

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Appeal No.S- 174 of 2010

Appellants: Through Syed Tarique Ahmed Shah, Advocate

Complainant: Through Mr. Ghulamullah Chang, Advocate.

State: Ms. Safa Hisbani, A.P.G

Date of hearing: 20.09.2019

Date of decision: 20.09.2019

J U D G M E N T

IRSHAD ALI SHAH, J. The appellants by way of instant appeal have impugned judgment dated 28.05.2010, passed by learned 2nd Additional Sessions Judge, Badin whereby they have been convicted and sentenced as under;

“All the accused are also convicted for offence of attempt to commit Qatl-i-Amd of complainants party punishable under Section 324 PPC read with section 149 PPC and are sentenced to suffer rigorous imprisonment for five years and they shall also pay the fine amounting to Rs.25,000/-(rupees twenty five thousand) each or in default to pay the fine amount to suffer simple imprisonment for six months more. The accused are also convicted under Section 337-A(ii) PPC read with section 149 PPC and sentenced to suffer rigorous imprisonment for three years and they are also directed to pay Arsh amounting to rupees one lac and in default of payment of arsh, they shall be confined in jail till the realization of amount of Arsh. The accused are also convicted under Section 337-F(vi) PPC read with section 149 PPC and sentenced to suffer rigorous imprisonment for five years and shall also pay an amount of rupees one lac as Daman or in default of payment of Daman, they shall be confined in jail till the realization of amount of Daman. Accused are also convicted under section 337-L(ii) PPC read with section 149 PPC and sentenced to suffer rigorous imprisonment for two years. The amount of Arsh and

Diyat if recovered shall be distributed amongst the victims/injured of this case. “

2. It is alleged that the appellants after having formed an unlawful assembly and in prosecution of their common object caused hatchet and lathi blows to PWs Abdul Jabbar, Ali Hassan, Khamiso, Ghulam Nabi, Wahid Ali, Mst. Zainab, Mst. Hawa and Mst. Bhagbhari with hatchet and lathies for that they were booked and reported upon by the police.
3. The appellants did not plead guilty to the charge and prosecution to prove it examined complainant Muhammad Juman and his witnesses and then closed the side.
4. The appellants in their statements recorded U/S 342 Cr.P.C denied the prosecution allegations by pleading innocence by stating that they have been involved in this case falsely by the complainant party, they did not examine themselves on oath or anyone in their defence.
5. On evaluation of the evidence so produced by the prosecution, learned trial court convicted and sentenced the appellant as is detailed above.
6. 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 their enmity over cattle trespass; the FIR has been lodged with un-explained delay of four hours; no female injured was examined by the prosecution; there was counter version of the incident; the appellants were never charged for offence punishable u/s 324 PPC, yet they have been convicted for the said offence by learned trial Court without lawful justification on the basis of evidence which was

doubtful in its corrector. By contending so, he sought for acquittal of the appellants.

7. Learned counsel for the complainant has recorded no objection to the acquittal of the appellants while, learned A.P.G for the State has sought for dismissal of the instant appeal by supporting the impugned judgment.

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

9. Admittedly, the FIR of the incident has been lodged with un-plausible delay of about four hours, which smells of deliberation and consultation. As per FIR, there is general allegation of the incident. No female injures has been examined by the prosecution. There was counter version of the incident. The parties were already disputed over cattle trespass. The appellants were never charged for an offence punishable u/s 324 PPC. In these circumstances, learned counsel for the complainant has rightly recorded no objection to acquittal of the appellants.

10. 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 appellants beyond shadow of doubt and they are entitled to such benefit.

10. 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”.

11. In case of **Tarique Pervaiz vs. The State (1995 SCMR 1345)**, it has been held by Hon’ble Apex Court that;

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

12. Based upon above discussion, the conviction and sentence awarded to the appellants by way of impugned judgment are set-aside, the appellants are acquitted of the offence, for which they have been charged, tried and convicted by the learned trial court, their bail bonds are cancelled and surety is discharged.

13. The instant appeal is disposed of accordingly.

J U D G E