IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Crl. Revision Application No.S-27 of 2024

Applicant: Hayat s/o Abdul Rahim
Through Mr. Vishandas Kolhi, Advocate.

The State: Through Mr. Ghulam Abbas Dalwani, DPG a/w complainant.

Date of hearing: 18.09.2025

Date of short order:18.09.2025

J U D G M E N T

***Amjad Ali Sahito, J*:** Through this Crl. Revision Application, the applicant has impugned the judgment dated 03-09-2019 passed by learned Additional Sessions Judge-I, Tharparkar @ Mithi in Criminal Appeal No.07 of 2019 whereby he partly allowed appeal and accordingly the judgment dated 22.08.2019 passed by learned Civil Judge and J.M-I/MTMC Mithi was modified as under:

> i- The conviction and sentence awarded to the appellant/ accused for the offence punishable U/S 504, 34 P.P.C is set aside,
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> ii- The conviction of the appellant/ accused for the offence punishable U/S 337-A(iii), P.P.C recorded by the learned trial court is upheld and maintained, the order passed by the learned trial court regarding sentence of payment of Arsh at the rate of ten percent of Diyat is also maintained with modification that the amount to be paid shall be Rs. 232020.2/-, the appellant/ accused shall pay Arsh at the rate of ten percent of Diyat amounting to Rs. 232020.2/-to the injured/ complainant Lal Bux son of Muhammad Bux, and the sentence of imprisonment U/S 337-A(iii) P.P.C by way of Ta'zir passed against the appellant/ accused, is set aside in view of section 337-N(2) P.P.C. Since appellant/ accused has failed to pay Arsh at the rate of ten percent of Diyat amounting to Rs. 232020.2/- to the injured/ complainant, therefore, appellant/ convict Hayat be kept in custody at jail till the above amount of Arsh is paid in full/ lump sum or he may be released on bail U/S 337-X(2) P.P.C, if he furnishes security or surety equal to the said amount of Arsh to the satisfaction of learned trial court.

2. The facts of the prosecution case are that on 23-05-2019 at 1845 hours complainant Lal Bux son of Muhammad Bux by caste Dars

resident of village Posarko Dars Taluka Mithi, lodged FIR, at PS Mithi stating therein that on 24.10.2018, a police letter was given to him for his (complainant's) medical treatment, and final medico legal certificate of the same has been received and the facts are that he resides at the above mentioned address and he and Hayat Dars & others were in dispute over installing his water supply connection located in the southern side street of his house. On 24-10-2018, at about 2015 hours, he was present at his house when he heard the commotion of cutting installed pipe, on which he went outside the house in street and saw on torch light that each Hayat son of Abdul Raheem having iron rod in his hand and Juman son of Sanwan both by caste Dars resident of village Posarko had cut/ disconnected the pipe of his water supply connection. He asked them why they cut the pipe of water connection of his house, whereupon they became annoyed and abused him. Hayat caused blow of iron rod on the right side of his head, and he fell down on earth. Both of them caused kicks, fists blows and blows of iron rod. Complainant raised hue and cries which attracted to Khan Muhammad son of Sajjan and Abdul Wahid son of Dholo both by caste Dars resident of village Posarko who came running, intervened and rescued the complainant. Thereafter complainant narrated whole story to them. Then complainant went to police station Mithi and obtained letter for medical treatment and reached at civil hospital, Mithi where he was treated. Thereafter he was referred to Hyderabad for further treatment. After treatment, he came to village where Nek mards kept him on hopes of faisla, complainant waited but no faisla was held, consequently he went to police station Mithi and lodged present FIR.

3. After completion of the usual investigation, the I.O. submitted a police report under section 173 Cr.P.C before the trial court, showing applicant and co-accused on Court bail. After supplying copies of necessary documents, charge was framed against them, to which they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined as many as six (06) witnesses, who produced numerous documents and thereafter, the prosecution closed its side. Thereafter, statement of applicant and co-accused under section 342 Cr.P.C were recorded wherein they denied the allegations being false and claimed their

innocence; however they did not examine themselves on oath or lead evidence in defence. Later on, after hearing the parties, the trial Court convicted and sentenced the applicant and co-accused. Against said judgment, applicant filed Criminal Appeal No.07/2019, which was partly allowed and sentence awarded to the applicant by learned trial court was modified as mentioned above,

5. Per learned counsel for the applicant, the applicant is innocent and has falsely been implicated in this case; that PW-5 ASI Pato in his cross-examination has admitted that the complainant has not disclosed before him that who have caused injury to him; that the only source of identification is torch light but nowhere other 4/5 PWs, who were present but they had not apprehended the present accused to believe that he has committed the said offence; that the complainant/injured witness has disclosed the entire story to the PW Khan Muhammad, as such, he is not the eye witness of the incident; that the learned appellate Court has disbelieved the prosecution witness and acquitted the accused for an offence U/s 504/34 PPCand only convicted him U/s 337-A(iii) PPC whereas PW-6 has not supported the version of the complainant; that all the witnesses are closed relatives of the complainant hence, they fall within the category of interested witnesses; that the Doctor only disoclosed that the injured has received only one injury, whereas, complainant disclosed that other accused persons had also given kick and fist blows. Lastly, he prays for setting aside the impugned judgments.

6. On the other hand, Mr. Ghulam Abbas Dalwani, DPG alongwith complainant vehemently opposed for acquittal of the applicant and stated that in fact, the accused has committed the offence; as such, he is not entitled for the acquittal.

7. I have heard the learned counsel for the parties and perused the material available on record with their able assistance.

8. The case of the prosecution is that on 24-10-2018, at about 2015 hours, he was present at his house when he heard the commotion of cutting installed pipe, on which he went outside the house in street and saw on torch light that accused Hayat son of Abdul Raheem having iron rod in his hand and Juman son of Sanwan had cut/ disconnected the pipe of his water supply connection. On

inquiry as to why they are disconnecting the said pipe, to which they became annoyed and accused Hayat caused blow of kicks, fists so also iron rods, as such, complainant raised hue and cry which attracted to Khan Muhammad and Abdul Wahid. The injured was shifted to civil hospital, Mithi where he was given first aid and referred to Hyderabad for further treatment. After proper treatment he came to his village and thereafter lodged the instant FIR. The statement of PW Khan Muhammad was also recorded with delay of more than seven months. Admittedly, the incident took place on 24.10.2018, whereas, the FIR was lodged on 23.05.2019 with a delay of about seven month for which no plausible explanation has been given except the complainant stated that after due deliberation and consultation, he has lodged the instant FIR. In fact, the prosecution has failed to provide any plausible explanation for the delay in lodging the F.I.R., which reflects mala fide intention and lack of bona fides on the part of the complainant. In such circumstances, it can reasonably be inferred that the F.I.R. was lodged after due deliberation and consultation. The august Supreme Court of Pakistan in the case of *"G.M. Niaz v. The State"* (2018 SCMR 506), was pleased to hold as under:

> *"An FIR in respect of the alleged occurrence had been lodged after about seven hours and forty minutes which by itself was a circumstance doubting the claimed availability of the above mentioned eye-witnesses with the deceased at the time of occurrence."*

9. Guidance is also sought from the principle enunciated by the august Supreme Court of Pakistan in the case of *Zafar v. The State and others* (2018 SCMR 326), where the august Supreme Court of Pakistan was pleased to hold as under:

> *"It has been observed by us that the occurrence in this case as per prosecution took place on 03.09.1999 at 3.00 a.m. (later half of night) and the matter was reported to the police on the same day at 8:30 am. i.e. after five hours and thirty minutes of the occurrence. The distance between the place of occurrence and the police station is 09 miles. The post-mortem on the dead body of deceased was conducted on the same day at 2.00 p.m. i.e. After 11 hours of the occurrence. No explanation whatsoever has been given by the complainant Shahadat Ali (PW-5) and Umer Daraz (PW6) in the FIR or while appearing before the learned trial Court qua the delay ill lodging the FIR or for that matter the belated post-mortem of the deceased."*

10. Further, the complainant has disclosed in his evidence that accused had given multiple injuries through iron rod so also kick and fist blows but the PW-4 Lal Kumar has deposed that injured has received only one injury which was declared by the Doctor U/s 337-A(iii) PPC. In cross-examination, he admits that **"Injured himself did not show other injury except head injury on his body."** However, PW-5 ASI Pato admits that **"The injured stated that quarrel happened at his village and he has sustained injuries. He did not state the detail of such incident. Injured did not tell me names of persons who caused injuries to him."** Further, the complainant disclosed that the only source is torch light through which he has identified the accused but both the witnesses Khan Muhammad and Wahid Dino have not stated that they have identified the witnesses on source of light even the complainant has informed them above story and they are not eye witnesses of the incident.

11. The ocular evidence does not find support from the medical evidence. The material contradictions in the evidence of the prosecution witnesses have also undermined the credibility of their testimonies, rendering the prosecution case highly doubtful. In this regard, reliance is placed upon the judgment of the Hon'ble Supreme Court of Pakistan in the case of *Zafar v. The State* (2018 SCMR 326), wherein it was held that:–

> ***11. Having discussed all the aforesaid aspects of the case, it has been observed by us that medical evidence, motive, recovery and for that matter absconding of appellant are merely supportive/corroborative piece of evidence*** *and presence of eyewitnesses at the place of occurrence at the relevant time has been found by us to be doubtful****, no reliance can be placed on the supportive/ corroborative piece of evidence to convict the appellant on capital charge.***

12. The upshot of the above discussion is that the prosecution has miserably failed to bring home the guilt of the applicant beyond reasonable doubt and it is a settled proposition of law that for giving the benefit of the doubt to an accused there does not need to be many circumstances creating doubts if there is a single circumstance which creates reasonable doubt about the guilt of the accused, then the accused will be entitled to the benefit. In this respect, reliance can be

placed upon the case of **MUHAMMAD MANSHA v. THE STATE** reported in 2018 SCMR 772, wherein the Hon'ble Supreme Court of Pakistan has held 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". Reliance in this behalf can be made upon the cases of* ***Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)****."*

13. Taking the guideline from the case laws cited at (supra), I am of the view that in the present case, the prosecution story is overwhelmed under the thick clouds of doubt and the learned trial court has not evaluated the evidence in its true perspective and thus arrived at an erroneous conclusion by holding the applicant guilty of the offence. Thus, the instant Criminal Revision Application was allowed vide short order dated **18.09.2025.** Consequently, the conviction and sentence awarded to the applicant by learned trial court vide impugned judgment dated 22.08.2019 were set aside. He was acquitted of the charge by extending the benefit of doubt.

14. These are the reasons of my short order dated **18-09-2025.**

JUDGE