

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Crl. Appeal No.S - 114 of 2020

Appellants: Mehboob Ali son of Ghulam Qadir, 2) Shahli Khan son of Wali Muhammad and 3) Talib son of Ali Nawaz all by caste Lashari through M/s. Aijaz Shaikh and Sameeullah Rind, Advocates.

Respondent: The State, through Ms. Sana Memon A.P.G for the State.

Complainant: Muhammad Hussain son of Saeed Khan Lashari through Mr. Ghulamullah Chang, Advocate.

Date of hearing: 21-01-2021.

Date of decision: 21-01-2021.

JUDGMENT

IRSHAD ALI SHAH, J: The appellants have impugned judgment dated 16.07.2020 passed by learned Model Criminal Trial Court-I, Hyderabad, whereby they have been convicted and sentenced as under;

| Sr.No. | Section | Sentence Awarded |
|---------------|-------------------------|--|
| 01. | 148 R/W Section 149 PPC | Accused Shehli Khan, Talib, and Mehboob are sentenced to suffer R.I for three years |
| 02. | 302(b)/35 PPC | Accused Shehli Khan, Talib, and Mehboob are sentenced to suffer R.I for life under section 302 PPC R/w section 35 PPC, and to pay compensation of Rs.1,00,000/-to the legal heirs of deceased jointly as provided U/s 544-A of Cr.P.C. In case of failure to pay compensation, the accused persons shall suffer SI for six months. |
| 03. | 337-A(i)/35 PPC | Accused Shehli Khan, Talib, and Mehboob are sentenced to suffer R.I for one years and also to pay Daman to the tune of Rs.4,000/=each to be paid to both the injured equally. |
| 04 | 337-F(i)/35 PPC | Accused Shehli Khan, Talib, and Mehboob are sentenced to suffer R.I for one year and also to pay Daman to the tune of Rs.4,000/=each to be paid to both the injured equally. |
| 05. | 337-F(vi)/35 PPC | Accused Shehli Khan, Talib, and Mehboob are sentenced to suffer R.I for two years and also to pay Daman to the tune of Rs.4,000/=each to be paid to both the injured equally. |

2. The conviction and sentence awarded to the appellants have been ordered to run concurrently with benefit of section 382-B Cr.P.C.

3. The facts in brief necessary for disposal of instant appeal are that the appellants with rest of the culprits allegedly in furtherance of their common intention caused hatchets and lathies blows to complainant Muhammad Hussain and his sons Sono Khan and Waqar Ahmed, consequently Waqar Ahmed died of such blows, for that they were booked and reported upon.

4. At trial, the appellants did not plead guilty to the charge and the prosecution to prove it, examined complainant Muhammad Hussain and his witnesses and then closed its side.

5. The appellants in their statements recorded u/s 342 Cr.P.C denied the prosecution's allegation by pleading innocence. They however, did not examine anyone in their defence or themselves on oath.

6. On evaluation of evidence so produced by the prosecution learned trial Court convicted and sentenced the appellants as is detailed above by way of impugned judgment.

7. It is contended by learned counsel for the appellants that the appellants being innocent have been involved in this case falsely by the complainant party in order to satisfy its old enmity with them; the FIR has been lodged with delay of about two days; the evidence of the prosecution being doubtful has been believed by learned trial Court without lawful justification; therefore, the appellants are liable to their acquittal by extending them benefit of doubt. In support of their contentions they have relied upon cases of *Saleem Khadra and others*

vs The State (2019 P.Cr.L.J Note 132), Muhammad Ibrahim and another vs The State (2019 P.Cr.L.J 1378), Sajjad Bhatti and others vs The State (2017 P.Cr.L.J 114) and Nazir Ahmad vs Muhammad Iqbal and another (2011 SCMR 527).

8. Learned APG for the State and learned counsel for the complainant by supporting the impugned judgment have sought for the dismissal of the instant appeal by contending that they have actively participated in commission of incident by causing hatchet/lathi blows to the complainant, PW Sono Khan and the deceased. In support of their contention they have relied upon cases of *Taj vs The State (2012 SCMR 43) and Khadija Siddiqui and another vs Shah Hussain and another (PLD 2019 S.C 261).*

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

10. As per ASI Muhammad Mushtaque Sikander, on 25.10.2018 he was duty officer of PS Husri. On the same date there came complainant Muhammad Hussain with his sons Sono Khan and Waqar Ahmed, having injuries, they were referred by him to hospital for examination of their injuries and certificate. No cogent explanation is offered by him for his failure to record FIR of the incident promptly; such omission on his part could not be overlooked.

11. In case of *Imran Ashraf and others vs. the State (2001 SCMR-424)*, it has been observed by Hon'ble Court that;

“Section 154, Cr.P.C. lays down procedure for registration of an information in cognizable cases and it also indeed gives mandatory direction for registration of the case as per the procedure. Therefore, police enjoys no jurisdiction

to cause delay in registration of the case and under the law is bound to act accordingly enabling the machinery of law to come into play as soon as it is possible and if first information report is registered without any delay it can help the investigating agency in completing the process of investigation expeditiously”.

12. The FIR of the incident was lodged by the complainant on 27.10.2018. It was with delay of about two days to incident. Such delay could not be ignored, same obviously is reflecting deliberation and consultation.

13. In case of Mehmood Ahmed & others vs. the State & another (1995 SCMR-127), it was observed by the Hon’ble Court that;

“Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.

14. As per PW Sono Khan he went at the place of incident, on cries, and found his brother Waqar Ahmed lying on the ground in unconscious condition and his father was having head injury and was bleeding. If, it was so then his arrival at the place of incident was after sustaining of the blows by the complainant and the deceased, therefore, he could hardly be said to be witness to the blows allegedly sustained by the complainant and the deceased. It was further stated by him that he was caused hatchet blows with its back side by appellants Talib and Shahli. On examination, as per medical officer Dr. Wasim Khan, PW Sono Khan was found sustaining single injury on his wrist. Where gone the second injury? It is not made known by the

prosecution. As per the complainant Muhammad Hussain he was caused hatchet blow on his head by appellant Mehboob. As per medical officer Dr. Wasim Khan, the complainant was found sustaining three injuries. Wherefrom have come rest of the two injuries? It is not made known by the prosecution. No injury with the hatchet on person of the complainant was found, on his medical examination. It was further stated by the complainant that deceased Waqar Ahmed was caused hatchet and lathi blows by accused Ghulam Qadir and Ahmed. Significantly, they both are absconding. No blood mark was found at the place of incident and appellant Mehbob Ali as per SIO/SIP Sirajuddin was also found to be innocent. In these circumstances, the involvement of the appellants, on the basis of injuries allegedly sustained by the complainant and PW Sono Khan which have been found to be in conflict with the medical evidence, so far its number is concerned, is appearing to be doubtful.

15. In case of *Muhammad Masha vs The State (2018 SCMR 772)*, it was observed by the Hon'ble Supreme Court of Pakistan 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 Tariq Pervez v. The State (1995 SCMR 1345), GhulamQadir 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)."

16. The case law which is relied upon by the learned A.P.G for the State and learned counsel for the complainant is on distinguishable facts and circumstances. In case of *Taj (supra)* the injuries sustained by the injured were explained plausibly. In the instant case injuries sustained by the injured are not explained plausibly. In case of *Khadija Siddiqui and others (supra)* the accused was found to have inflicted several knife blows to his classmate and her minor sister and both the injured fully implicated him in commission of incident. In the instant case, the number of accused is involved is more than one and there is conflict between medical and ocular evidence in respect of number of injuries sustained by the injured.

17. In view of the facts and reason discussed above, the conviction and sentence recorded against the appellants by way of impugned judgment are set-aside; consequently, they are acquitted of the offence for which they have been charged, tried and convicted by learned trial Court, they shall be released forthwith in the subject case, if not required in any other custody case.

18. The instant appeal is disposed of accordingly.

Judge

Ahmed/Pa,