

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

### Present

Mr. Justice Abdul Maalik Gaddi  
Mr. Justice Khadim Hussain Tunio

Cr. Appeal No.D-97 of 2018

Lakhmir. . . . .Appellant

Versus

The State. . . . .Respondent

Cr. Rev. A. No.D-33 of 2018

Habibullah. . . . .Applicant

Versus

Lakhmir and others. . . . .Respondents

Lakhmir, appellant in Cr. Appeal No.D- 97 of 2018 and Respondent No.1 in Cr. Revision Application No.D- 33 of 2018	Through Mr. Altaf Ahmed Shahid, Advocate
Habibullah, complainant in Cr. Appeal No.D- 97 of 2018 and Applicant in Cr. Revision Application No.D- 33 of 2018	Through Mian Taj Muhammad Keerio, Advocate
The State	Through Mr. Shawak Rathore, D.P.G
Date of hearing and judgment	27.02.2020

### J U D G M E N T

**ABDUL MAALIK GADDI, J.-** By this common judgment, we intend to dispose of the above-cited criminal appeal as well as criminal revision, as they arise out of one and same incident, involving common question of law and facts as well as judgment (impugned herein) having been delivered by the learned trial Court on 28.09.2018.

2. Through captioned criminal appeal, appellant Lakhmir s/o Abdul Hakeem has assailed the legality and propriety of the judgment dated 28.09.2018, passed by learned Additional Sessions Judge, Khipro in Sessions Case No.34 of 2015 (old Sessions Case No.407 of 2012) (Re: The State V Lakhmir and others), emanating from Crime No.107 of 2012, registered at Police Station Khipro, under section 302, 324, 114, 337-A(i), F(i), 34 PPC, whereby the learned trial Court after full dressed trial, convicted and sentenced appellant Lakhmir as mentioned in the concluding para (point No.4) of the impugned judgment, which reads as under:-

*“ Accused Lakhmir is convicted U/s 302(b) PPC and sentenced to suffer imprisonment for life as Ta’zir and to pay Rs.100,000/- (rupees one lac) as compensation to the legal heirs of deceased as provided U/s 544-A Cr.P.C. However, accused was extended benefit of section 382-B Cr.P.C”.*

3. Through Cr. Rev. A. No.D-33 of 2018, Applicant (complainant) Habibullah S/o Abdul Hakeem seeks enhancement of sentence already awarded to accused / appellant Lakhmir and co-accused Ramzan / respondents, as per charge framed against him.

4. As per F.I.R, lodged by complainant Habibullah S/o Abdul Hakeem, the allegation against appellant Lakhmir is that at the time of incident he was available at the place of occurrence empty handed but he instigated other co-accused to attack upon the complainant party; as a result thereof co-accused Abdullah who is absconder, has caused repeater shot injury to Abdul Hakeem who fell down and died at the spot; whereas co-accused Akbar and Ramzan caused lathi and hatchet injuries to injured / P.Ws Sikandar, Ghulam Mustafa, Gul Muhammad and Sultan.

5. It is noted that co-accused Akbar who at the time of incident was allegedly armed with lathi has been acquitted by the trial Court although the allegation against him was that he alongwith co-accused Ramzan (armed with hatchet) caused lathi blows / injuries to P.Ws Sikandar, Ghulam Mustafa, Gul Muhammad and Sultan whereas through same judgment, co-accused Ramzan was convicted to suffer R.I for 05 years with fine and on appeal preferred by said Ramzan his sentence was converted / reduced to one already undergone by this Court vide judgment dated 08.10.2018 passed in Cr. Appeal No.S- 220 of 2018, which judgment has not been challenged either by the complainant or the State before the Honourable Supreme Court of Pakistan, therefore, it has attained finality. However, co-accused Abdullah who as per F.I.R. had caused fatal injury to deceased is still absconder, therefore, under the circumstance, we would

confined ourselves to discuss the case of present appellant / accused Lakhmir only; however, without prejudice the case of either party(ies).

6. It appears from the record that the trial Court framed charge against present appellant as well as other co-accused at Exh.04 to which they pleaded not guilty and claimed to be tried vide their pleas at Exh.05 to 07, respectively.

7. In order to prove its case, the prosecution examined complainant Habibullah as PW-01 at Exh.08, he produced FIR at Exh.08/A, Ghullam Mustafa (injured) as PW-02 at Exh.09, he produced his statement U/s 164 Cr.P.C at Exh.09/A, Sikandar Ali (injured) as PW-03 at Exh.10, he produced his statement U/s 164 Cr.P.C at Exh.10/A, Gul Muhammad Arisar as PW-04 at Exh.11, Muhammad Sultan as PW-05 at Exh.12, he produced his statement U/s 164 Cr.P.C at Exh.12/A, Mir Hassan as PW-06 at Exh.13, he produced mashirnama of dead body at Exh.13/A, mashirnama of injuries of injured Sikandar, Ghulam Mustafa, Gul Muhammad and Sultan at Exh.13/B, mashirnama of place of incident from where recovered socked blood stained earth and one empty cartridge of 12 bore at Exh.13/C, seizure memo of deceased cloths at Exh.13/D, memo of arrest of accused Lakhmir at Exh.13/E, memo of blood stained lathi produced by accused Akbar at Exh.13/F and memo of blood stained hatchet recovered on the pointation of accused Ramzan at Exh.13/G, Muhammad Ashraf Tapedar as PW-07 at Exh.14, he produced sketch of place of incident at Exh.14/A, PC-Hamza Ali as PW-08 at Exh.15, he produce receipt of dead body at Exh.15/A, Dr. Gouri Shankar as PW-09 at Exh.16, he produced police letter for examination of injured at Exh.16/A, final MLCs of injured Sikandar at Exh.16/B, his two X-ray film reports at Exh.16/C & D, final MLC of injured Sultan at Exh.16/E, his one X-ray film report at Exh.16/F, final MLC of injured Ghullam Muhammad at Exh.16/G, his one X-ray film report at Exh.16/H, final MLC of injured Ghullam Mustafa at Ex:16/I and his one x-ray at Exh.16/J, letter No.942/2012 for postmortem at Exh.16/K, Lash Chakas Form at Exh.16/L, police letter addressed to MO for receiving visras & cloths of deceased at Exh.16/M, autopsy report at Exh.16/N, acknowledgment receipt of dead body & cloths of deceased at Exh.16/O and copy of letter addressed to Incharge Chemico-Bacteriological Laboratory & Chemical Examiner, Government of Sindh @ Karachi in respect of one plastic cartridge pad (kartoos) with pallets at Exh.16/P, ASI Ghullam Rasool as PW-10 at Exh.17, he produced Inquest report (Danishnama) of deceased at Exh.17/A.

8. Thereafter, statements of the accused under section 342 Cr.P.C was recorded at Exh.21, wherein he denied all the allegations leveled against him by the prosecution and claimed his false implication in this case. However, neither he examined himself on oath nor produced / examined any witness in his

defence; thereafter, learned counsel for accused moved an application U/s 540 Cr.P.C at Exh.25 whereby prayed to re-call PW Dr. Ghouri Shankar for the purpose of further cross examination and after hearing it was dismissed vide order dated 22.2.2017.

9. Learned trial Court after hearing the learned counsel for the parties and examining the evidence available on record, convicted and sentenced the accused / appellant as stated in introductory paragraphs of this judgment.

10. Learned counsel for the appellant in Cr. Appeal No.D-97 of 2018 has contended that the case registered against the appellant is false and has been registered due to malafide intention of complainant in collusion with police; that the case is highly doubtful and no incident as alleged in the F.I.R has taken place; that the impugned judgment is against the law, equity and natural norms of justice, as such is not sustainable in law; that the impugned judgment was passed on the basis of surmises, conjectures and against the principles of criminal justice; that all the prosecution witnesses are interested; that while recording the evidence all prosecution witnesses have made contradictory statements, which have not been considered by the trial Court while delivering the impugned judgments; that as per F.I.R, present appellant was empty handed and mere his presence was shown at the place of incident; that appellant is behind the bars for the last 02 years for no fault, therefore, according to him, in view of the documents and evidence so brought on record as well as the material contradictions and discrepancies in prosecution case create serious doubt and benefit of doubt always goes in favour of accused; therefore, while extending benefit of such doubt the appellant / accused be acquitted in this case.

11. On the other hand, learned DPG duly assisted by learned counsel for complainant / Applicant Habibullah, who is also present in Court, while opposing the contentions raised by learned counsel for the appellant and supporting the impugned judgment contended that the prosecution has fully established its case against the appellant beyond reasonable doubt by producing consistent / convincing and reliable evidence and the contradictions whatever on record are of minor in nature and are not fatal to the prosecution case; that the impugned judgment and sentences awarded to the appellant is / are result of proper appreciation of evidence brought on record which need no interference; that the appellant has been rightly convicted by the trial Court, hence the appeal in hand may be dismissed. Learned DPG however, opposed the captioned criminal revision application filed by the complainant / Applicant for enhancement of the sentence awarded to the appellant.

12. On the other hand, Mian Taj Muhammad Keerio learned counsel for the applicant in Cr. Rev. A. No.D-33 of 2018, while adopting the arguments of

learned D.P.G in appeal, further submits that though the appellant has been rightly convicted by the trial Court but the punishment awarded to him is lesser than the quantum of allegations leveled and proved against him, therefore, the punishment awarded to the appellant may be enhanced.

13. We have heard the learned counsel for the parties at considerable length and perused the available record with their able assistance.

14. After hearing the parties, careful consideration and meticulous examination of the evidence / available record, suffice to say that mere heinousness of the offence is not sufficient to convict the accused because the accused continues with presumption of innocence until found otherwise at the end of the trial. It is the settled principle of law that burden of proof of allegation is always upon the prosecution to prove its case beyond shadow of doubt. Keeping in view the basic touch stone of criminal administration of justice, we have examined the ocular evidence as well as circumstantial and documentary evidence along with impugned judgment only to the extent of appellant Lakhmir and come to the conclusion that prosecution has failed to prove its case against him. It is noted that in this case deceased Abdul Hakeem died due to sustaining the firearm injuries at the hands of proclaimed offender Abdullah. It is an admitted fact that present appellant at the time of alleged incident was empty handed and he did not cause any injury or hurt either to deceased or any prosecution witness. It is also noted that co-accused Akbar who allegedly caused lathi blows / injuries to prosecution witnesses has been acquitted by the trial Court and the complainant though filed appeal against his acquittal before this Court but the same was dismissed vide judgment dated 08.10.2019 in Criminal Acquittal Appeal No.D- 30 of 2018. It has come from the record that co-accused Ramzan though he caused hatchet blows / injuries to deceased Abdul Hakeem as well as P.W Sikandar and he was convicted and awarded sentence R.I for 05 years with fine and on filing appeal being Cr. Appeal No.S-220 of 2018 his sentence was reduced to one already undergone, which judgment has not been challenged either by the complainant or the State before the Honourable Supreme Court, hence it attained finality.

15. It is also surprising to note that co-accused Akbar though he caused lathi blows / injuries to P.Ws Ghulam Mustafa, Gul Muhammad and Sultan, has been acquitted by the trial Court whereas co-accused Ramzan who caused hatchet injuries to deceased as well as P.W Sikandar and has been awarded sentence of R.I for 05 years with fine but the present appellant was awarded life imprisonment without assigning any valid reason. During the course of arguments we have specifically asked the question from learned D.P.G as well as learned counsel for the complainant / Applicant to point out any

unimpeachable evidence on record to connect the appellant with the commission of alleged offence they have no satisfactory reply with them.

16. It is pointed out by learned counsel for the appellant that appellant Lakhmir is about 74 years of age and he is in jail since 28.09.2018 (date of impugned judgment) and almost two years have been passed. The case and claim of appellant Lakhmir as stated in his statement under section 342 Cr.P.C, is that he is innocent and has been falsely implicated in this by the complainant on account of petty dispute over landed property. The enmity in between the complainant and appellant Lakhmir has not been disputed. Appellant is facing trial since 2012 and almost 08 years have been passed. As observed, only the role attributed to present appellant is that of instigation and no unimpeachable evidence is available on record to prove the guilt of present appellant as instigator. Merely saying by complainant party that the appellant was present at the time of incident and he instigated to co-accused without any documentary or unimpeachable evidence, is not enough to connect the appellant with the commission of alleged offence, therefore, under these circumstances, false implication of appellant Lakhmir could not be ruled out.

17. For what has been discussed above, the case of prosecution is full of lacunas and it has failed to bring home charge against present appellant Lakhmir beyond a reasonable doubt. It is well settled principle of law that burden of proving the case is always upon the shoulders of prosecution and prosecution is bound to prove its case beyond shadow of reasonable doubt, and if a single circumstantial doubt comes in the case of prosecution it goes in favour of accused not as a matter of grace but as a matter of right as laid down by Honourable Supreme Court of Pakistan in case of **Tariq Pervez V The State** (1995 SCMR 1345) and **Muhammad Akram V The State** (2009 SCMR 230).

18. Above are the reasons of our short order dated 27.02.2020 whereby the captioned Cr. Appeal No.D-97 of 2018 was allowed and the impugned judgment dated 28.09.2018 was set aside only to the extent of present appellant Lakhmir and he was acquitted of the charge and ordered to be released forth with if not required in any other custody; and, as a result thereof Cr. Revision Application No.D- 33 of 2018, filed by the complainant / applicant for enhancement of the sentence awarded to appellant / Respondent, was dismissed.

JUDGE

JUDGE