

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Appeal No.S-140 of 2014

Date of hearing:	04.05.2015.
Date of Decision:	04.05.2015.
Appellants:	Umed Ali, Wahid Bux, Jalal & Kazi through Mr. Nandan A.Kella, Advocate.
Respondent:	The State through Mr. Mushtaque Ahmed Abbasi, D.D.P.P.
Complainant:	Through Mr. Ghulamullah Chang, Advocate.

J U D G M E N T

MUHAMMAD IQBAL KALHORO, J:- Through instant appeal, the appellants have challenged the judgment dated 28-11-2014, passed by learned Additional Sessions Judge, Tando Muhammad Khan, in crime No.05/2012 of PS Shaikh Bhirkio, under section 395 PPC, convicting and sentencing them to suffer five years rigorous imprisonment for the offence punishable under section 395 PPC and fine of Rs.10,000/- in default whereof to suffer simple imprisonment for three months more, with benefit u/s: 382-B Cr.P.C. extended to them.

2. Facts stated briefly here are that on 17-12-2011 at 07-10 p.m. when complainant Munawar Ali along with his family was present in his house, four armed persons with muffled faces barged

into his house. Out of them two persons who were armed with repeaters caused blows with their weapons on complainant's head and remaining two who were armed with TT Pistols succeeded to take keys of cupboard from the complainant by putting him under the fear. From the cupboard, they robbed Rs.2,00,000/-, 20 Tola Gold viz. finger rings, necklace, chains, ear rings, Jhomar, bangles. In the struggle which ensued between the complainant and two of the accused, their mufflers were removed and the complainant was able to identify them as Muhammad Ameen and Wahid Bux Panhwar. All the accused however, made their escape good and after awhile complainant's brother Haji Akbar and cousin Muhammad Saleem came in his house and informed him that accused armed with repeaters were Jalal and Qazi Panhwar. The complainant tried to settle the matter privately by approaching the Head Men (Nek Mards) of the area but in vain and finally he lodged the above stated FIR.

3. After due formalities, the charge was framed against the appellants and trial as such started against them. To prove its case prosecution examined three witnesses i.e. complainant Munawar Ali, I.O ASI Munir Ahmed Shahani and PW Ghulam Akbar. The appellants in their statements recorded u/s 342 Cr.P.C denied the case of the prosecution and pleaded that due to enmity with a Landlord namely Ajiarz Duras they were falsely implicated in the case. The

appellants however, neither examined themselves on oath nor led any evidence in their defence.

4. Learned trial Judge after considering the evidence and hearing the parties convicted the appellants in the manner as stated above through the impugned judgment.

5. Mr. Nandan A. Kella, learned Counsel for the appellants argued that the appellants were wrongly convicted by the learned trial Court as there was no confidence-inspiring evidence produced by the prosecution against them. He next contended that the evidence adduced by the witnesses was full of contradictions and anomalies which were not properly appreciated by the learned trial judge while convicting the appellants. He in order to highlight his point led me through prosecution evidence and specifically pointed out certain portions therein. He lastly contended that for giving benefit of doubt to the accused, multiple circumstances causing doubt in the prosecution case were not necessary, a slightest doubt if is created in the case the benefit thereof must go in favour of the accused. According to him, it was a rule of prudence to extend benefit of doubt to the accused not as a matter of grace but as a matter of right. He lastly prayed for the acquittal of appellants.

6. Mr. Ghulamullah Chang, learned counsel for the complainant in rebuttal contended that prosecution was able to bring home guilt of the appellants through the reliable and unimpeachable evidence

produced before the trial Court, which rightly convicted the appellants. He next contended that the appellants had committed a serious offence of robbery in the house of the complainant, which could not be allowed to go unpunished in presence of trustworthy evidence. He expressed his view that on the basis of any hypothetical ground, the appellants could not have been acquitted by the learned trial Court. By the conviction awarded to the appellants, the ends of justice stood satisfactory served, according to him. He finally requested for dismissal of the instant appeal by arguing that the findings of trial Court against the appellants needed no interference by this Court.

7. Mr. Mushtaque Ahmed Abbasi, learned D.D.P.P. adopted the arguments expounded by the learned counsel for the complainant and prayed for dismissal of the appeal.

8. I heard both the counsel for the parties and perused the material available on record. The case of prosecution is that all the appellants co-jointly trespassed in the house of complainant at about 0710 hours on 17-12-2011 and robbed him cash of Rs.200,000/- along with 20 tollas of gold consisting of various ornaments. When they were decamping from the scene of incident, the complainant struggled with two of them and was able to identify them as Muhammad Ameen and Wahid Bux, and after a while when his brother namely Haji Akbar and his cousin Muhammad Saleem got

into his home they disclosed the identity of two remaining accused as Jalal and Kazi all by caste Panhwar. During the trial in support of such allegations, the complainant has examined himself and his brother named above. The evidence of Investigating Officer is only in respect of investigation of the case and arrest of the appellants. After examining the evidence in detail it appears that all the appellants are residents of the area where complainant party is living. Complainant's brother in his deposition has admitted that father-in-law of accused Ameen is living near his house and village of appellants is situated nearby his village. The evidence produced by prosecution further shows that the appellants and the complainant party are known to each other. Complainant in the FIR as well as in his deposition has maintained that he was able to recognize two of the appellants as a result of struggle with them, when their mufflers were removed. The remaining two decamped from the spot in the same conditions i.e. muffled faces but surprisingly the brother of the complainant who was coming to his house saw them without the mufflers on their faces and could identify them easily. Importantly his deposition is only to the limit of seeing them running out of the house of the complainant; but, it may be mentioned here, without any booty in their hands. Such piece of evidence does not materially correspond with the prosecution case regarding robbery of cash and gold ornaments from the complainant as in that eventuality the brother of the complainant

would have seen the appellants carrying the robbed articles. His assertion that he saw the accused Ameen along with appellants outside complainant's house having a bundle of clothes is not helpful for the prosecution either, for that would not mean and it cannot be so inferred in absence of any specific word about it, that the bundle which he saw in the hands of accused Ameen was handed over to him by the appellants. I am of the view such farfetched conclusion in respect of guilt of the appellants shall be against the well entrenched principles of appreciating the evidence. Admittedly, and it is important to note here that the complainant has not examined any person from his family inmates said to be present at the time of incident to support allegations of robbery in his house committed by the appellants.

9. A look at the FIR registered by the complainant would reveal that it was lodged after more than one month of the incident. The incident occurred on 17-12-2011, concerning which the FIR was registered on 19-01-2012. The explanation with regard to such delay furnished by the complainant that he kept on approaching the Headman (Nekmards) of the area to privately settle the matter with the appellants is not worth believing since it has gone unsupported. No Nek Mard of the locality came forward to say a word that on account of complainant's instance efforts were put to privately settle the matter between the parties. The contents of the FIR show that the

complainant had come to know about the identity of two appellants during and of two remaining appellants immediately after the incident but quite unbelievably he kept mum for that long period (till he registered the FIR) without any result coming his favour. The delay in the given circumstances does not appear to be satisfactorily explained by the complainant and false implication of the appellants under the circumstances cannot be ruled out. The only piece of evidence which the prosecution has brought against the appellants is the word of complainant without any corroboration as admittedly there is no eye witness of the incident except the complainant himself. It is also worthwhile to state here and that also goes to the benefit of appellants that during investigation no any incriminating article including the case property was recovered from them to establish their connection with the commission of present offence. As per well settled principles of criminal administration of justice, the conviction can be awarded to an accused, only after reliable, trustworthy and unimpeachable evidence containing no loophole or discrepancy casting some cloud over the veracity of prosecution story is brought on record. The question of liberty of a person has to be dealt with very cautiously by the Courts. Unless some cogent, best and natural evidence is produced against him fully establishing his guilt beyond any reasonable doubt, he should not be sent behind the bars. I fully agree with the arguments of learned defense counsel that to extend benefit of doubt to an accused presence of multiple

circumstances causing doubt to the prosecution case is not necessary. Single circumstance creating reasonable doubt in the prudent mind about guilt of the accused would make him entitled to such benefit not as matter of grace but as a matter of right. In the present case as has been discussed above the prosecution has failed to bring on record the evidence of that quality and degree which would justify maintaining conviction and sentence against the appellants.

10. I am therefore of the view that the interference in the findings of conviction recorded by the trial Court against the appellants is necessary and would serve the ends of justice. Consequently I allow the appeal, set aside the conviction and sentence of appellants and order their release forthwith, if not required any other custody case. These are the reasons of my short order announced on 04-05-2015, allowing the appeal in hand.

JUDGE

Dated: 06-05-2015.

A.C