

## IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.

Spl. Anti-Terri. Jail Appeal No. D-82 of 2022

**Before:**

**Mr. Justice Muhammad Saleem Jessar &  
Mr. Justice Zulfiqar Ali Sangi**

Appellant	Ghulam Fareed Chandio, through Mr. Rab Dino Makwal, Advocate.
Respondent	The State through Mr. Aftab Ahmed Shar, Addl. Prosecutor General Sindh along with complainant Muhammad Nawaz.
Date of Hearing.	22-10-2024.
Date of Judgment.	22-10-2024.

### **J U D G M E N T.**

**MUHAMMAD SALEEM JESSAR-J:-** Through instant Jail Appeal, appellant Ghulam Fareed Chandio has assailed the judgment dated 31.07.2022 (**impugned judgment**), penned down by learned Judge, Anti-Terrorism Court, Khairpur Mir's (**trial Court**) in Special Case No.72-A of 2013, re: State v. Liaquat Ali and others) being outcome of FIR No. 271 of 2013, registered at P.S, A-section, Khairpur Mir's, under sections 302, 324, 386, 148, 149 PPC r/w Section 6(k) of ATA, 1997, whereby after full-dressed trial, trial Court found the appellant to be guilty of the charge and therefore convicted and sentenced him for offence under section 302(b) PPC r/w section 149 PPC to suffer imprisonment for life and to pay compensation of Rs.2,50,000/- to be paid to legal heirs of deceased Shahnawaz and in case of default in payment, to suffer R.I for six months more. For offence under section 324 r/w section 149 PPC, he was convicted and sentenced to suffer R.I for ten years and fine of Rs.25,000/- and in case of default in payment, to suffer R.I for six months more. For offence under section 386

r/w section 149 PPC, he was convicted and sentenced to suffer R.I for seven years and to pay fine of Rs. 15,000/- and in case of default in payment, to suffer R.I for four months. For offence under section 7 ATA, he was convicted and sentenced to suffer imprisonment for life and fine of Rs. 50,000/- and in case of default in payment, to suffer R.I for six months more. All the sentences were ordered to run concurrently with benefit of section 382-b Cr.P.C, duly extended to him.

2. Appellant being dis-satisfied and aggrieved by said judgment has maintained instant appeal.

3. The brief facts of the prosecution are that complainant Muhammad Nawaz lodged FIR on 11.12.2013 at 1800 hours, in respect of an incident, allegedly occurred on the same day at 1700 hours, which reads as under:

*“Complaint is that Shahnawaz aged about 36/37 years was my elder brother. Accused Liaquat Ali, Fareed, Zakria alias Zakoo, Sikander alias Sikoo all by caste Chandio and Sajjan Lashari are criminal type of persons. About one month ago, above named accused demanded ‘bhatta’ from us, on our refusal they were found threatening us of murder. Today at evening time I, my brother Shahnawaz and relative Sanwal s/o Qurban Katohar were sitting at hotel near MashaAllah Petrol Pump there at about 5:00 p.m came accused Liaquat Ali s/o Sheral chandio having dagger, 2. Fareed s/o Allahdino Chandio having dagger, 3. Sajjan Lashari, having dagger, 4. Sikander alias Sikoo s/o Sheral Chandio having Kalashnikov, 5. Zakria alias Zakoo Chandio having pistol, they overpowered us by force by saying that we have failed to pay them ‘bhatta’ now we would be killed so that none may refuse paying ‘bhatta’ to us on demand. By saying so, accused Liaquat Ali Chandio caused dagger blow to Shahnawaz on his chest with intention to commit his murder, accused Sajjan Lashari caused dagger blow to PW Sanwal at right side of his chest with intention to commit murder, accused Fareed Chandio caused dagger blow to PW Sanwal on his right thigh with intention to commit his murder, accused Sikander alias Sikoo caused butt blow with his Kalashnikov to PW Sanwal on his head. I while raising cries ran towards petrol pump. On my cries, my relatives Paras Din s/o Moula Dad, 2. Misri s/o Hamzo Katohar and others came running, on seeing them coming,*

*all the accused ran away while making aerial firing and creating terror. We immediately came to injured and narrated the above facts to witnesses and found that my brother Shahnawaz and PW Sanwal and blood was oozing from their injuries and condition of Shahnawaz was serious. Immediately we arranged for conveyance and shifted the injured persons for immediate treatment to Civil Hospital, Khairpur. Having left the injured in civil Hospital, Khairpur now I have appeared to report that the above named accused in collusion with each other by making affray, being armed with deadly weapons on account of non-payment of 'bhatta' have caused injures to my brother Shahnawaz and Sanwal with daggers, with intention to kill them, as well as accused persons having weapons made aerial firing in order to spread terror. I am complainant, investigation may be made."*

4. After investigation, co-accused Sikandar alias Sikoo and Zakria alias Zikoo were challaned, who faced the trial and by way of judgment dated 12.03.2016 were convicted and sentenced to capital punishment of death; however, in appeal filed by them before this Court, they were acquitted of the charge by way of judgment dated 27.03.2019. Thereafter, present appellant surrendered before the trial Court and prosecution to prove its charge examined PW-1 Tapedar Muhammad Chuttan, PW-2 Dr. Khoob Chand, PW-3 Muhammad Katohar (complainant, PW-4 Snawal Katohar (injured/eyewitness, PW-5 Misri Khan (eyewitness), PW-6 Ghulam Shabbir, PW-7 PC Qurban Ali Jamali (corpse bearer), SIP Gulzar Abro, SIP Mazhar Ali Panhwar and SIP/retired DSP Muhammad Ameen Pathan, who produced relevant documents and then side of prosecution was closed.

5. Thereafter, statement of appellant in terms of section 342 CrPC was recorded, wherein he denied the prosecution allegation and pleaded innocence. However, neither he examined himself on oath nor produced any witness in his defence.

6. Learned counsel for appellant submits that co-accused Sikandar alias Sikoo had caused butt blows to deceased Shahnawaz, whereas Zakria alias Zakoo is assigned mere his presence and on completion of trial, both were awarded capital punishment of death, hence both had maintained Crl. Jail Appeal No.D-55 of 2016 before this Court. Said appeal filed by co-accused was heard and decided by way of judgment dated 27.03.2019, whereby both convicts were acquitted of the charges. Consequently, Crl. Confirmation Case No.03 of 2016 was answered in negative. He further submits that the role attributed to present appellant is that he allegedly caused dagger blow to injured Sanwal at his right thigh; however, injured Sanwal (Exh-07) at the time of his evidence before the trial Court had not identified him nor implicated; therefore, he was declared as hostile witness by the prosecution. He further submits that co-accused, against whom role of causing butt blows to deceased Shahnawaz is assigned, has been acquitted of the charge and though complainant has maintained such Petition against acquittal before the Apex Court, yet it has not been noticed so far. He therefore submits that in view of evidence adduced by injured/victim Sanwal, the prosecution has miserably failed to prove its charge against the appellant, hence by granting appeal in hand, he may be acquitted of the charge.

7. Learned Additional P.G for the State, in view of the evidence adducted by prosecution, particularly evidence of injured/PW Sanwal, has not opposed the appeal. Complainant Muhammad Nawaz is present in person and submits that he has forgiven the appellant Ghulam Fareed and has also no objection for the grant of this appeal.

8. Heard arguments and perused the record. No doubt, appellant was nominated in FIR with specific role of causing alleged dagger blow to PW Sanwal at his right thigh; however, at the time of his evidence said injured/PW Sanwal did not implicate the appellant. Even he did not identify him to be culprit of his offence, hence he was declared by the prosecution to be hostile witness. The complainant had also not implicated the appellant in his evidence before the trial Court.

9. As far death of deceased Shahnawaz is concerned, the appellant had not been assigned role of causing injury or even scratch to the deceased. The main co-accused Liaquat Ali, who had committed murder of the deceased has not been arrested so far and is still at large.

10. Since co-accused having similar role has already been acquitted of the charge by this Court and the case of the appellant is on better footing to that of co-accused in view of the evidence of PW Sanwal, who allegedly was shown as injured of crime, had not implicated the appellant of the charge leveled against him by the prosecution. In view of such material as well as evidence adduce before the trial Court, the prosecution has not come with its clean hands, thus has created room for doubt which as per settled law always goes to favour the accused. It is also settled law that for giving benefit of doubt to an accused, it is not necessary that there should be many circumstances creating doubt and if any simple doubt arises in a prudent mind, the same should be extended in favour of accused not as a matter of grace or concession, but as a matter of right. In case of **Tarique Pervez vs. The State (1995 SCMR 1345)**, it has been held by the Apex Court as under:

*“For giving benefit of doubt to an accused it is not necessary there should be many circumstances creating doubt- if a simple circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right”.*

11. For what has been discussed hereinabove, we are of the view that the prosecution has miserably failed to establish its charge against the appellant. Consequently, instant appeal is hereby allowed. Resultantly, the impugned judgment is set aside. Accordingly, appellant Ghulam Fareed Chandio is hereby acquitted of the charge. Appellant is in custody; therefore, he shall be released forthwith if his custody is no more required by jail authorities in connection with other criminal custody case.

The Jail appeal stands allowed/disposed of.

**JUDGE**

**JUDGE**

AHMAD