

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Jail Appeal No.D- 103 of 2015**

Before;

Mr. Justice Muhammad Iqbal Mahar
Mr. Justice Irshad Ali Shah

Appellant: Ghulam Shabbir son of Ali Nawaz Khuhawar,
Through Mr. Shoukat Ali Makwal, Advocate

Complainant: Imran Ali Ansari in person.

State: Ms. Rameshan Oad, A.P.G

Date of hearing: 31.10.2019
Date of decision: 31.10.2019

J U D G M E N T

IRSHAD ALI SHAH, J. The appellant by preferring the instant appeal has impugned judgment dated 29th October, 2015 passed by learned Judge, Anti-Terrorism Court, Hyderabad at Hyderabad, whereby the appellant has been convicted and sentenced as under;

“Accused Ghulam Shabbir convicted under Section 7(a) of Anti Terrorism Act 1997 to RI for Life Imprisonment and fine of Rs.2,00,000/- (two lacs) and one year Simple Imprisonment more in case of payment of fine for offence falling under Section 6(2)(a) of Anti Terrorism Act, 1997, and he is also convicted under Section 7(h) of Anti Terrorism Act, 1997 for Ten Years Rigorous Imprisonment and fine Rs. One lac and Six months Simple Imprisonment more in case of default in payment of fine falling under Section 6(2)(k) of Anti Terrorism Act, 1997. He is also convicted to R.I for Ten Years and fine of Rs. One Lac for offence falling under Section 25 of Sindh Arms Act, 2013. The accused shall be entitled to

benefit of Section 382-B Cr.P.C and all the convictions and Imprisonment will run concurrently.”

2. It is alleged that the appellant with one more culprit in furtherance of their common intention on account of failure of the complainant party to pay them ‘Bhatta’ committed Qatl-e-amd of Kamran by causing him fire shot injuries. On arrest from appellant has also been secured unlicensed pistol of 30 bore with magazine containing four live bullets of same bore used in commission of incident. After usual investigation, the appellant was reported upon by the police to face trial for the above said offence, before learned trial Court.

3. At trial, the appellant did not plead guilty to the charge and the prosecution to prove it, examined PW-1 complainant Imran Ali at (Ex.12), he produced FIR of the present case and receipt whereby he acknowledge the delivery of dead body of deceased to him; PW-2 Muhammad Mehmood at (Ex.13); PW-3 Ali Asghar at (Ex.14); PW-4 Mashir Shahabuddin at (Ex.15); PW-5 Mashir Shah Nawaz Qureshi at (Ex.16), he produced memo of place of incident, memo of examination of dead body of the deceased, Danishnama, memo of recovery of clothes of the deceased, memo of recovery of articles from the confectionary shop of the complainant party, memo of recovery of one Sika from place of incident; PW-6 HC Ghulam Qadir at (Ex.17); PW-7 Tapedar Ameer Ali at (Ex.18), he produced

sketch of wardat and letter written to him by Mukhtiarkar concerned for preparation of sketch of wardat; PW-8 SIO ASI Mukhtiar at (Ex.19), he produced Roznamcha entries; PW-9 SIO ASI Sikander Ali at (Ex.20), he produced roznamcha entries, lashchakas form and his letter to medical officer for post mortem on the dead body of the deceased; PW-10 M.O Dr. Abdul Hafeez Qureshi at (Ex.21), he produced post mortem report on the dead body of the deceased; PW-11 Arshad Shaikh at (Ex.22) and PW-12 SIO Inspector Qadir Bux at (Ex.23), he produced roznamcha entries, his letter to FSL, sketch of pistol recovered from the appellant, report of Forensic Expert, report of chemical examiner and his letter to Mukhtiarkar concerned for preparation sketch of place of incident and then learned DDPP closed the side on behalf of prosecution vide statement at (Ex.25).

4. The appellant in his statement recorded under Section 342 Cr.P.C denied the prosecution allegation. He did not examine anyone in his defence or himself on oath to disprove the prosecution allegation against him.

5. On evaluation of evidence, so produced by the prosecution, the learned trial Judge convicted and sentenced the appellant as is detailed above by way of judgment, which is

impugned by the appellant before this Court by preferring the instant Appeal, as stated above.

6. It is contended by the learned counsel for the appellant that the appellant being innocent has falsely been involved in this case by the complainant party; the FIR of the incident has been lodged with un-plausible delay of seven hours; the engine and chassis number of motorcycle whereby the appellant and absconding accused Mushtaque Ali came at the place of incident has not been disclosed by the complainant party; no make of the soap cakes allegedly secured from the place of incident has been disclosed by the witnesses during course of their examination; there is no recovery of bulb from the place of incident; the complainant and his witnesses being related interse were having reason to support each other and they have been believed by learned trial Court without lawful justification. By contending so, he sought for acquittal of the appellant. In support of his contention he has relied upon cases of **(1) Haroon Shafique vs The State and others (2018 SCMR 2118)**, **(2) Muhammad Farooq vs The State and others (2019 P.Cr.L.J 609)**, **(3) Altaf Hussain vs The State (2019 SCMR 274)** and **(4) Muhammad Ashraf alias Acchu vs The State (2019 SCMR 652)**.

7. Learned A.P.G for the State and complainant Imran Ali in person by rebutting the above contention have sought for dismissal of the instant appeal. In support of their contentions they relied upon cases of **(1) Muhammad Akram alias Akrai vs The State (2019 SCMR 610), (2) Muhammad Sharif and others vs The State and others (2019 SCMR 1368) and (3) Government of Khyber Pakhtunkhwa through Secretary Home and Tribal Affairs Department Peshawar and others vs Mehmood Khan (2017 SCMR 2044), (4) Muhammad Ilyas and others vs The State (2011 SCMR 460).**

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

9. Un-natural death of deceased Kamran on account of fire shot injuries, the prosecution has been able to prove by examining medical officer Dr. Abdul Hafeez. The death of the deceased being un-natural even otherwise is not disputed by the appellant. Only dispute with the appellant is to the extent that he being innocent has been involved in this case falsely by the complainant party. It was stated by complainant Imran Ali that on the date of incident, the appellant and absconding accused Mushtaque Ali (Mustafa Ali) came at their confectionary shop, they demanded 'Bhatta' from them, which was refused, on such refusal the appellant fired at deceased

Kamran, who after sustaining such fire shot died. The appellant and absconding accused Mushtaque Ali (Mustafa Ali) then went away, on their motorcycle. The dead body of the deceased was taken to hospital for post mortem. After post mortem, FIR of the incident was lodged with PS Kotri. Whatever, is stated by complainant Imran Ali takes support from the evidence of PWs Ali Asghar, Arshad and Muhammad Mehmood (who happened to be child witness). They have been subjected to lengthy cross examination by learned counsel for the appellant, which they have stood successfully. They could not be disbelieved, only for the reason that they are related interse. Even otherwise, nothing has been brought on record which could prove the relationship between the complainant and his witnesses. The complainant and his witnesses were having no reason to involve an innocent person in a false case at the cost of life of the deceased. Non discloser of the engine and chassis number of the motorcycle and make of soap cakes secured from the place of incident is not enough to make a conclusion that the complainant and his witnesses are chance witnesses of the incident. The delay in lodgment of FIR for few hours was natural and same even otherwise has been explained plausibly by the prosecution. On arrest from appellant, as per SIO/Inspector Qadir Bux has been secured unlicensed pistol of 30 bore with magazine containing four live bullets allegedly used by the

appellant in commission of incident, same has been found similar with the empty secured from the place of incident on its examination by Forensic Expert. It was day time incident, therefore, there was no need for the police to have secured bulb from the place of incident. In these circumstances, learned trial Court was right to make a conclusion that the prosecution has been able to prove its case against the appellant beyond shadow of doubt. Indeed, learned trial Court has dealt the appellant leniently while awarding him the lesser punishment.

10. The case law which is relied upon by learned counsel for the appellant is on distinguishable facts and circumstances. In case of ***Haroon Shafique (supra)***, the main reason for acquittal of the accused was that the post mortem on the dead body of deceased was conducted after fifteen hours of his death which given rise to an inference that time has been consumed by the complainant party and the police in cooking up a story for the prosecution. In the instant case, no delay in post mortem on the dead body of deceased has occasioned. In case of ***Muhammad Farooque (supra)***, the main reason for acquittal of the accused was that co-accused after full fledged trial was acquitted and his acquittal was not challenge. In the instant case, no co-accused has been acquitted. In case of ***Altaf Hussain (supra)***, the main reason for acquittal of

the accused was that the Doctor who examined the deceased was not produced before the trial Court and co-accused were also acquitted. In the instant case, the doctor who examined the deceased has been produced by the prosecution at trial and there is no acquittal of co-accused. In case of ***Muhammad Ashraf alias Acchu (supra)***, the main reason for acquittal of the accused was that the evidence of the complainant and his witnesses was already disbelieved to the extent of co-accused. In the instant case, the trial of co-accused has yet to commence.

11. In view of the facts and reasons discussed above, we find no justification to make interference with the impugned judgment by way of instant appeal. It is dismissed accordingly.

J U D G E

J U D G E