

69/8

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Crl. Jail Appeal No.D-33 of 2015.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For orders on office objection 'A'.
2. For Hearing of case.

05.12.2017.

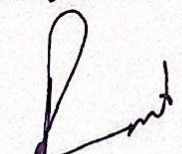
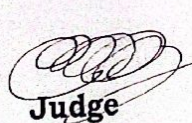
Mr. Safdar Ali Ghouri, advocate for the appellant.

Mr. Sardar Ali Shah, D.P.G.

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Heard learned counsel for the appellant and learned D.P.G
for the State.

For the reasons to be recorded later on, instant Crl. Jail Appeal is allowed. The conviction and sentence awarded to appellant, namely, Akbar son of Mithal, vide impugned judgment dated 19.03.2015, passed by Judge, Anti-Terrorism, Larkana, in Special Case No.22 of 2013, for offences punishable under sections 365-A, 324, 353, 148, 149, PPC r/w S-7(e) & (h) of Anti-Terrorism Act, 1997 culminated from Crime No.22 of 2013 registered at Police Station Waggan, District Qamber-Shahdadkot, are set aside and the appellant is acquitted of the charge. He is directed to be released forthwith, if his custody is not required by any Court in any other Crime/Offence.


Judge

Judge

71

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Jail Appeal No.D-33 of 2015

Present:

Mr. Justice Zafar Ahmed Rajput

Mr. Justice Khadim Hussain Tunio

Appellant : Akbar son of Mithal Buledi, through
Mr. Safdar Ali Ghouri, Advocate

Respondent : The State, through
Mr. Sardar Ali Shah, D.P.G.

Date of Hearing : 05.12.2017

Date of Decision : 05.12.2017

J U D G M E N T

KHADIM HUSSAIN TUNIO, J:- Through instant Criminal Jail Appeal, the appellant named-above has impugned the judgment, dated 19.03.2015, passed by the learned Judge Anti-Terrorism Court, Larkana in Special Case No. 22 of 2013, arisen out of Crime No. 22 of 2013, registered at P.S. Waggan, District Kambar-Shahdadkot under sections 365-A, 324, 353, 148, 149, P.P.C. r/w Section 7 of the Anti-Terrorism Act, 1997, whereby the appellant and other co-accused were convicted and awarded sentences, as under:-

- a) Accused Akbar and proclaimed offenders 1) Aijaz son of Mithal Janwari 2) Sikandar son of Khan Muhammad Janwari 3) Hakim @ Hakoo son of Mour Janwari 4) Barkat son of Ghulam Hyder Janwari 5) Manzoor son of Eidan Janwari 6) Nusrat son of Mehboob Janwari 7) Imdad @ Nang son of Hyder Mugheri and 8) Fida son of Baggan Mugheri are convicted for an offence punishable u/s. 365-A, r/w section 149, PPC and sentenced to suffer imprisonment for life, and the properties of the accused are ordered to be forfeited to the Government.
- b) Accused Akbar and proclaimed offenders 1) Aijaz son of Mithal Janwari 2) Sikandar son of Khan Muhammad Janwari 3) Hakim @ Hakoo son of Mour Janwari 4) Barkat son of Ghulam Hyder Janwari 5) Manzoor son of Eidan Janwari 6) Nusrat son of Mehboob Janwari 7) Imdad @ Nang son of Hyder Mugheri and 8) Fida son of Baggan Mugheri are further convicted for an offence punishable u/s. 324 r/w section 149, PPC and sentenced to suffer R.I. for ten years.
- c) Accused Akbar and proclaimed offenders 1) Aijaz son of Mithal Janwari 2) Sikandar son of Khan Muhammad Janwari 3) Hakim @ Hakoo son of Mour Janwari 4) Barkat son of Ghulam Hyder Janwari 5) Manzoor son of Eidan Janwari 6) Nusrat son of Mehboob Janwari 7) Imdad @ Nang son of Hyder Mugheri and 8) Fida son of Baggan Mugheri are also convicted for an offence punishable u/s. 353 r/w section 149, PPC and sentenced to suffer R.I. for two years.

d) Accused Akbar and proclaimed offenders 1) Aljaz son of Mithal Janwari 2) Sikandar son of Khan Muhammad Janwari 3) Hakim @ Hakoo son of Mour Janwari 4) Barkat son of Ghulam Hyder Janwari 5) Manzoor son of Eidan Janwari 6) Nusrat son of Mehboob Janwari 7) Imdad @ Nang son of Hyder Mugheri and 8) Fida son of Baggan Mugheri are also convicted for an offence punishable u/s. 148, PPC and sentenced to suffer R.I. for two years.

e) Accused Akbar and proclaimed offenders 1) Aljaz son of Mithal Janwari 2) Sikandar son of Khan Muhammad Janwari 3) Hakim @ Hakoo son of Mour Janwari 4) Barkat son of Ghulam Hyder Janwari 5) Manzoor son of Eidan Janwari 6) Nusrat son of Mehboob Janwari 7) Imdad @ Nang son of Hyder Mugheri and 8) Fida son of Baggan Mugheri are also convicted for an offence punishable u/s. 7(e) of Anti-Terrorism Act 1997 and sentenced to suffer imprisonment for life.

f) Accused Akbar and proclaimed offenders 1) Aljaz son of Mithal Janwari 2) Sikandar son of Khan Muhammad Janwari 3) Hakim @ Hakoo son of Mour Janwari 4) Barkat son of Ghulam Hyder Janwari 5) Manzoor son of Eidan Janwari 6) Nusrat son of Mehboob Janwari 7) Imdad @ Nang son of Hyder Mugheri and 8) Fida son of Baggan Mugheri are also convicted for an offence punishable u/s. 7(h) of Anti-Terrorism Act 1997 and sentenced to suffer R.I. for five years. They are ordered to pay fine of Rs.20,000/= each and in case of default in payment of fine, they shall further suffer S.I. for six months.

2. Brief facts of the prosecution case, as disclosed in the F.I.R., are that on 08.04.2013, at about 2100 hours, complainant Ayaz Hussain, his nephews Mukhtiar Ali, Muhammad Ilyas and relative Qurban Ali were returning from village Khair Muhammad Mugheri in Toyota Corolla at about 8:00 p.m., when (i) Wali Dino s/o. Mehboob (2) Aijaz s/o. Mithal (3) Sikander s/o. Khan Muhammad (4) Hakim @ Hakoo s/o. Mour (5) Barkat s/o. Ghulam Hyder (6) Manzoor s/o. Eidan (7) Nusrat s/o. Mehboob (8) Akbar s/o. Mithal and three unidentified persons, all duly armed with weapons, stopped them and abducted the complainant and his relative Qurban Ali; however, his nephews Mukhtiar Ali resisted, on that accused Sikander made straight fire from his Kalashnikov on Mukhtiar Ali, which hit him on the left side of his abdomen. The accused then dragged the complainant and Qurban Ali towards the Western side of the road; meanwhile, Wahid Bux Lashari, S.H.O., P.S Waggan alongwith his subordinate staff reached there and asked the accused persons to surrender but they opened fire on the Police party. The accused dragged

the complainant and his relative Qurban Ali for 1½ kilometers and when they reached Phoroo Lakha, they made their escape good by leaving the complainant and Qurban Ali there.

3. After usual investigation, challan was submitted by the police against the accused. A formal charge was framed against the present appellant, to which he pleaded not guilty and claimed to be tried.

4. To prove its case, the prosecution examined P.W-1 S.I.P. Azizullah, the duty officer at Ex-15, who produced F.I.R. at Ex-15-A and attested copies of Roznamcha Entries No. 31 and 32 at Ex-15-B and 15-C, respectively; P.W-2 A.S.I. Akhtar Ali, arresting officer, at Ex-16, who produced mashirnama of treating arrest of accused Mustoo @ Ghulam Mustafa at Ex. 16-A; P.W-3 Ayaz Hussain, complainant, at Ex. 18; P.W-4 Muhammad Ilyas at Ex. 19; P.W-5 P.C. Ghulam Sarwar, mashir, at Ex-21, who produced the attested copy of mashirnama of imaginary arrest of accused Akbar at Ex.21-A; P.W-6 P.C. Akhtar Ali, corpse bearer, at Ex.23, who produced the attested photo copy of receipt of dead body of deceased co-accused Wali Dino at Ex.23-A; P.W-7 S.I.P. Wahid Bux Lashari, Investigating Officer, at Ex.24, who produced the mashirnama of place of vardat at Ex.24-A, the mashirnama of seeing the injuries of injured at Ex.24-B, the mashirnama of arrest of accused Wali Dino at Ex.24-C, letter No. 39 dated 10-4-2013 issued by Senior Superintendent of Police, Qamber-Shahdadkot for constituting the Joint Investigation Team at Ex.24-D, mashirnama of imaginary arrest of accused Akbar Buledi at Ex.24-E, P.W-8 Dr. Ramesh Lal, Senior Medical Officer, at Ex.26, who produced the attested photocopy of police letter at Ex.26-A, post mortem report of deceased Wali Dino Janwari at Ex. 26-B. The statement of appellant/accused under section 342 Cr.P.C in which he denied the allegation

leveled against him and claimed to be innocent. The learned Trial Court on the assessment of evidence on the record convicted the appellant and absconding co-accused and sentenced them, vide judgment dated 19.03.2015, as mentioned above.

5. Learned counsel for the appellant has contended that the parties were inimical to each other and the complainant at number of times issued threats to appellant illegally to compel him to leave his village and lastly he involved him in this false case; that the prosecution failed to prove its case against the appellant/accused beyond any shadow of doubt but even then the appellant was convicted by the trial Court; hence, the impugned judgment is against the law and facts on record; that the private witnesses were interested witnesses who, admittedly, have inimical relations with the accused persons and are hostile towards them; that the trial Court did not appraise and appreciate the evidence in its true perspective and even the alleged motive for alleged commission of offence has come from the mouth of the same interested witnesses, whose testimony itself require corroboration; that since the judgment is not sustainable under law, it is liable to be set aside in the larger interest of justice. In support of his contentions, the learned counsel has referred to case-law reported as 2008 SCMR 1572, 1997 SCMR 25, 1999 SCMR 1030, 1995 SCMR 599, 1993 SCMR 550, 2001 SCMR 420, 1996 SCMR 167, SBLR 2006 Sindh 1448 & 2017 SCMR 622.

6. Learned D.P.G. for the State has vehemently opposed the acquittal of the appellant on the ground that appellant is nominated in the FIR with specific role and the learned trial Court has rightly convicted the appellant while relying on the evidence of prosecution witnesses.

7. We have given due consideration to the submissions of learned counsel for the appellant and the learned D.P.G. and have perused the evidence available on the record.

8. It appears that main witnesses, namely, Qurdan Ali, the alleged abductee and Mukhtiar Ali, the injured, have not been examined by the prosecution; as such, the prosecution withheld its best evidence. It is well-settled principle of law that if the best piece of evidence is available and the same is withheld by a party, then it is presumed that the party has some ill motive behind non-production of such evidence. The alleged incident is stated to have been taken place on a road, but police failed to associate any person from the locality as witness. It is an admitted position that none of two abductees was recovered from the possession of the appellant. Besides, as per prosecution case, a police party headed Wahid Bux Lashari S.H.O. PS. Waggan also reached the spot and an encounter took place in between police party and accused persons which lasted 20 to 25 minutes but nobody from either side sustained any injury. However, the said S.H.O in his statement has deposed nothing about reaching the spot; chasing the accused and taking place any such encounter on the alleged day. It may also be observed the co-accused Mustoo @ Ghulam Mustafa has been acquitted by the trial Court of the charge, vide impugned judgment, on the basis of same set of evidence.

9. It has now well-settled principle of law that the conviction must be based on unimpeachable evidence and certainty of guilt and any doubt arising in the prosecution case must be resolved in favour of the accused. In the instant case, the evidence available on record are not of such a character which could be relied upon to convict a person as the testimony of the


81

with the contents of F.I.R., hence, in such case the benefit of doubt would go to the appellant. It is also well settled legal principle that for giving benefit of doubt to an accused, there need not be a number of circumstances to prove the innocence of accused; even single circumstance creating reasonable doubt is sufficient for the acquittal of an accused. As the prosecution has failed to prove the guilt against the appellant beyond any shadow of doubt, his conviction cannot be maintained.

10. For what has been discussed above, the appeal is allowed and the conviction and sentence awarded by the trial Court to the appellant vide impugned judgment is set aside and the appellant/accused is acquitted of the charge. He is directed to be released forthwith, if his custody is not required by any other court in any other Crime/Offence.

11. Above are the reasons of our short order, dated 05.12.2017, whereby instant appeal was allowed.


JUDGE


JUDGE