

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

Cr.Appeal.No.S- 245 of 2016

1. For orders on objection.
2. For hearing of MA 10927/2016.

Date of hearing: 21.06.2017.
Date of judgment: 21.06.2017.

Appellant: Suhbat Ali s/o Muhabat Ali Gorchani
Through Mr. Aghis-u-Salam, Advocate.

Complainant: Ghulam Shabir
Through Mr. Mazhar Ali Leghari, Advocate.

Respondent: The State
Through Mr. Shahid Ahmed Shaikh, A.P.G.

JUDGMENT

SALAHUDDIN PANHWAR, J: Through instant appeal, appellant has challenged the judgment dated 09.12.2016 passed by learned Sessions Judge, Tando Allahyar in Sessions Case No.12 of 2016, emanating from crime No.57 of 2015 registered at P.S Chambar for offences u/s 324, 114, 337-F(ii), 337-F(vi), 504, 34 PPC.

2. Precisely, relevant facts of the case are that on 30.10.2015 complainant with his brother Ghulam Akbar and nephew Khadim Hussain Gorchani were present in front of their house, when at about 2-00 p.m, accused Mohabat Ali Gorchani armed with lathi, Ghulam Hyder s/o Mohabat Ali armed with lathi and Suhbat Ali s/o Mohabat Ali armed with pistol came there and accused Mohabat Ali while

abusing complainant party, instigated his sons Sohbat and Ghulam Hyder not to spare and cause death to the complainant party. On which accused Sohabat Ali, armed with pistol, made straight fire at complainant party with intention to kill which hit to the brother of the complainant PW Ghulam Hyder on his left leg below the knee and thereafter, all the three accused gave lathi blows as well kick and fists blows to the PWs. Fire shots and the cries of complainant party attracted the villagers, who came running and accused on seeing them went away towards their houses. Complainant took his injured brother Ghulam Hyder and went to PS Chambar, obtained letter for treatment and after treatment went to the PS and lodged his FIR in the manners stated above. Investigation was carried out wherein the present appellant and the co-accused were arraigned.

3. Trial Court framed the charge against accused and examined, *in all*, 05 PWs as produced by the prosecution to substantiate the charge.

4. In Section 342 Cr.P.C. statement accused professed his innocence and claimed that he has been implicated due to enmity with the complainant party on matrimonial affairs.

5. At the outset learned counsel for the appellant contends that the ocular account states that the appellant caused two firearm injuries to the injured Ghulam Akbar on left leg and the charge was also based on the ocular account whereas medical certificate as well Doctor's evidence categorically contends that the injured Ghulam Akbar received injury on right leg hence the medical evidence is not corroborating the ocular version therefore, this is the case of acquittal.

6. Learned A.P.G. is not in a position to contravene the factual aspect of the case as brought on evidence pleaded by the counsel for the appellant. However, he contends that the other evidence is available against the appellant.

7. Counsel for the complainant contends that there was clear motive and the judgment of trial court is based on sound reasons hence the appeal is liable to be dismissed.

8. I have heard the respective parties and have also gone through available record.

9. It is *prima facie* evident that prosecution came forward with a *specific* claim (allegation) i.e causing of fire-arm injuries on *left-leg* and witnesses of *ocular* account also stuck with such allegation *however* it is also a matter of record that medical certificate as well Doctor's evidence categorically contends that the injured Ghulam Akbar received injury on *right leg* hence the medical evidence is not corroborating the ocular version. It is medical evidence through which prosecution seeks *corroboration* to ocular account with regard to receipt of injuries, nature of the injuries, kind of weapons, used in the occurrence. Reference may be made to the case of *Ghulam Qadir v. State* 2008 SCMR 1221 wherein it is held as:

“So far as medical evidence is concerned, it is settled law that the medical evidence may confirm the ocular evidence with regards **receipt of injuries, nature of the injuries, kind of weapons,** used in the occurrence but it would not connect the accused with the commission of the offence.

It is also a matter of record that prosecution never attempted to justify such *material* dent. In absence whereof, it could result into presumption that the complainant was not the witness of incident else he would not have committed such a *mistake*. I

would also make it clear here that to bring the law into motion (FIR), the informant is not required to be an *eye-witness* but once he (informant) claims to be an *eye-witness* and the ocular account, so set-up, is found not corroborated then benefit shall go in favour of the accused. Since, the *ocular* account, so set-up under claim of an '**eye-witness**, hence dent, created by its (prosecution's) own material i.e medical evidence, would be sufficient to conclude that prosecution did not succeed in establishing its case '**beyond reasonable doubt**'. It may also be added that prosecution *normally* would not be entitled for a *conviction* unless the *ocular* account is established beyond **any reasonable doubt** and any **material dent** is *normally* sufficient for acquittal. Reference may be made to case of *Ghulam Qadir v. State* supra. Accordingly, the impugned judgment is set aside. Appeal is allowed and the appellant is hereby acquitted of the charge. He shall be released forthwith if he is not required in any other custody case.

JUDGE

Tufail

