

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Revision No.27 of 2021.

Appellants : Wajid Ali and another
Through Mr. Habibullah G. Ghouri,
Advocate.
Respondent : The State
Through Mr.Nazir Ahmed Bangwar, D.P.G.
Date of Hearing: : 05.3.2025.
Date of Judgment: : 05.3.2025

JUDGMENT

KHALID HUSSAIN SHAHANI J.- Through this Criminal Revision Application u/s 435 & 439 Cr.P.C, the appellants have assailed the judgment dated 03.03.2021 passed by the learned 2nd Additional Sessions Judge, Kamber, whereby their Criminal Appeal No.03 of 2020 was dismissed, maintaining their conviction u/s 341 PPC as awarded by the learned 1st Judicial Magistrate, Kamber, through judgment dated 29.01.2020.

2. Briefly, the facts of the case are that the complainant, Syed Abdullah Shah, filed a Direct Complaint alleging therein that on 18.11.2018, while he was going alone on motorcycle, he was intercepted by the applicants near Dhara Graveyard and at the instigation of applicant Wajid Ali, the applicant Lutif Ali caused kicks and fist blows, causing injuries to his finger, left leg, and buttock as well as uprooted complainant's beard hairs. Complainant's cries attracted his brother Riaz Ali and son Irshad Ali Shah, and accused fled away.

3. The Complaint was initially dismissed by the learned 2nd Judicial Magistrate, Kamber, but was later allowed in appeal by the learned 2nd

Additional Sessions Judge, Kamber, resulting in the cognizance taken by learned 1st Judicial Magistrate, Kamber for offence under Sections 337-F(I), 337-F(V), 341, and 34 PPC.

4. A formal charge was framed, to which applicants pleaded not guilty and claimed trial. Prosecution examined three witnesses including complainant, Irshad Ali Shah (son) and Dr. Abdul Aziz Soomro (MLO). In statements u/s 342 Cr.P.C, the applicants denied wrong doing.

5. After conclusion of trial, learned trial Court passed judgment dated 29.01.2020, convicting the applicants u/s 341 PPC and sentenced to a fine of Rs.1500/- each, in default whereof to suffer seven days' simple imprisonment. Same was challenged before the learned 2nd Additional Sessions Judge, Kamber, in Criminal Appeal No.03 of 2020, which was dismissed through impugned judgment dated 03.03.2021. Hence, present Criminal Revision.

6. At the very outset, learned counsel for the applicants contended that both courts below failed to appreciate that the complainant was alone at the time of the alleged occurrence, and the so-called eyewitnesses arrived only after he raised cries. Once the trial court disbelieved the prosecution evidence regarding injuries allegedly sustained by the complainant, the same evidence could not form the basis for convicting the applicants for offence u/s 341 PPC. He further argued that the prosecution failed to prove its case beyond a reasonable doubt, and therefore, the impugned judgments are liable to be set aside.

7. Conversely, learned Deputy Prosecutor General Sindh has supported the impugned judgments, contending that sufficient evidence was available on record to justify the conviction of the applicants u/s 341 PPC, however, conceded that ocular account was not supported by the medical evidence

and in support of complainant's version, no independent witness examined, except his son being interested.

8. I have heard the learned counsel for the parties and perused the record with their assistance. It is an admitted position that the prosecution case was primarily based on the testimony of the complainant and two witnesses, who admittedly were not present at the time of the alleged occurrence, but arrived later upon hearing cries. The trial court did not find the prosecution evidence credible enough to sustain the charges under Sections 337-F(I) and 337-F(V) PPC, thereby acquitting the applicants of those charges. However, the same evidence was relied upon to convict them under Section 341 PPC. This selective reliance on evidence, without independent corroboration, raises serious doubts about the prosecution's case. The important aspect of the case is also that PW Riaz Ali, the brother of the complainant has even not testified at trial, therefore, inference could easily be taken that if he would have been examined, he would not support the complainant's version. Such fact casts doubt about the story set forth by the complainant.

9. It is a settled principle of law that when two views are possible in a criminal case, the one favoring the accused must be adopted. In the instant case, the benefit of the doubt must be extended to the applicants, as the prosecution failed to establish its case beyond reasonable doubt.

10. In view of the foregoing, the impugned judgments dated 29.01.2020 and 03.03.2021, passed by two Courts below respectively, are set aside. The applicants are acquitted of the charge u/s 341 PPC. The instant Criminal Revision stands allowed.

JUDGE