

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Criminal Appeal No.D-80 of 2016

Present:

*Mr. Justice Zafar Ahmed Rajput,
Mr. Justice Irshad Ali Shah,*

Appellant : Abdul Qadir s/o Sarang Ogahi,
Through Messers .Habibullah Ghouri and
Shafi Muhammad Mahar, Advocate(s)

Complainant : Muneer Ahmed through
Mr.Luqman Hakeem, Advocate

State : Through Mr.Sharafuddin Kanhar, A.P.G.

Date of hearing : 29.08.2018

Date of decision : 29.08.2018

JUDGMENT

IRSHAD ALI SHAH, J.-, The appellant by way of instant appeal has impugned the judgment dated 22.12.2016 passed by learned Judge, Anti-Terrorism Court, Kashmore @ Kandhkot, whereby he was convicted u/s.265-H(ii) Cr.PC for offence u/s.302(b) r/w Section 149 PPC and section 7(a) of Anti-Terrorism Act, 1997, and sentenced to undergo imprisonment for life and to pay fine of Rs.200,000/- or in case of default thereof, he has to undergo S.I for two years more with further order that if the fine amount is realized, the same shall be paid to the legal heirs of the deceased DSR Javed Iqbal as compensation u/s.544(a) Cr.PC. The appellant was also convicted for an offence u/s.353 PPC r/w Section 149 PPC and sentenced to undergo R.I for two years. The appellant was also convicted for an offence u/s.324 PPC r/w Section 149 PPC and sentenced

to undergo R.I for Ten years and to pay fine of Rs.100,000/- (One Lac). In case of default in payment, he has been ordered to undergo S.I for one year more and if fine amount is realized, the same should be paid to the injured DSR Asif Sajjad as compensation u/s.544(a) Cr.PC.

2. The facts in brief necessary for disposal of the case are that the present appellant with rest of the culprits after having formed an unlawful assembly and in prosecution of their common object, not only committed Qatl-e-Amd of DSR Javed Iqbal by causing him fire shot injuries but also caused fire shot injuries to DSR Asif Sajjad with intention to commit his murder in course of discharge of their duty as public servants and then made their escape good by resorting to firing with their respective weapons and rocket-launchers with a view to create harassment, for that the present case was registered against them at the instance of Sub Inspector Muneer Ahmed of Pakistan Rangers.

3. On investigation, the appellant was arrested while already confined at Central Jail, Shikarpur, in another case and then after usual investigation was challaned before the learned trial Court to face trial for the above said offence.

4. At trial, the appellant did not plead guilty, and the prosecution to the charge examined PW-01 complainant Sub Inspector Rangers Muneer Ahmed, who produced FIR of the present case, PW-02 Injured DSR Asif Sajjad, who produced roznamcha entry, PW-03 Mashir SIP Ghulam Nabi, who produced roznamcha entry, mashirnama of

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examination of dead body of deceased DSR Javed Iqbal, Danistnama of dead body of deceased DSR Javed Iqbal, memo of examination of injuries of DSR Asif Sajjad, memo of place of incident and recovery of empty shells of rocket launchers, bullets of G-3 rifle and cartridges, PW-04 SIP Liaquat Ali, who produced roznamcha entry, PW-05 Medical Officer Dr. Abdul Subhan, who produced letter, medical certificate in respect of examination of injuries of injured, letter of referring the injured for medical examination, postmortem report, PW-06 SDPO Iqbal Ahmed Shaikh, who produced roznamcha entry, letter of Home department for consent of trial, letter of SSP Kashmore @ Kandhikot for verification of shells of rocket launcher, letter of Mukhtiar for site plan, photo stat copy of road certificate, letter of clearance of empty shells from B.D Squad Special Branch Sukkur, letter of sanction/consent of Home Department, ballistic experts' report, PW-06 PC Corpse bearer Abdul Wahab, who produced receipt of delivery of dead body to medical officer, memo of arrest of appellant/accused, PW-07 Malik Tahir Mehmood Incharge B.D Squad Special Branch Sukkur, PW-08 Tapedar Noor Ahmed Chachar, who produced sketch of Vardat.

5. The appellant during course of his examination u/s.342 Cr.PC denied the prosecution's allegation by pleading innocence and stated that he was involved in this case falsely at the instance of MPA Mir Abid Khan Sundrani, who has political dispute with him. He however, did not

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examine anyone in his defense or himself on oath in disproof of the prosecution allegation.

6. On evaluation of evidence so produced by the prosecution, the learned trial Court convicted and sentenced the appellant as detailed above by way of judgment, which the appellant has impugned before this Court by way of instant appeal.

7. It is contended by the learned counsel of the appellant that the appellant being innocent has been involved in this case falsely by the complainant at the instance of MPA Mir Abid Khan Sundrani on account of political dispute, he otherwise has nothing to do with the alleged incident; that the specific role of committing death of the deceased Javed Iqbal and causing injury to PW Asif Sajjad has been attributed to absconding accused Nawab and Suhbat, even otherwise the involvement of the appellant in this case on the basis of vicarious liability is not free from doubt. By contending so, he sought for acquittal of the appellant.

8. Learned A.P.G and learned counsel for the complainant have sought for dismissal of the instant appeal by contending that the appellant has actively participated in commission of the incident, as such he is vicariously liable for commission of the incident. In support of their contentions, he relied upon case of **Shoukat Ali vs.the State (PLD 2007 SC-93)**.

9. We have considered the above arguments and perused the record.

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10. The unnatural death of the deceased DSR Javed Iqbal and injury to PW DSR Asif Sajjad is proved by the evidence of medical officer Dr. Abdul Subhan Dayo. Now is to be examined the liability of the present appellant to the present incident. It has been deposed by the complainant Sub Inspector Rangers Muneer Ahmed that on 07.09.2015, on information, he alongwith the deceased, injured, rangers and police personnel went at the otaq of Nawab within jurisdiction of P.S Durrani Mahar, where at about 1430 hours they found 29 culprits sitting in the otaq, and on challenge made by the deceased to the culprits, there arose an encounter between them and the culprits, which continued for about half an hour, as result whereof, DSR Javed Iqbal died after sustaining fire-shot injuries, while DSR Asif Sajjad sustained fire shot injury. The culprits then made their escape good. It was further deposed by the complainant that the police personnel informed/disclosed to him the names of the culprits therefore he nominated them in the FIR. Who those police personnel(s) were? It is not made known by the complainant and/or prosecution. It was specifically stated by the complainant that DSR Javed Iqbal was fired at by absconding accused Nawab while DSR Asif Sajjad was fired at by absconding accused Suhbat. The complainant so far committing death of the deceased and causing fire shot injury to the injured at the hands of absconding accused Nawab and Suhbat is concerned, is supported by PWs SIP Liaquat Ali and SIP Ghulam Nabi. If their evidence so far committing death of the deceased and causing injury to the injured at

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the hands of absconding accused Nawab and Suhbat is believed to be true, then the role attributed to the appellant by them in commission of the incident is only to the extent of making aerial firing allegedly at the time of incident. The evidence of PW/injured DSR Asif Sajjad is silent with regard to the fact that as to who committed death of the deceased and caused injury to him. The appellant on arrest was not subjected to identification parade through the complainant or PW/injured DSR Asif Sajjad, which appears to be significant. In that situation, the involvement of the appellant on the basis of disclosure of his name to the complainant by unnamed police personnel(s) is appearing to be doubtful. As per SIO/SDPO Iqbal Ahmed, the memo(s) of examination of dead body of deceased DSR Javed Iqbal and injury to injured DSR Asif Sajjad were prepared by HC Iqbal Shah, while Lash Chakas Form, Danistnama and 161 Cr.PC statements of the witnesses were recorded by police personnel(s). Why he did so? No explanation to it is offered by him or the prosecution. In that situation, the conclusion which could be drawn of the circumstances would be that the investigation of the case was not conducted by SIO/SDPO Iqbal Ahmed Shaikh in diligent manner. There is no independent witness to the incident. The appellant was apprehended in the present case while he was found confined at District Jail Shikarpur. No effort was put forth by the police to effect recovery of crime weapon from him, which appears to be significant. In these circumstances, the

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involvement of the appellant in the instant case is appearing to be doubtful one.

11. In case of **Zeeshan alias Shani (2012 SCMR-428)**, it was held by the Honourable Supreme Court of Pakistan that;

"Delay of more than one hour in lodging report had also given rise to the inference that occurrence did not take place in the manner projected by prosecution and time was consumed in making effort to give a coherent attire to prosecution case, which hardly proved successful---Such delay was all the more fatal when police station, besides being connected with the scene of occurrence through a metalled road, was at a distance of 11 kilometers from the latter---Supreme Court observed that standard of proof should have been for higher as compared to any other criminal case, when according to prosecution, it was a case of police encounter and it was desirable and even imperative that such case should have been investigated by some other agency, as police in such case, could not have been investigators of their own cause--- Such investigation which was woefully lacking independent character could not be made basis for conviction in a charge involving capital sentence".

12. In case of **Mursal Kazmi alias Qamar Shah vs. the State (2009 SCMR-1410)**, it was held by the Honourable Supreme Court of Pakistan that;

Identification of accused in Court---Principle---Substantive evidence of a witness is his statement in the Court, but the purpose of identification test is to test that evidence and the safe rule is that the sworn testimony of a witness in Court as to the identity of an accused who was stranger to the witness, requires corroboration, which should be in the form of an earlier identification proceedings".

13. In case of **Faheem Ahmed Farooqui vs. the State (2008 SCMR-1572)**, it was held by the Hon'ble Supreme Court of Pakistan that;

"single infirmity creating reasonable doubt regarding truth of the charge makes the whole case doubtful.

14. The case law which is relied upon by learned A.P.G and learned counsel for the complainant is on distinguishable facts and circumstances. In that case, the accused was having motive to commit the incident and the role attributed to him was not only confined to that of proverbial "lalkara", but it was more than that. In that context, his appeal against conviction was dismissed by the Honourable Supreme Court of Pakistan. In the instant case, the very identity of the appellant is under cloud of the doubt.

15. Above are the reasons of short order dated **29.08.2018**, whereby the instant appeal was allowed with following observation;

"Heard learned counsel for the parties. For the reason, to be recorded later-on, the instant appeal stands allowed. The

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conviction and sentence awarded to appellant Abdul Qadir Ogahi, vide impugned judgment dated 22.12.2016 passed in Special Case No.31/2015, Re.St.v.Abdul Qadir and others, arisen out of FIR No.14/2015, P.S Durrani Mahar, is set-aside, he is acquitted of the charge. The appellant be released forthwith, if his custody is no more required in any other case".

