

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**  
**Criminal Jail Appeal No.S-204 of 2019**

Appellants: Hakim Ali Son of Taj Muhammad Nizamani, Ali Akbar Son of Noor Muhammad Nizamani and Khalique Dino alias Ali Ghulam Son of Hakim Ali Nizamani through M/s. Muhammad Hashim Laghari and Aijaz Shaikh, Advocate.

Respondent: The State, through Mr. Shahid Ahmed Shaikh, Deputy Prosecutor General, Sindh.

Date of hearing: 12-03-2021.

Date of decision: 12-03-2021.

**JUDGMENT**

**IRSHAD ALI SHAH, J:** The appellants by way of instant Jail Appeal have impugned judgment dated 18.07.2019 passed by learned Model Criminal Trial Court Hyderabad whereby they have been convicted and sentenced as under:

- i. "For offence punishable under section 114 P.P.C to suffer R.I for two years.*
- ii. For offence punishable under section 302 P.P.C r/w section 114 P.P.C to suffer imprisonment for life and to pay compensation of Rs.100,000/- to legal heirs of deceased failing whereof to undergo simple imprisonment for six months."*

2. All the conviction and sentences were ordered to run concurrently with benefit of section 382-B Cr.P.C.

3. The facts in brief necessary for disposal of instant jail appeal are that the appellants with rest of the culprits allegedly after having formed an unlawful assembly and in prosecution of their

common object by using criminal force committed murder of Shamsuddin alias Shaman by causing him fire shot and dagger injuries and then went away by making fires at complainant Aziz Ahmed and his witnesses Bashir Ahmed, Raja and others with intention to commit their murder, for that they were booked and reported upon.

4. At trial, appellants did not plead guilty to the charge and prosecution to prove it, examined complainant Aziz Ahmed and his witnesses and then closed the side.

5. The appellants in their statements recorded u/s 342 Cr.P.C denied the prosecution's allegation by pleading innocence, they did not examine themselves on oath in terms of section 340 (2) Cr.P.C but examined DPO/DIG Munir Ahmed in their defence.

6. It was inter alia stated by DPO Munir Ahmed in his evidence that on inquiry he found accused Jahangir, Irshad and Ghulam Rasool to be guilty for murder of deceased Shamsuddin alias Shaman. By stating so, he impliedly declared rest of the culprits involved in the incident to be innocent.

7. On conclusion of trial, learned Trial Court convicted and sentenced the appellants by way of impugned judgment.

8. It is contended by learned counsel for the appellants that the appellants being innocent have been involved in this case falsely by the complainant party due to previous enmity; the FIR of the

incident has been lodged with delay of about six hours; the 161 Cr.P.C statements of PWs have been recorded with further delay of one day even to F.I.R and no effective role in commission of incident even otherwise is attributed to the appellants; the evidence of the prosecution being doubtful in its character has been believed by the learned Trial Court without lawful justification, therefore, the appellants are liable to acquittal on point of doubt.

9. The learned D.P.G for the State by supporting the impugned judgment has sought for dismissal of the instant jail appeal by contending that the appellants have actively participated in commission of incident by abetting the offence and making fires at the complainant and his witnesses with intention to commit their murder.

10. I have considered the above arguments and perused the record.

11. As per complainant Aziz Ahmed on 17.10.2016 when he, deceased Shamsuddin alias Shaman, PWs Bashir Ahmed and Raja were going back to their houses they were confronted by the appellants and others. Out of them, at the instigation of appellant Hakim Ali, co-accused Jahangir (now has died), Ashique Ali (now is absconding) and Dildar (now has died) caused fire shot injuries to deceased Shamsuddin alias Shaman, who by sustaining such fire shot injuries fell down on the ground and then he was caused

daggar injuries by co-accused Wasi Ahmed (now is absconding). When he and his witnesses advanced towards Shamsuddin alias Shaman, they were also fired at by appellants Ali Akbar, Khalique Dino and co-accused Irshad (now has died) with intention to commit their murder, such fires they managed to escape by taking shelter behind a wall. The complainant in his such version to some extent is supported by PWs Bashir Ahmed and Raja. If, for the sake of argument, their such piece of evidence is believed to be true even then, the role attributed by them to appellant Hakim Ali is only to the extent of instigation and role attributed by them to appellants Ali Akbar and Khalique Dino alias Ali Ghulam is only to the extent of making ineffective fires upon them with intention to commit their murder. How, they managed to escape fires though made upon them with intention to commit their murder? It is mystery. Be that as it may, no punishment either for offence punishable under sections 324 or 504 P.P.C has been awarded to any of the appellants by learned Trial Court, though they have been charged for the said penal sections specifically. By that act, they impliedly have been acquitted by learned Trial Court atleast for above said penal sections. The parties admittedly are inimical with each other; therefore, the involvement of the appellants in this case, on point of vicarious liability or on the basis of allegation of ineffective firing is appearing to be doubtful and they are found entitled for such benefit.

12. In case of *Tariq Pervaiz vs the State (1995 SCMR 1345)*. It has been held by the Hon'ble Supreme Court that:-

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

13. Having concluded above, the conviction and sentence recorded against the appellants by way of impugned judgment are set-aside, consequently they are acquitted of the offence for which they have been charged, tried and convicted by learned trial Court. They are in custody and shall be released forthwith in the present case.

JUDGE

Muhammad Danish Steno\*