

*Doubt over identity*

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**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

Present:-

Mr. Justice Mohammad Karim Khan Agha  
Justice Mrs. Kausar Sultana Hussain

1. Cr. Appeal No.D- 99 of 2018
2. Cr. Appeal No.D- 100 of 2018

Appellants Rashid, Muhammad Adnan alias Aadil and Muhammad Arif (present on bail) in Cr. Appeal No.D-99 of 2018	through Mian Taj Muhammad Keerio, Advocate
Appellant Riaz (present on bail) in Cr. Appeal No.D- 100 of 2018	through Mr. Sameeullah Rind, Advocate
Respondent : The State	through Mr. Shahzad Saleem Nahiyoona, Additional Prosecutor General, Sindh
Date of hearing	18.01.2023
Date of judgment	24.01.2023

**J U D G M E N T**

**MOHAMMAD KARIM KHAN AGHA, J.**-Appellants Rashid, Muhammad Adnan alias Aadil, Muhammad Arif and Riaz along with other co-accused were tried by the learned Special Judge, Anti-Terrorism Court, Shaheed Benazirabad and Sanghar at Nawabshah in Special Case No.38 of 2017 culminating from Crime No. 254 of 2017, registered at Police Station Sakrand District Shaheed Benazirabad, under sections 431, 341, 427, 151, 152, 504, 186, 189, 147, 148, 398, 337-L(ii) PPC r/w sections 6/7 Anti-Terrorism Act; and, vide judgment dated 20.11.2018, (the impugned Judgment), they all were convicted and sentenced to suffer Rigorous imprisonment for 02 years

each; whereas the other co-accused namely Rizwan, Ghulam Sarwar, Muhammad Rafique, Muhammad Hanif, Nabeel Pervaiz, Arman, Usama Pervaiz, Naveed Pervaiz, Muhammad Javed, Muhammad Imran, Nadeem and Sajid Ali were acquitted of the charge while being extended the benefit of the doubt.

2. The brief facts of the prosecution case as disclosed in the FIR are that on 13.10.2017 at about 1300 hours complainant Ashfaq Ahmed Lakho incharge Reader, Civil Judge & Judicial Magistrate-I, Sakrand lodged FIR at P.S Sakrand alleging therein that in compliance of directions in petition No.D-337 of 2017 and D-1817 of 2017 the learned Magistrate Syed Sajjad Hussain Shah accompanied with his driver and police staff consisting of gunman PC Sabir Ali, PC Sarfraz, PC Habibullah, PC Sarfraz Ali in his government vehicle which was driven by PC Arshad Ali proceeded to visit the schools in his area, and at about 10:45 a.m. staff of police station Sakrand also joined them namely ASI Muhammad Wazir Jokhio, PC Amanullah, PC Ghulam Fareed, PC Muneer Ahmed who were in government vehicle No.SPL-114 having driver HC Muhammad Ilyas and they proceeded from police station Sakrand at about 11:00 a.m. and when they reached at National Highway at Sabu Rahu Bux stop at 11:20 a.m. the complainant got down from the vehicle and wanted to enquire about the addresses of schools, when (1) Rashid Khanzada, (2) Adnan @ Adil Khanzada, (3) Arif Khanzada sons of Jamshed Khanzada, (4) Riaz S/o Khan Mallah, R/o Sabu Rahu Taluka Sakrand encircled the complainant and others. The complainant disclosed to them that they have come to enquire about the address of the schools, but the accused apprehended that their visit was with regard to illegal sale of "Mainpuries and Gutkaa" and they (accused) threatened them (complainant party) not to spare them and they started misbehaving with them. It is further alleged that the accused called other companions who were 30/35 persons who came running there duly armed with lathies, bricks and bottles. Accused Rashid and Adnan went running towards the vehicle of learned Magistrate and tried to forcibly open the door of the car and they caused fist and kick blows to the gunman of the Magistrate by giving them abuses and tried to



rob government ammunition from them. It is further alleged by the complainant that they saw all the accused then block the road on National Highway and tried to stop the vehicles by stoning upon them and also set on fire tyres which blocked the Highway in order to create terror and panic. They also broke the glasses of the vehicles. The learned Civil Judge Sakrand directed police staff to get the miscreants cleared from National Highway road, which was done by police staff. The learned Magistrate returned back to his office in Sakrand without inspecting the schools. He directed his Reader to lodge such FIR of the incident.

3. The investigation of the crime was conducted by the I.O, who recorded the statements of the P.Ws as well as prepared other documents and after completing the same, challaned the case before the Court having jurisdiction.

4. The charge against the accused was framed, to which the accused pleaded not guilty and claimed to be tried.

5. In order to substantiate its case, the prosecution examined the P.Ws. and thereafter, the prosecution side was closed. The statements of the accused were recorded u/s 342 Cr.P.C, wherein they have denied the prosecution allegations and claimed their false implication in this case by the police. However, they neither examined themselves on oath in order to disprove the prosecution case nor led any evidence in their defense.

6. Learned trial Judge after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellants and acquitted the co-accused as set out earlier in this judgment.

7. Learned trial court in the impugned judgment has already discussed the evidence in detail and there is no need to repeat the same here, so as to avoid duplication and unnecessary repetition.

8. Learned counsel for the appellants have contended that the appellants were falsely implicated in this case by the police in order to show their efficiency; that it is a case of mistaken identity; that it

identity parade was held; that the star witness the civil Judge/Judicial magistrate I was not examined; that the only evidence against them as compared to the acquitted co-accused was that they were named in the FIR and for any or all of the above reasons the appellants should be acquitted by extending them the benefit of the doubt. In support of their contentions, learned counsel for the appellants relied upon the cases of **Nadeem Hussain V The State** (2019 SCMR 1290), **Shahbaz Masih V The State** (2007 SCMR 1631) and **Haroon V The State** (2007 SCMR 1612).

9. On the other hand, learned A.P.G. fully supported the impugned judgment and contended that the local police knew all the appellants and that it was not a case of mistaken identity and since it was a day light incident there was no need to hold an identification parade and as such the prosecution had proved its case beyond a reasonable doubt and the appeals be dismissed.

10. We have considered the arguments of learned counsels, scanned the entire evidence available on record with their able assistance and considered the relevant law and authorities cited by them at the bar.

11. After our reassessment for the evidence of the witnesses and the recoveries made at the wardat we find that the prosecution has proved beyond a reasonable doubt that on 13.10.2017 at about 11.20am the complainant along with civil judge and Judicial magistrate I along with police officials whilst en route by car to check schools within the limits of PS Sakrand at Sabu Rahu stop were attacked by miscreants who prevented them from carrying out their official duties and forced them after clearing the road to return to the civil court which incident was duly reported to the District and Sessions Judge

12. The only question left before us is whether the appellants were part of the miscreants who attacked the police and the vehicle of the civil Judge and prevented them from performing their lawful duties.

13. After our reassessment of the evidence we find that the prosecution has **NOT** proved beyond a reasonable doubt the charge against the appellants keeping in view that each criminal case must



be decided on its own particular facts and circumstances for the following reasons;

(a) The FIR is not actually in the words of the complainant. It appears that the police prepared the FIR at the PS and simply got the complainant to blindly sign it which is most irregular. Interestingly, the civil judge in his complaint to the District Sessions Judge in connection with the incident does not name or describe any of the miscreants and only reports the incident in very vague and broad terms.

(b) Furthermore, the FIR contains the names **and fathers** of the appellants yet none of the policemen in their evidence before the court admitted even knowing the appellants **before** the incident which casts serious doubt on the appellants who were named in the FIR as being involved in this incident.

(c) The prosecution case very much hinges on the correct identification of the appellants as the miscreants who attacked the police at the car of the civil judge yet despite not knowing the appellants from before, the appellants not being arrested on the spot, no hulia being given of any of the appellants and no identification parade being held in respect of any of the appellants we find that the prosecution witnesses could not have identified the witnesses with any certainty as being the miscreants and might be a case of mistaken identity.

(d) That the civil Judge who was a key witness and was available did not give evidence and as such some of the best evidence against the appellants was not produced for which an adverse inference can be drawn under Article 129 (g) Qanun-e-Shahadat Ordinance 1984 that he would not have supported the prosecution case. In this respect reliance is placed on the case of **Shahbaz Masih** (Supra)

(e) That no recovery was made from any of the appellants at their arrest.

(f) That the incident did not attract the provisions of the Act of 1997 as there was no design to create terror on account of the acts allegedly made by the appellants. The facts and circumstances of this case as per the evidence reveal that when the complainant asked for directions to some schools on the spur of the moment the miscreants became angry because they believed that they were being harassed over the use of "Mainpuries" and as such attacked the police party out of anger. In this respect reliance is placed on the case of **Ghulam Hussain v State** (PLD 2020 SC 61)

(g) That the appellants are entitled to the benefit of the doubt not by way of concession but by way of right and in this case we find doubt in the prosecution case especially in terms of the correct identification of the appellants.

14. For the reasons mentioned above the impugned judgment is set aside and the appeals are allowed. The bail bonds of the appellants stand cancelled and they are free to go.

15. The appeals stand disposed of in the above terms.