

IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS

Criminal Acquittal Appeal No.S-58 of 2024

(Pirbhu Lal Versus Jhaman Das & another)

DATE	ORDER WITH SIGNATURE OF JUDGE
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Date of hearing and Order 02.10.2024

Appellant Pirbhu Lal a/w his counsel Mr. Wishan Das Kolhi advocate
Respondent Jhaman Das a/w his counsel Mr. Kanji Mal advocate
Mr. Dhani Bux Mari, Assistant P.G Sindh

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JUDGMENT

Adnan-ul-Karim Memon, J.

This appeal arises from the judgment dated 04-05-2024, passed by the learned Additional Sessions Judge-II, Tharparkar @ Mithi, in Criminal Appeal No. 08/2024 ("Impugned Judgment"). The Impugned Judgment set aside the conviction of respondent Jhaman Das by the Judicial Magistrate, Mithi, in Criminal Case No. 01/2024 arising out of Crime No.128/2023 under section 337-F(vi), 504 PPC of PS Islamkot ("Trial Court Judgment"). An excerpt of the ("Trial Court Judgment") is reproduced as under:-

"18. In view of the above discussion in point No.01. The prosecution has proved its case beyond doubt against the accused namely Jhaman Das S/o Pirsu Mal. Since it has also been brought on record that the accused is not previously convicted nor having any criminal record, neither he is a desperate nor hardened criminal. Therefore, he needs to be treated leniently while awarding a conviction to him. In this regard, I am fortified in my view from the authority reported as 2012 P.Cr.L.J 1502. Hence the accused Jhaman Das S/o Pirsu Mal is convicted under section 245) Cr. P.C by taking a lenient view as follows:-

Accused Jhaman Das S/o Pirsu Mal is convicted for the offense under section 337-F(vi) PPC to pay Daman in the sum of Rs. 100,000/- to victim/injured Pirbhu Lal S/o Pirsu Mal, as provided U/S 337-Y(a, b, c) P.P.C.

Accused Jhaman Das S/o Pirsu Mal is also convicted for the offense under section 504 PPC to pay a fine in the sum of Rs.30,000/-

Meanwhile, the accused/convict may be released on bail if he furnishes security/surety equivalent to the amount of Daman and fine to the satisfaction of this court. If the convictee fails to furnish security/ surety till raising the court then he may be taken into custody and remanded to jail for want of security/surety. However, if the accused/convicts fail to pay the Daman and fine amount within the prescribed period, he may be kept in jail and dealt with same manner as if sentenced to simple imprisonment until the amount is paid. The Bail bond of accused Jhaman Das is canceled and surety is discharged, let the copy of Judgment be supplied to the accused person free of cost..".

2. The Additional Sessions Judge found several flaws in the prosecution's case, including:

“During trial, prosecution has examined as many as five witnesses including complainant, two eye-witness, I.O and medical officer. They produced several documents during the course of investigation, which are available in R & Ps and have been perused by me.

I have given due consideration to whole R & Ps and perused the material available before me including the deposition of witnesses.

Learned trial Court framed charge under sections 504 and 337-F(vi) P.P.C and convicted appellant/accused for the same. From the perusal of evidence of complainant it reveals that he has not mentioned about the abusive language by accused against him. He has deposed that on 07-12-2023, when he was present at his plot, at about 1645 hours, his brother/accused Jhaman came to him and hit lathi upon his left hand and thereby sustained injury. Whereas, PW Pardeep deposed that when he & his brother arrived at place of incident, their father/injured Purbhu Lal was lying on earth while accused Jhaman Das was standing with stick. On the other hand, PW Ameet, who also rushed at the place of incident on hearing cries along with his brother/PW Pardeep, deposed that his uncle Jhaman Das was armed with stick, abusing his father and holding him from his collar & beating with stick. Both PWs namely Pardeep and Ameet deposed that they brought their father to home and did not find any visible injury on his body but only scratch / swelling on left hand finger, however, complainant himself did not depose about his going to home. Complainant deposed that he went to RHC Islamkot but they asked for letter, therefore, appeared at P.S Islamkot, obtained letter and then went for treatment at RHC Islamkot, however, this fact also contradicts with the statement of PW Ameet, who deposed that they went to P.S Islamkot, obtained letter and then his brother Pardeep accompanied their father to RHC Islamkot. On the other hand, PW Pardeep deposed that they brought their father to a private hospital after that went to P.S, obtained letter and then went to RHC Islamkot.

I came to the conclusion that there are so many lacunas, legal flaws and contradictions in the case of the prosecution and I am of the view that the learned trial Court erred while awarding sentence to the accused. Therefore, the appellate Court can alter or set-aside the same. There is a law that injury on the body of a person does not stand him as a truthful witness. Mere availability of medical evidence does not connect accused with commission of crime, unless there is trustworthy, confidence inspiring and credible evidence in shape of direct evidence against accused. I am fortified with the case law reported as *2020 MLD 1862*, *2019 MLD 1808*. The veracity of the injured witness is to be tested from circumstances of the case and his own statement whether it fits in circumstances of the case or otherwise. There is admitted enmity between accused and complainant, who are real brothers to each other and such civil litigation is also pending, hence, malafide intentions and ulterior motives of complainant cannot be ruled out. Such scenario also creates doubt in the prudent mind and makes the dent in case. From the above discussion and points disclosed that the prosecution vehemently failed to prove its case beyond any reasonable shadow of doubt. Although there is enmity between the parties which is admitted and same is double sword. Besides this, version of complainant as per contents of FIR also contradicts with his own deposition before Court. Variation of statement also levels serious doubt about the credibility of witness.

Therefore, reasonable doubts created in the case of the prosecution cannot be ignored and it is by now a well settled principle of law that the benefit of doubt is always extended to the accused as a matter of right and for this purpose only a single/ simple circumstance creating

reasonable doubt in a prudent mind about the guilt of the accused, is sufficient. The reliance is respectfully placed on the case of *Tariq Pervez Versus The State (1995 SCMR 1345)*.

In view of the above discussion and the appreciation of the evidence adduced, it is now crystal clear that prosecution has failed to prove the charge against the appellant/ accused person beyond any reasonable doubt, so the point No. 1, is answered in affirmative.

Point No. 2.

In view of my finding on point No.1, I am of the considered view that the prosecution has clearly failed to prove its case against the appellant/ convicts beyond any reasonable shadow of doubt, therefore, the judgment of conviction and sentence passed by the learned trial Court against the appellant/accused is based on misreading, non-appreciation of evidence available on record, which is against the law and facts on record and liable to be set aside. Therefore, this criminal appeal is allowed and the impugned judgment dated 27.03.2024, of conviction and sentence, passed by the learned trial Court against the appellant/accused, is hereby set aside and the appellant namely Jhaman Das son of Pirsu Mal is acquitted U/S 423 (1) (b) Cr.P.C. of the charges leveled against him. Appellant/accused is present on bail of learned trial Court, so his bail bond stands cancelled and surety discharged.

3. Based on aforesaid findings, the Additional Sessions Judge concluded that the prosecution failed to prove the case beyond a reasonable doubt. He acquitted Jhaman Das under Section 423 (1)(b) of the Code of Criminal Procedure (Cr.P.C.).
4. The appellant seeks a reversal of the Impugned Judgment and restoration of the Trial Court Judgment by convicting respondent Jhaman Das.
5. It appears from the cross examination of complainant that he had made certain admissions, like he admitted that he did not produce the ownership documents of alleged plot. He also admitted that the respondent was/is his real brother and civil proceedings is pending on subject issue. He admitted that there was mobile tower installed on the disputed land and such agreement was executed between the company and the respondent. The witness of the complainant admitted that there was/is civil dispute between the parties over the plot. Such admissions on the part of complainant and his witnesses leads to believe that there were strained relations between two real brothers and registration of subject case appears to be result of such dispute. The complainant has also admitted that place of incident is located in populated area, but none from the locality came forward to corroborate the version of complainant. The complainant also admitted that

previously, the respondent had lodged "NC" against him and such fact could not be overlooked. The Medicolegal Officer Doctor Kanwar Lal admitted in the deposition that there was/is correction in the OPD slip. He admitted that there was/is no injury upon the body and head of the complainant. He admitted that there is possibility that the present injured might have received injury by falling on tile or marble. He also admitted that on the same day, injured Jhaman appeared with the police letter.

6. When confronted the statement of the complainant and his witnesses including statement of medical officer, both the parties after arguing the matter at some length, agreed to settle their dispute by providing security bonds to the Deputy Commissioner and SSP. These officials will ensure the arrangement is effective and monitor compliance. The parties must maintain peace, avoid criminal activity, and refrain from threats or harassment.

7. By consent of the parties, this criminal acquittal appeal is disposed of in the above terms, without prejudice to the rights of both brothers. Let a copy of this order be communicated to the Deputy Commissioner and SSP for compliance.

JUDGE