

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Crl. Jail Appeal No. D – 165 of 2010

Before:

Mr. Justice Muhammad Iqbal Mahar

Mr. Justice Irshad Ali Shah

Appellants: Muhammad Ibrahim son of Mohammad Bux Notkani
and Saleh son of Manoo Lohar.
through Mr. Aijaz Shaikh, advocate.

Respondent: The State, through Shahzado Saleem Nahiyoan,DPG

Date of hearing: 03-10-2019.

Date of decision: 03-10-2019.

J U D G M E N T

IRSHAD ALI SHAH, J; The facts in brief necessary for disposal of instant appeal are that an FIR was lodged by complainant Pir Bux with P.S Tando Ghulam Ali District Badin with regard to abduction of his son-in-law Ali Bux for ransom. On investigation, on encounter, PW-Ali Bux was secured by police after killing of one of the culprit namely Zulfiqar, such FIR was lodged by Inspector Nazeer Ahmed with PS Matli District Badin. Subsequently, appellants Ibrahim and Saleh were found to have assembled with intention to commit some offence and were accordingly apprehended by police with one more person (Ahmed alias Karo) and from Ibrahim was also secured a Kalashnikov, such case was registered. The investigation continued, during course whereof co-accused Muhammad Hashim too was apprehended. On pointation from appellant Saleh was secured

unlicensed pistol with two live bullets and for such recovery a separate case was also registered, they were subjected to identification parade and on conclusion of the investigation, were challaned by the police to face trial for the above said offence.

2. A joint charge was framed against the appellants and co-accused Muhammad Hashim (who now has died) to which they pleaded not guilty and prosecution to prove it examined in all 14 witnesses including complainant and on conclusion of the trial one of the culprit (Ibrahim) involved in the incident, was acquitted while other two (Muhammad Hashim and Saleh) were convicted by learned trial Court vide judgment dated 04.03.2003. On appeals against conviction and acquittal, the conviction and acquittal were set-aside by this Court on 11.11.2008 with direction to learned trial Court to re-write the judgment.

3. On remand, accused Muhammad Hashim too died while appellants on rewriting of judgment were found guilty for the above said offence and were convicted and sentenced by learned trial Court vide his judgment dated 19.05.2010 as below;

“Both accused Ibrahim and Saleh are convicted for offence punishable under section 365-A PPC and sentenced them to R.I for life. The properties of both accused Ibrahim and Saleh were forfeited to the extend Rs.250,000/-each and their all properties moveable/immoveable are ordered to be attached and confiscated to the Government. Both accused Ibrahim and Saleh are also convicted for offence punishable under section 324 PPC and

sentenced them to suffer R.I Seven years and fine Rs.50,000/-and default in payment of fine they will suffer S.I one year.

Both accused Ibrahim and Saleh are also convicted for the offence punishable under section 353 PPC and sentenced them to suffer R.I Seven years and fine Rs.25,000/-and default in payment of fine they will suffer S.I six months.

The both accused Ibrahim and Saleh are convicted for the offence punishable under section 7 of Anti-Terrorism Amended ordinance 2001 and sentenced them to suffer R.I Seven years and fine Rs.10,000/-and default in payment of fine they will suffer S.I six months.

The accused Saleh is convicted for offence punishable under section 13(e) Arms Ordinance and sentenced him to suffer R.I Three years and fine Rs.10,000/-and default in payment of fine they will suffer S.I six months.”

4. The appellants by way of instant appeal have impugned the judgment of conviction and sentence before this Court.

5. It is contended by the learned counsel for the appellants that the appellants being innocent have been involved in this Case falsely; the FIR has been lodged with delay of about one day; it does not contain the names of appellants; the abductee was not recovered from the exclusive possession of the appellants; the recovery has been foisted upon the appellants and the appellants have been convicted on the basis of identification parade, which was doubtful in its character. By contending so, he sought for the acquittal of the appellants. In support of his contention he relied upon case of ***Waseem alias Asgher vs The State (1997 P.Cr.L.J Karachi 1037)***, (2) case of ***Riaz vs The State (1998 P.Cr.L.J 1613)*** and

(3) case of Ghulam Rasul and 3 others vs The State (1988 SCMR 557).

6. Complainant Pir Bux has recorded no objection to acquittal of the appellants while learned D.P.G for the State by supporting the impugned judgment has sought for dismissal of instant appeal.

7. We have considered the above arguments and perused the record.

8. The FIR of the incident has been lodged with delay of about of one day, yet it does not contain the names and descriptions of the culprits involved in the incident. As per Inspector Nazeer Ahmed the abductee Ali Bux was secured by him when he was found lying in Sugarcane crop, after encounter with the culprits whereby one of the culprit namely Zulfiquar also lost his life. If it is believed to be so, then the abductee Ali Bux was not secured from the exclusive possession of the appellants. As per complainant Pir Bux no ransom was paid to anyone for release of abductee PW Ali Bux. Only thing, which involves the appellants in commission of incident is their identification parade, which allegedly was conducted by Mr. Ali Ahmed Wagan, the then Judicial Magistrate Matli, District Badin. It was single row whereby both of the appellants were asked to stand for purpose of identification. Such row as per complainant Pir Bux was consisting of 12 dummies, same as per PW Ali Bux and Mr. Ali Ahmed Wagan was consisting of 20 dummies. Mr. Ali Ahmed

during course of his examination was fair enough to admit that the accused were handcuffed and they were not with muffled faces. If it was so, then it was easy for the complainant and PW Ali Bux to have identified the appellants during course of identification parade being handcuffed person. No role in incident even otherwise, was attributed the appellants by complainant Pir Bux, PWs Ali Bux and Muhammad Juman during course of identification parade. In that situation, it could be concluded safely that the identification being doubtful in character could hardly be relied upon to maintain conviction against the appellants. Now there remains recovery of Kalashnikov allegedly from appellant Ibrahim and pistol from appellant Saleh. Admittedly, those recoveries have not been affected in presence of independent person, those weapons were not sealed at the spot and nothing has been brought on record which may suggest that those has ever been subjected to examination by an expert. In these circumstances, the appellants could hardly be connected with the recovery of crime weapons.

9. 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 found entitled to such benefit.

10. Learned trial Court therefore ought not to have overlooked the plea of innocence, which was taken by the appellants at trial.

11. 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.”

12. Pursuant to above discussion, the conviction and sentence recorded against the appellants together with the impugned judgment are set aside; consequently, the appellants are acquitted of the offence for which they have been charged, tried and convicted by learned trial Court, they are present in Court on bail, their bail bonds are cancelled and surety is discharged.

13. Instant criminal appeal is disposed of in above terms.

Judge
Judge