

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Crl. Appeal No.S –14 of 2020

Appellant: Qasim son of Ameer Bakhsh Lund,
Through Mr. Sajjad Ahmed Chandio Advocate

Respondent: The State, through Mr. Shahzado Saleem Nahiyoona,
D.P.G.

Date of hearing: 04-12-2020.

Date of decision: 04-12-2020.

JUDGMENT

IRSHAD ALI SHAH, J: The appellant by way of instant appeal has impugned judgment dated 24.12.2019 passed by learned Ist Additional Sessions Judge/MCTC Dadu, whereby the appellant for an offence punishable u/s 302(b) PPC was convicted and sentenced to undergo rigorous Imprisonment for life as Tazir and to pay compensation of Rs. 200,000/=, to legal heirs of deceased Aijaz Ali and in case of default whereof to undergo Simple Imprisonment for six months.

2. The facts in brief necessary for disposal of instant Criminal Appeal are that the appellant and co-accused Sahib, Mumtaz alias Bhutto and Manzoor allegedly in furtherance of their common intention committed Qatl-i-amd of Aijaz Ali by causing him fire shot injuries and then went away by insulting complainant Abdul Nabi and his witnesses, for that they were booked and reported upon by the police.

3. At trial, the appellant and said co-accused did not plead guilty to the charge and the prosecution to prove it, examined complainant Abdul Nabi and his witnesses and then closed its side.

4. The appellant and said co-accused in their statements recorded u/s 342 Cr.P.C denied the prosecutions' allegation by pleading innocence, they did not examine themselves on oath or anyone in their defence.

5. On conclusion of the trial, learned trial Court acquitted the above named co-accused, while convicted and sentenced the appellant as is detailed above by way of impugned judgment.

6. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the police; the complainant and his witnesses on ocular account have not supported the case of prosecution and co-accused Sahib, Mumtaz alias Bhutto and Manzoor have been acquitted while the appellant has been convicted by the learned trial court on the basis of same evidence without assigning cogent reason. By contending so, he sought for acquittal of the appellant.

7. Learned DPG for the State was fair enough to say that the complainant and his witnesses on ocular account have not supported the case of prosecution.

8. I have considered the above arguments and perused the record.

9. Complainant Abdul Nabi and PWs Zulfiqar Ali and Ali Gohar during course of their examination besides supporting the factum of the death of the deceased did not implicate the appellant or anyone else by stating that they could not identify anyone. On account

of their failure to identify the culprits involved in the incident they were declared hostile to the prosecution. So was the case with PW/Mashir Abdul Rehman he too was fair enough to admit that his LTIs on all the memos were obtained by the police without reading the contents whereof. If it was so, then it was table investigation on the part of investigating officer SIO/SIP Akhtar Hussain. The evidence which was produced by the prosecution obviously was not enough to base conviction. Surprisingly, on the basis of same evidence, co-accused Sahib, Mumtaz alias Bhutto and Manzoor have been acquitted while the appellant has been convicted by learned trial Court, such conviction could hardly be maintained in the circumstances.

10. In case of ***Sardar Bibi and others vs. Munir Ahmed and others (2017 SCMR-344)***, it was held by the Hon'ble Apex Court that;

"When the eye-witnesses produced by the prosecution were disbelieved to the extent of one accused person attributed effective role, then the said eye-witnesses could not be relied upon for the purpose of convicting another accused person attributed a similar role without availability of independent corroboration to the extent of such other accused".

11. The conclusion which could be drawn of the above discussion would be that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt and appellant is found to be entitled to such benefit.

12. In case of **Tariq Pervaiz vs the State (1995 SCMR 1345)**. It has been held by the Hon'ble Supreme Court that:-

“For giving benefit of doubt to an accused, it is not necessary that there should be many circumstances creating reasonable doubt in a prudent mind about the guilt of accused, then he would be entitled to such benefit not as a matter of grace and concession but of right.”

13. Pursuant to above discussion, the conviction and sentence recorded against the appellant are set-aside; consequently, the appellant is acquitted of the offence for which he has been charged, tried and convicted by learned trial Court, he is in jail to be released in present case forthwith.

14. Instant criminal appeal is disposed of accordingly.

Judge

Ahmed/Pa,