

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Appeal No. S- 108 of 2024.

Appellants. : Qurban Ali Sabzoi
Through Mr. Safdar Ali Bhutto, Advocate.
Respondent : The State through Mr.Nazir Ahmed Bangwar,
D.P.G.
Date of hearing : 10.3.2025.
Date of Judgment : 21.3.2025.

J U D G M E N T

KHALID HUSSAIN SHAHANI J.- By this criminal appeal, appellant has challenged the judgment dated 28.11.2024 passed by the learned Sessions Judge, Kashmore @ Kandhkot, in Sessions Case No. 435 of 2024 re(State v. Ali Jan and another) arisen out of Crime No.264 of 2024 of P.S A-Section Kandhkot offence under Sections 399, 402 PPC, whereby he has been convicted and sentenced under Section 402 PPC to suffer R.I for 2 years and a fine of Rs.20,000/-, in default to suffer S.I for 5 months and U/S 353 PPC to suffer R.I for 3 years and a fine of Rs.30,000/-, in default to suffer S.I for 6 months more, with benefit of section 382-B Cr.P.C.

02. The prosecution case, as set out in the FIR is that on 08.09.2024 at about 1330 hours, a police party led by complainant HC Abdul Wahab, during regular patrolling, received spy information about a gang of nine culprits standing at the link road Taj Muhammad, intending to commit a crime. Upon reaching the pointed location, the police party found the road blocked with stones. Nine culprits were seen standing on road, out of which two were armed with T.T Pistols and rest were having K.Ks. The seven were identified as Qurban Ali Sabzoi (appellant), Kaleemullah Mughal, Hamadullah Bhayo, Siraj Ahmed Bhayo, Khan Muhammad @ Kukur, Sarfaraz Bhayo and Ghaus Bux Bhayo. On being challenged by the police

party to surrender, all accused made their escape good. Consequent upon case was registered inter alia on above facts.

03. After registration of FIR, the names of co-accused Ali Jan s/o Chachar Sabzoi and Ali Jan s/o Meeral Sabzoi were introduced in further statement of complainant. Upon completion of the investigation, the case was sent up for trial before the concerned court, showing Ali Jan son of Chachar and Qurban Ali in custody and rest as absconding.

04. At trial, appellants and co-accused Ali Jan s/o Chachar Sabzoi and Ali Jan s/o Meeral Sabzoi pleaded not guilty. To substantiate its case, prosecution examined four witnesses, including complainant HC Abdul Wahab, PC Muhammad Tayab (mashir), PC Pervez Ahmed and I.O/ASI Muhammad Anwar Chachar. The statements of accused were recorded under Section 342 Cr.P.C, wherein they denied the wrong doing.

05. After hearing, appellant Qurban Ali was convicted, however, co-accused Ali Jan s/o Chachar and Ali Jan s/o Meeral acquitted.

06. Learned counsel for the appellant argued that the case is false and fabricated; appellant has been falsely implicated by the police with mala fide and ulterior motives; allegedly nine accused were seen with deadly weapons, out of whom seven accused including appellant Qurban Ali were identified with their names, parentage and address without having previous acquaintance, which does not appeal to a prudent mind; allegedly out of nine accused, two were having T.T pistols and rest armed with K.Kovs, but no description given as to which accused was carrying what weapon; allegedly police party had reached very close to the accused persons, so that they could identify them, yet they despite heavily armed with service weapons could not either chase or make a single fire during broad day light and allowed them to easily escape; there is sheer violation of Section 103 Cr.P.C as despite having prior information, no private person was arranged to witness the occurrence and mashirs cited are subordinate of the complainant; the evidence of prosecution witnesses is contradictory

on material points and lacks independent corroboration; the learned trial Court, according to the counsel, failed to appreciate the contradictions in the prosecution's case and convicted the appellant based on unreliable evidence.

07. On the other hand, learned Deputy Prosecutor General Sindh supported the impugned judgment; however reluctantly agreed that despite identification of accused, no efforts whatsoever were made by the police being armed with lethal weapon to apprehend the accused.

08. Allegedly incident occurred at 1330, when police party on spy information was able to reach close enough to the accused so that they could identify seven accused with their names, parentage and addresses. Neither they could chase them nor they even fired from their weapons instead let them easily escape the scene. It is also crucial to note, after registration of FIR, two co-accused Ali Jan son of Chachar and Ali Jan son of Meeral were booked against two unknown individuals, for whom neither any source of identification was disclosed nor their identification parade held. Though police had prior information, yet they failed to arrange any private person to witness the occurrence, rather chosen to associate PC Muhammad Tayab and PC Muhammad Asad as mashirs, they were the same Mashirs, who had acted as mashirs in another cases against almost same set of accused including co-accused Ali Jan son of Chachar and Ali Jan son of Meeral in a case bearing Crime No.267 of 2024 of P.S A-Section Kandhkot under Sections 399, 402, 324, 353 PPC; however, they have been acquitted by this Court from said crime in Cr. Appeals No.S-106 and 107 of 2024, therefore, false implication by police with mala fide and ulterior motives cannot be excluded from consideration.

09. A careful examination of the prosecution evidence reveals contradictions among the witnesses on several material points. The complainant and witnesses gave conflicting versions regarding the sequence of events. There is no independent corroboration of the alleged

occurrence. Both the mashirs of recovery and arrest are police personnel, who being subordinate to complainant are interested and partisan, their testimony cannot be taken as gospel truth in absence of any other strong corroboration by independent evidence including circumstantial evidence, which is lacking in the case in hand, as nothing has been recovered from the possession of appellant. Besides, it is astonishing to note, complainant simply stated that out of nine accused two were armed with T.T pistols and rest were armed with K.Kovs, thus it went on undecided at the trial as to which accused was having what weapon. On these scores the prosecution story suffers from material doubts and it cannot be excluded beyond consideration that it was only a paper work by concocting a false prosecution story by police only to show their so called performance to their high ups, thus prosecution has failed to establish the guilt of the appellants beyond shadow of a reasonable doubt. It is a settled principle of criminal law that even if a single doubt arise into the prosecution case, its benefit must go to the accused.

10. In view of the above discussion, the prosecution has failed to prove its case beyond shadow of reasonable doubt and the appellant is entitled to the acquittal on benefit of doubt. Consequently, appeal is allowed. The conviction and sentences awarded to the appellant by the learned trial court vide judgment dated 28.11.2024 is set aside. The appellant is acquitted of all charges. He shall be released forthwith if not required in any other case.

JUDGE