

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Crl. Rev.Appln. No. D – 23 of 2018

Crl. Jail Appeal No. S – 185 of 2018

Crl. Jail Appeal No. S – 212 of 2018

Before;

Mr. Justice Irshad Ali Shah

Mr. Justice Amjad Ali Sahito

Crl. Rev.Appln. No. D – 23 of 2018

Applicant/complainant: Haji Kaloo son of Arz Muhammad
Through Mr. Shakir Nawaz Shar,
Advocate.

Respondents: Through M/s. Ghulamullah Chang
and Ghulamullah Memon,
Advocates.

The State, Through Ms. Rameshan Oad,APG.

Crl. Jail Appeal No. S – 185 of 2018

Crl. Jail Appeal No. S – 212 of 2018

Appellants: Azizullah alias Guju son of Mazzan Khan
Chandio and Muhammad Ilyas son of Ali
Nawaz Chandio.

through M/s Ghulamullah Chang and
Ghulamullah Memon, advocates.

Respondent: The State, through Ms. Rameshan Oad,APG

Date of hearing: 18-11-2019.

Date of decision: 18-11-2019.

J U D G M E N T

The facts in brief necessary for passing of instant judgment are that the appellants with rest of the culprits

after having formed an unlawful assembly and in prosecution of their common object in order to satisfy their old enmity allegedly committed Qatl-e-amd of Bhai Khan when he was discharging his lawful duty as a public servant as Office Superintendent District Court Dadu by causing him fire shot injuries and then went away by threatening the complainant party, for that they were booked and reported upon.

2. At trial, the appellants did not plead guilty to the charge and prosecution to prove it examined complainant Haji Kaloo and his witnesses and then closed the side.

3. The appellants in their statements recorded u/s 342 Cr.P.C denied the prosecution allegation by pleading innocence. They did not examine anyone in their defence. However, they examined themselves on oath and produced copy of FIR crime No.234 of 2006 of PS Khairpur Nathanshah to prove enmity.

4. On evaluation of evidence, so produced by the prosecution, learned trial Court found the appellants guilty for the above said offence(s) and then vide its judgment dated 31st July, 2018 convicted and sentenced the appellants as under;

*“accused (1) Azizullah @ Guju S/o Mazzan Khan Chandio and (2) Muhammad Ilyas S/o Ali Nawaz Chandio are hereby convicted under Section 265-H(ii) Cr.P.C. for committing an offence punishable under section 302(b) P.P.C and awarded sentence to suffer **IMPRISONMENT FOR LIFE**, as there is no proof requiring imposing of death sentence and on the basis of above*

*mitigating circumstances, the above sentence is awarded to the accused. The convicts are directed to pay compensation of Rs.500,000/- (Five Lacs) each to the legal heirs of deceased, as provided under section 544-A Cr.P.C within the **period of 30 days**. The above compensation is to be recovered as arrears of Land Revenue. In case of default, the accused shall suffer additional **S.I. for 06 months**. The accused are confined in jail since their date of arrest, hence, they are also extended benefit of Section 382-B Cr.P.C according to law and their detention period in the jail shall be computed towards the sentence awarded to them, as above.”*

5. The appellants by preferring separate appeals have impugned the above said judgment while the complainant by making Revision Application has sought for enhancement of the conviction and sentence awarded to the appellants.

6. The Appeals and Revision Application so filed now are being disposed of by way of instant judgment.

7. It is contended by learned counsel for appellant Azizullah that; he being innocent has been involved in this case falsely by the complainant party, in order to satisfy their enmity with him; the dying declaration of the deceased has been recorded on oath, which is against the law; the confessional statement of the accused is untrue; the complainant and PWs are chance witnesses of the incident and the recovery has been foisted upon appellant Azizullah. By contending so, he sought for acquittal of the appellant Azizullah.

8. It is contended by learned counsel for appellant Muhammad Illyas that he being innocent has been involved

in this case falsely by the complainant party, only on basis of vicarious liability, otherwise no active role in commission of incident is attributed to him. By contending so, he sought for acquittal of appellant Muhammad Ilyas.

9. It is contended by learned counsel for the complainant that the appellants have been dealt with leniently by learned trial Court without lawful justification. By contending so, he sought for enhancement of the conviction and sentence to the appellants.

10. Learned A.P.G for the State was fair enough to say that the appellants have not been confronted with the report of chemical examiner and confessional statement by learned trial Court during course of their examination under Section 342 Cr.P.C. By stating so, she sought for the remand of the case with direction to learned trial Court to re-write the judgment after recording statements of the appellants under Section 342 Cr.P.C afresh.

11. Learned counsel for the appellants and the complainant were not able to controvert the suggestion made by learned A.P.G for the State. The only suggestion which they made was that the time be fixed for learned trial Court for re-writing of the judgment. By making such suggestion, they impliedly consented for remand of the case.

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

13. It is the case of the prosecution that the appellants with rest of the culprits after having formed an unlawful

assembly and in prosecution of their common object being armed with deadly weapons, in order to avenge old enmity committed murder of the deceased by causing him fire shot injuries while he was performing his duty as Office Superintendent at District Court Dadu. Soon after incident, appellant Azizullah was apprehended together with the crime weapon which he allegedly used in commission of incident, while appellant Muhammad Ilyas made escape his good together with the rest of the culprits. The deceased made his dying declaration and appellant Azizullah admitted his guilt by making a confessional statement before the Magistrate having jurisdiction. The prosecution led its evidence to that context. Unfortunately, the appellants have not been confronted with the report of the chemical examiner and confessional statement during course of their examination u/s 342 Cr.P.C by learned trial Court, which is against the mandate contained by Article-10(A) of the constitution of Islamic Republic of Pakistan, which prescribes guarantee for fair trial. In these circumstances, it would be hard to maintain / set-aside / enhance the conviction and sentence awarded to the appellants by learned trial Court by way of impugned judgment, those are set-aside with direction to learned trial Court to record the statements of the appellants under Section 342 Cr.P.C afresh and then to pass the judgment (afresh) by providing fair chance of hearing to all the concerned within two months after receipt of copy of this judgment.

14. Needless to state that the conviction and sentence have been set-aside, therefore, no issue of its enhancement remains in field to be examined. Indeed, the Revision Application has become infructuous.

15. The instant appeals and Revision Application stand disposed of in above terms.

Judge

Judge

Ahmed/Pa