

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Jail Appeal No. S-18 of 2022

Criminal Jail Appeal No.S-31 of 2022

Appellants: Ghulam Rasool @ Gago son of Illahi Bux, Jameel Ahmed son of Ghulam Rasool @ Gago Ghumro and Nadir Hussain son of Zaheer Ahmed Ghumro **through** M/s. Rukhsar Ahmed Junejo and Raja Iftikhar Hussain Ansari advocates.

The Complainant: **Through** M/s Ali Ahmed Khan and Bilal Ahmed Soomro, advocates.

The State: Mr. Zulfiqar Ali Jatoi, Additional P.G for the State.

Date of hearing: 19-03-2024

Date of judgment: 19-03-2024

J U D G M E N T

IRSHAD ALI SHAH, J- It alleged by the prosecution that the appellants with rest of the culprits after having formed an unlawful assembly in prosecution of its common object besides causing fire shot injuries to PWs Ali Raza and Muhammad Amin with intention to commit their murder, committed murder of Abdul Ghaffar and Mehboob by causing them fire shot injuries and then went away by threatening the complainant party and making aerial firing to create harassment, for that the present case was registered. At trial, the appellants denied the charge and the prosecution to prove the same, examined in all eight witnesses and then closed its side. The appellants in their statements recorded u/s 342 Cr.P.C denied the prosecutions' allegation by pleading innocence; they did not examine anyone in their defence or themselves on oath. On conclusion of trial, they were convicted and sentenced to various terms of imprisonment spreading over life for allegedly having committed the above said offence. All the sentences were directed to run concurrently with benefit of section 382(b) Cr.P.C by learned IIIrd Additional Sessions Judge/(MCTC-II) Sukkur vide judgment

dated 07-03-2022, which they have impugned before this Court by preferring two separate criminal jail appeals.

2. 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 and the evidence of the P.Ws being doubtful in its character has been believed by learned trial Court without assigning cogent reasons, therefore, they are entitled to be acquitted of the charge by extending them benefit of doubt, which is opposed by learned Additional P.G for the State and learned counsels for the complainant by supporting the impugned judgment.

3. Heard arguments and perused the record.

4. It was stated by complainant Ghulam Shabbir that on 17-09-2018 when was available at his village there at about evening time, he was intimated by PW Muhammad Amin that he and PW Yasir have been beaten by Ghumra community persons, when they were going to purchase grocery. On the basis of such information, he, Abdul Ghaffar, Mehboob and Ali Raza left for the city on their motorcycles, when reached at Bus stand, there they found PWs Muhammad Amin and Yasir bleeding, they took them towards Bagarji Hospital, when were about to reach there, they found approaching them on eight motorcycles; the appellants and others, they could not identify six culprits; they were Ghulam Rasool empty handed, Nadir son of Ghulam Rasool with Kalashnikov, Zakir with Kalashnikov, Muhammad Yousif with Kalashnikov, Nadir son of Zaheer with Kalashnikov and Jameel Ahmed with gun. On Instigation of Ghulam Rasool, accused Nadir son of Ghulam Rasool fired at Abdul Ghaffar, who by sustaining such fire on his forehead fell down; accused Nadir son of Sabir fired at Mehboob, who by sustaining such fire fell down. It is contrary to FIR wherein it was stated by him that it was Nadir son of Ghulam Rasool and Zakir who fired at deceased Abdul Ghaffar and Mehboob Ali respectively. Obviously Nadir son of Sabir has been introduced in commission of

the incident by the complainant at trial. It was further stated by the complainant that accused Yousif then fired at PW Ali Raza, which hit him on left side of his abdomen; accused Nadir son of Zaheer fired at PW Muhammad Amin, which hit him on right side of his chest; rest of the culprits made aerial firing. On cries being raised by them, all the accused went away. PW Muhammad Amin by putting an attempt to support the complainant stated that it was Ghulam Rasool son of Nadir who fired at deceased Abdul Ghaffar. By stating so, he besides belying the complainant for causing injury to deceased Abdul Ghaffar at the hands of Nadir son of Ghulam Rasool, introduced a new culprit in commission of incident with name of Ghulam Rasool son of Nadir at trial. PW Ali Raza has also attempted to support the complainant in his version. The complainant and his witnesses however were found unanimous in their version that the deceased died at the spot. They in that respect were belied by Medical Officer Dr. Mushtaque Ahmed, who on asking was fair enough to say that condition of injured Mehboob was serious therefore he was referred to Ghulam Muhammad Medical College Hospital Sukkur while injured Abdul Ghaffar died at his Hospital during treatment. By making improvement, which is contrary to the FIR, the complainant and PW Muhammad Amin have made their version to be doubtful, which could hardly be relied upon to maintain conviction. The FIR of the incident has been lodged with delay of about one day; such delay having not been explained plausibly could not be over looked, it is reflecting consultation and deliberation. No effective role in commission of incident even otherwise is attributed to appellants Ghulam Rasool alias Gago and Jameel Ahmed; therefore, their involvement in commission of incident apparently is to be judged with doubt on that score too. PW Yasir being sole independent person has not been examined by the prosecution; the presumption which could be drawn of his non-examination in terms of Article 129 (g) of Qanun-e-Shahadat Order, 1984 would be that he was not going to support the

case of the prosecution. Evidence of I.O/ASI Abdul Qadir is only to the extent that he visited the hospital and conducted initial investigation of the case. His evidence hardly needs discussion. Evidence of I.O/SIP Nazeer Ahmed is to the extent that he conducted investigation of the present case, apprehended the appellants and during course of interrogation, appellant Jameel Ahmed by confessing his guilt produced the incriminating gun, which he secured under memo. If it is believed to be so, even then such confession being extra judicial in nature could not be used against him as evidence in terms of Article 39 of Qanun-e-Shahadat Order, 1984. Evidence of PW/mashir Ghulam Shabbir is to the extent of attestation of memos prepared in the present case. His evidence is of little help to the case of prosecution. The appellants during course of their examination u/s 342 Cr.P.C have pleaded innocence by denying the prosecution allegation, such plea of innocence on their part could not be lost sight of in the circumstance of the case.

5. The conclusion which could be drawn of the above discussion would be that the prosecution has not been able to prove its case against the appellants beyond shadow of doubt and to such benefit they are found entitled.

6. In case of *Imran Ashraf and others vs. the State* (2001 SCMR-424), it has been held by Apex Court that;

“Section 154, Cr.P.C. lays down procedure for registration of an information in cognizable cases and it also indeed gives mandatory direction for registration of the case as per the procedure. Therefore, police enjoys no jurisdiction to cause delay in registration of the case and under the law is bound to act accordingly enabling the machinery of law to come into play as soon as it is possible and if first information report is registered without any delay it can help the investigating agency in completing the process of investigation expeditiously”.

7. In the case of *Muhammad Mansha vs. The State* (2018 SCMR 772), it has been held by Apex court that;

"4....Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".

8. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellants under impugned judgment are set aside, they are acquitted of the offence for which they were charged, tried, convicted and sentenced by learned trial Court and shall be released forthwith if not required to be detained in any other custody case.

9. The instant Criminal Jail Appeals are disposed of accordingly.

JUDGE