuries: that they were caused by hard and blunt substance. Lengthy cross examination of complainant and the witnesses over these points has not yielded any admission / contradiction favorable to the accused. The witnesses are consistent and supportive of each other in describing relevant features of the case constituting core of the scene. They don't falter, nor veer off when asked about identity of each accused, the motive part of the story, time, date and place of incident and death of Muhammad Qasim, a son of the complainant, in the hospital as a result of a head injury, on that very night.

9. As stated above, the case put up by appellants for their acquittal is mainly founded on alleged variations which per them the witnesses have made in describing the role played by each accused in causing injuries to them and to deceased at the time of incident. In elaboration, it is urged that the complainant in evidence has alleged that all four accused, finding him in the street of his house, started beating him. When his family came to rescue him on his cries, appellants **Imam Ali, Jhando** and **Raza Muhammad** (identified as Razaq in the case) caused *lathi* blows to his son Qasim. While, PW Aijaz states that when they reached the place of scene on cries of his father, they saw all four accused thrashing his father with lathies and when they tried to rescue him, appellant **Imam Ali** and accused **Razaq** inflicted blows to Muhammad Qasim. Whereas, Mst. Karima, another eyewitness, has described the incident in the same words, and has named appellant **Imam Ali** and accused **Razaq** for being responsible in causing *lathi* blows to her son deceased Muhammad Qasim. There is no inconsistency as far as identity of Imam Ali and Razaq, the main culprits responsible for inflicting injuries to deceased, is concerned. The complainant in addition has taken name of Jhando to be the one also who had beaten his deceased son.

10. Be that as it may, all the witnesses including complainant are unanimous in evidence over the fact that appellant Imam Ali and accused Razaq had given *lathi* blows to deceased and the blow of appellant Imam Ali had landed on his temple -- which proved as fatal in the final analysis. As discussed above, It is only the complainant who besides above named accused has taken name of appellant Jhando also to have caused *lathi* blows to his son Qasim. In the FIR, he has however assigned this role to only accused Razaq.

11. Notwithstanding, the question is that whether these discrepancies can be counted as material impinging intrinsic value of evidence of witnesses, who have otherwise narrated the whole incident in one voice, have identified all the four accused with their names; the articles (*lathis*) they were armed with; the reason/motive inducing them to mount an assault on the complainant for; his cries for help; family members rushing to the spot to rescue him; and their beating at the hands of the accused when they intervened to rescue him. When four accused conjointly, armed with *lathis*, are continuously and repeatedly causing blows to the victims, may be three, four or five, it will be well-nigh impossible for them to firstly count the blows they are sustaining and secondly identify exactly the one who among four is causing them a particular blow. Any number of victims in such a situation would first try to resist the attack and counter it. If it is not possible, they would try to save themselves, instead of calculating the number of blows and name of a particular accused doing it in a bid to accurately say so in evidence later on. Therefore, I am of the view that the discrepancies in the evidence highlighted in defense are not material and no benefit of which can be extended to the appellants in the shape of acquittal.

12. As pointed above, in respect of injuries, the case of prosecution has been supported by Medico Legal Officer, who, in his postmortem report, has recorded following injuries on the person of deceased and in the final medical certificates on the person of injured:

Deceased Muhammad Qasim

1. Contused swelling of size 5 x 5 cm on left temporal region with bleeding from mouth / nose.
2. Contused swelling of size 5 x 3 cm on left side of neck.
3. Contused swelling of size 2 x 2 cm on the upper third of right leg laterally.

Injured Aijaz

1. Lacerated wound on head left side just above left ear 2.5 cm depth is 5 cm.
2. Swelling on left hand 2 cm x 2 cm.

Injured Muhammad Umar

1. Lacerated wound on head left side just above left ear 2.5 cm depth is 5 cm.
2. Swelling on left hand 2 cm x 2 cm.
3. Swelling on right shoulder 5 x 5 cm.
4. Abrasion on left leg ½ cm.
5. Swelling on right leg (calf region) 2 cm x 2 cm.

Injured Mst. Kareema

1. Contusion on left shoulder with swelling 2 cm x 2 cm.

In cross-examination of Medico Legal Officer, nothing injurious to veracity of his evidence has come on record, nor any hint is there indicating that incident had not occurred in the manner as described by the complainant party.

13. The other witnesses, mainly police officials, have also supported the prosecution case by giving evidence on relevant points viz. registration of FIR followed by investigation, arrest of the appellants and recovery of *lathis*: the incriminating articles. From every corner, the prosecution has established its case against the appellants, and mere some variations, minor in nature lacking required impact to create doubt over salient features of the case, appellants cannot be declared as innocent and acquitted.

14. The prosecution has successfully brought home guilt of the appellants and has established the case through reliable evidence. Consequently, I do not find any merit in this appeal and **dismiss** it.

The appeal is accordingly **disposed of**.

J U D G E

Abdul Basit