

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No.187 of 2008

Appellants : Muhammad Jumman son of Ali Muhammad, Muhammad Chakar son of Muhammad Moosa, Hidayatullah son of Muhammad Hashim and Muhammad Iqbal son of Muhammad Siddiq **through** Ms. Baseerat Shafi, Advocate

Respondent : The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General, Sindh

Date of Hearing : 08.04.2024

Date of Judgment : 08.04.2024

JUDGMENT

Mohammad Karim Khan Agha, J. Appellants Muhammad Jumman son of Ali Muhammad, Muhammad Chakar son of Muhammad Moosa, Hidayatullah son of Muhammad Hashim and Muhammad Iqbal son of Muhammad Siddiq, faced trial in the Court of 1st Additional Sessions Judge, Malir, Karachi, in Sessions Case No.93/2001, in respect of FIR No.28/2001, under Section 302/234/34 PPC registered at PS Sukhan and vide judgment dated 26.07.2008, the appellants were convicted and sentenced to undergo R.I for life and to pay a fine of Rs.100,000/- and in case of non-payment of fine, they were directed to undergo SI for one year more.

2. Brief facts of the case are that on 23.03.2001, one Haji Noor Muhammad Baloch lodged report to police, in which he stated that he was working as contractor and resided at Bhains Colony, according to him near their village there was a cattle pen of buffaloes belong to one Shoukat where 4/5 of his employees were working who used to play tape recorder at high pitch, for this, the

complainant and other residents of the village complained to above said Shaukat and requested him to admonish his employees not to play the tape recorder. However, on 23.03.2001 when the complainant's younger brother Shah Muhammad was returning from the mosque after offering the prayers he found the above said persons again playing the tape recorder at high pitch. He thus restrained them, whereupon they came out from the cattle pen armed with hatchet, iron bars and lathies and stated that they had been told by Shaukat to kill whosoever objected to their playing of the tape recorder. They then caused injuries to Shah Muhammad and when complainant's another brother Muhammad Sharif went to rescue Shah Muhammad, he too was caused injuries and both of them went unconscious. The complainant mentioned that besides him, the incident was witnessed by Ghulam Mustafa Qadri, Ibrahim and other residents of the village. Thereafter complainant went to police station where SI Ghulam Mustafa Zardari lodged his FIR of this incident against the accused.

3. After completion of usual investigation, the matter was sent for trial and the appellants pleaded not guilty and claimed to be tried.

4. In order to prove its case, the prosecution examined 11 P.Ws and exhibited various items and other documents. All the appellants in their 342 Cr.P.C statements denied prosecution allegations and claimed their trial. All the appellants gave evidence on oath and three DWs were examined in support of their defence.

5. After appreciating evidence on record, the trial court convicted and sentenced the appellants. Hence the Appellants have filed this appeal against their conviction.

6. At the very outset learned counsel for the appellants pointed out the fact that in Point No.2 of the impugned judgment which deals with the conviction and sentences of the appellants, the offences for which the appellants have been convicted and acquitted and sentenced have not been set out separately. As per Cr.PC separate conviction in respect of each appellant for each

offence must be set out. If the appellants have been convicted for an offence, the names of the appellants and the offence(s) for which they had been convicted also has to be set out along with the sentence for each offence to which they have been convicted. However, it has been observed that the appellants are referred to as convict and the offence(s) for which they have been convicted have not been recorded separately alongwith relevant sentence for each offence , the appellants being charged for the offences under Section 302, 324,34 PPC and as such this is a clear violation of the law. Learned Additional Prosecutor General supports the above proposition and relies on the case of **Irfan and another v. Muhammad Yousaf and another** (2016 SCMR 1190) and contends alongwith learned counsel for the appellants that under these circumstances this is a fit case for remand.

7. I also agree with the parties that the violation of law described by learned counsel for the appellants and learned Additional Prosecutor General leads to this case to be remanded to the concerned trial Court.

8. Accordingly, I set aside the impugned judgment and remand this case to the 1st Additional Sessions Judge, Malir, Karachi, for the limited purpose of re-writing of the judgment strictly in accordance with law as indicating in this judgment in terms of the offences for which each appellant has been convicted/acquitted and the sentence for each convicted offence. This exercise shall be completed within one month of the date of receipt of this judgment. A copy of this judgment alongwith R&PS shall be sent to 1st Additional Sessions Judge, Malir, Karachi for re-writing of the judgment as indicated above and compliance of this judgment.

9. It is noted that the judgment was passed on 26.07.2008 and the appellants mentioned above granted bail in 2010 by this Court. Under these circumstances, it would not be just that the appellants be taken into custody, as such, the appellants **Muhammad Jumman son of Ali Muhammad, Muhammad Chakar son of Muhammad Moosa, Hidayatullah son of Muhammad Hashim and Muhammad Iqbal son of Muhammad Siddiq** shall remain on bail earlier granted by this Court until such

time the learned 1st Additional Sessions Judge, Malir, Karachi, has re-written the judgment in accordance with this judgment and announced the same.

10. The appeal stand disposed of in the above terms.

JUDGE

Nadir*