

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Acquittal Appeal No. S – 22 of 2013

Appellant/injured : Jaffer Rind, through Mr. Nisar Ahmed
Bhanbhro Advocate

Private respondents : Ramzan through Mr. J.K Jarwar Advocate
Mithal through Mr. Iftikhar Ali Arain
Advocate
Bajhi present in person

: The State, through Mr. Shafi Muhammad Mahar,
Deputy Prosecution General

Date of hearing : 28.10.2019
Date of decision : 28.10.2019

JUDGMENT

AFTAB AHMED GORAR, J.- Through instant Criminal Acquittal Appeal, the appellant/complainant has impugned judgment dated 29.01.2013, passed by learned Additional Sessions Judge Kandiaro, whereby the private respondents have been acquitted of the offence outcome of FIR Crime No.158/2008 registered at Police Station Mehrabpur for offences punishable under Sections 324m 114m 337-F(iii), 34 PPC.

2. The facts of the prosecution case are that on 18.10.2008 the complainant Pirzado lodged his FIR at P.S Mehrbpur that he had got the land on lease from Mithal and Ramzan situated in Deh Godho Hindu for four years, which he cultivated himself, whereas, Mithal and others used to demand for return of the said land before time, to whom they asked that after completing the lease period the land would be returned, as they were annoyed. On 17.10.2008 in the evening time, he along with his brothers Jaffer and Sallamuddin were rotating water in the said lands, there came accused each one Mithal, Ramzan and Bajhi having pistols. Out of them, accused Bajhi asked Ramzan and Mithal that Jaffer is stubborn to kill him, on his instigatin, accused Ramzan made direct fire upon Jaffer with intention of murder, which hit on his left side back of chest, who raised cries and

collapsed on the ground. They raised cries, which attracted his father Hussain Bux and other persons, who came there while giving hakals, as such the accused persons made their escape good. Thereafter, the injured was shifted to hospital, and ultimately the complainant appeared at Police Station and lodged the FIR.

3. After registration of the FIR and usual investigation, the private respondents were challaned to face their trial before the Court of Law.

4. At trial, the private respondents did not plead guilty to charge and the prosecution to substantiate its case, examined PW-1 complainant Pirzado at (Ex.6), he produced FIR at (Ex.7); PW-2 Jaffer Khan at (Ex.8); PW-3 Ameerzado at (Ex.9), who produced mashirnama of place of incident, inspection of injuries and mashirnama of arrest of accused at (Ex.9/A to 9/C) respectively; PW-4 / Dr. Naimatullah at (Ex.10), who produced police letter and provisional as well as final medical certificates of injured Muhammad Jaffer at (Ex.10/A & 10/C) respectively; lastly PW-4 Ashique Hussain at (Ex.11). Thereafter the learned ADPP closed the side of prosecution at (Ex.12)

5. The private respondents during the course of their examination u/s 342 Cr.PC denied the prosecutions' allegation by pleading innocence by stating that the brother of the complainant had sustained injuries at the hands of some other persons at some other place, whereas, due to malafide intentions, the complainant has involved them so that they may withdraw from their lands, hence concocted a false story and implicated them. Private respondent Bajhi has stated in his statement that he being nekmard of the village was not present at the place of incident, whereas, he was let off by the police during investigation.

6. The learned trial Court after hearing both the parties, learned ADPP and on evaluation of evidence so produced by the prosecution, the learned

trial Court acquitted the private respondents of the offence for which they were charged by way of impugned judgment, as stated above.

7. It is contended by the learned counsel for the appellant/complainant that the learned trial Court has recorded the acquittal of the private respondents without lawful justification, though the evidence of the prosecution witnesses was fully corroborated each other on all counts. It is further contended that the ocular version as setout in the FIR is fully supported by the medical evidence, whereas, the learned trial Court has merely extended benefit of doubt to the private respondents that the complainant and P.Ws are related to each other and there is old enmity between the parties. It is lastly contended that the judgment passed by the learned trial Court may be set-aside and the respondents shall be convicted.

8. Learned counsel for private respondents submit that there is delay of one day in lodgment of FIR, which suggests that it has been lodged after due deliberations and consultations, therefore, false implication of the private respondents cannot be rule out; there was old dispute between the parties over the landed property; the ocular accounts furnished by the prosecution is not in line with the medical evidence, further the mashirnama of place of incident also does not support the version of the complainant, as no blood stained earth was secured from the place of incident.

9. Learned DPG appearing for the State by supporting the impugned judgment has sought for dismissal of the instant criminal acquittal appeal by stating that there are material contradictions in the evidence of the prosecution witnesses, whereas, in existence of old enmity over the landed property between the parties, the false implication of the private respondents cannot be ruled out. He lastly prayed that the instant criminal acquittal appeal may be dismissed.

10. I have considered the above arguments and perused the record. The FIR of the incident has been lodged with delay of about one day without any plausible explanation hence the same could not be overlooked. In this regard, reliance is placed upon the case of **Mehmood Ahmed & others vs. the State & another (1995 SCMR-127)**, wherein the Honourable Apex Court has observed that;

“Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.

11. The ocular evidence is in shape of complainant Pirzado and injured Jaffar Khan, they both have contradicted each other on material aspects of the case. They have admitted in their evidence that they are related, inter se and there is dispute going on in between them and the private respondents over the landed property over the lease of the land. The complainant has stated in the FIR that in their presence accused Ramzan fired straight upon his brother Jaffer Khan which hit on his back side of shoulder. He further stated that on their cries his father Hussain Bux and other neighbours came at the place of incident. PW/injured Jaffer Khan has belied his version by stating that none has reached at the place of incident from village of Bajhi Khan or Ramzan or from the nearby villages. Further the complainant has stated that they took the injured to Nawabshah Hospital in Ambulance and their father Hussain Bux was also boarded in the Ambulance, whereas, the mashir Ameerzado in his evidence has stated that they shifted the injured in a Car to Hospital at Nawabshah. PW-2 / injured Jaffer Khan has admitted in his evidence that four years back he had taken on lease land from the private respondents Ramzan and Mithal, whereas, in this regard no such document has been placed on record and further admitted that private respondent Bajhi

is Primary School Teacher. PW-3 Ameerzado has also admitted in his evidence that complainant and injured are his nephews. He further stated that he accompanied with the police at the place of incident and police collected the blood stained mud. The version of mashir Ameerzado has been belied by I.O Ashique Hussain who in his cross-examination has stated that the blood stained mud could not be secured as the same was not able to be taken from the place of incident. The mashir and I.O have also contradicted each other with regard to seat of injury, as the mashir has stated that the injury of injured Jaffer Khan where the entrance wound on the front side of the chest, whereas, the I.O has stated that he found the injury on left shoulder of the injured. The mashir has further admitted the empty shell which was secured by the police was brought by PC Khadim Hussain in his hand and it was not sealed, whereas, there was no such mark of identification on the empty shell to show that it is the case property of this case.

12. In existence of material contradictions in the evidence of prosecution witnesses, there is nothing on record which may suggest that the impugned judgment is arbitrary or cursory to be interfered with by way of instant Criminal Acquittal Appeal. Accordingly, the instant Criminal Acquittal Appeal is dismissed.

Judge