

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Appeal No.S- 95 of 2013

Appellant: Mubarak son of Jumoon,
Through Mr. Ghulamullah Chang, Advocate

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

Date of hearing: 22.11.2019

Date of decision: 22.11.2019

J U D G M E N T

The facts in brief necessary for passing the instant judgment are that the appellant Mubarak with rest of the culprits after having formed an unlawful assembly and in prosecution of their common object in order to satisfy their dispute with the deceased Abbas Hyder over landed property not only committed his murder by causing him fire shot injuries but caused hatchet injuries to PW Ali Muhammad with intention to commit his murder and then went away by insulting the complainant party, for that they were booked and reported upon.

2. At trial, the appellant and co-accused Jumo, Achoo, Mst. Zahid and Rehmanullah did not plead guilty to the charge and prosecution to prove it examined PW-1 complainant Babar Ameer; PW-2 Ali Muhammad; PW-3 Adnan Hussain; PW-4 Tarique Hussain; PW-5 mashir Nazeer Ahmed; PW-6 Muhammad Ibrahim; PW-7 Ashfaque Ahmed; PW-8 Dr. Bashir Ahmed; PW-9 Tapedar Talib; PW-10 ASI Ghulam Nabi and then prosecution closed its side by producing report of ballistic expert and chemical examiner by way of statement.

3. Few step before closer of side by the prosecution, co-accused Asadullah and Samiullah joined the trial, they together with co-accused

Mst.Zahida and Rehmanullah were acquitted by learned trial Court by way of compromise one after other.

4. The appellant and co-accused Jumoon and Achoo 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 to disprove the prosecution allegation against them.

5. On evaluation of evidence so produced by the prosecution, learned trial court convicted and sentenced the appellant and co-accused Jumoon and Achoo vide his judgment dated 30.07.2013 as under:

“Accordingly I take lenient view as accused Mubarak, Jumoon and Auchoo are facing trial of this case since 2007, convict and sentenced accused for an offence punishable u/s 302-B & 149 PPC for imprisonment for life and fine of Rs.100,000/-each and in case of default, in payment of fine the accused shall further under go imprisonment for two years each. If fine paid by the accused the same be paid to legal heirs of deceased Abbas Hyder u/s 544-A, Cr.P.C. I also convict accused Mubarak, Jumoon and Auchoo and sentenced them for an offence punishable u/s 324 & 149 PPC for seven years and fine of Rs.10,000/-each. I further convict accused Mubarak, Jumoon and Auchoo and sentenced them for an offence punishable 337-A(i) & 149 and 337-A(iii) & 149 PPC to suffer two years and ten years respectively and also pay Arsh of Rs.217,457.70/-each. If Arsh paid by the accused, same be paid to injured Ali Muhammad Dars as compensation. Until Arsh is paid in the full to the extent of liability of each accused to victim Ali Muhammad Dars, the accused be kept in jail and dealt with the same manner as if sentenced to simple imprisonment. All the sentences shall run concurrently. Benefit of section 382-B Cr.P.C is extended to the accused.”

6. The appellant and co-accused Jumoon and Achoo by preferring their appeals impugned the aforesaid judgment before this Court. The appeal(s) preferred by appellant Jumoon and Achoo came to an end (abated) on account of their death while appeal preferred by the appellant remained

pending on the file, which now is being disposed of by way of instant appeal.

7. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the complainant party; the appellant was having no concern with the land of the deceased; the complainant and his witnesses are not natural witnesses of the incident; co-accused Mst. Zahida, Rehmanullah, Asadullah and Sanullah have already been acquitted by way of compromise by learned trial Court while co-appellant Jumoon and Achoo have died during pendency of their appeal; no specific injury to the deceased is attributed to the appellant; the pistol has been foisted upon the appellant and he has already been acquitted in such case of recovery of unlicensed pistol by learned trial Magistrate; the evidence of the prosecution being contradictory and un-reliable has been believed by learned trial Court without lawful justification. By contending so, he sought for acquittal of the appellant.

8. Learned D.P.G for the State by supporting the impugned judgment has sought for dismissal of the instant appeal by contending that the appellant has actively participated in commission of incident.

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

10. As per the FIR the deceased was having dispute with the sons of Malik Muhammad Sadiq over nine acres of the land. Nothing has been brought on record which may suggest that the deceased was having the nine acres of the land and it was under dispute with sons of Malik Muhammad Sadik. If for the sake of arguments, it is believed that the

deceased was having nine acres of the land, which he went to visit on the date of incident, then complainant Babar Ameer and PW Adnan Hussain being resident of distant place were having no reason to have gone with him (deceased) over his landed property. Perhaps in that context, it is contended by learned counsel for the appellant that the availability of complainant Babar Ameer and PW Adnan Hussain at the place of incident is doubtful one. If for the sake of arguments, it is believed that the complainant and PW Adnan Hussain were available at the place of incident, then there could be made no denial to the fact that they have attributed generalized role of causing fire shot injuries to co-accused Rehmanullah, Asadullah, Samiullah and the appellant upon the deceased. In other-words, it is not specified by them, which of the injury was caused by which of the accused to the deceased. As said above, co-accused Rehmanullah, Asadullah and Samiullah have already been acquitted by learned trial Court by way of compromise. In that situation, it would be hard now to hold the appellant (alone) to be guilty for the above said offence, on the basis of unspecified injury to the deceased.

11. In case of ***Muhammad Arif vs The State (2010 SCMR 1122)***, it was observed by the Hon'ble Court that;

“---S. 302(b)---Qatl-i-amd---Appraisal of evidence---Benefit of doubt---Eye-witnesses were interested, hostile and inimical to accused and their evidence required strong and independent corroboration, which was lacking in the case. As soon as the accused came out from the house they started firing and the complainant and other eye-witnesses started running to save their lives-Eye-witnesses, therefore, could not be in a position to distinguish and specify the weapon carried out by each accused---General allegations having been leveled against the accused and other

accused persons, it was not known as to whether the shot fired first by accused had hit the deceased--- Medical evidence also did not help in specifying the weapons used for causing the injuries---Recovery of crime empty of 8 mm rifle from the spot did not connect the accused with the commission of the crime---Accused was given benefit of doubt and acquitted in circumstances."

12. On arrest from the appellant has been secured unlicensed pistol of 30 bore by SIO/SIP Zakria. He has not been examined by the prosecution at trial on account of his death. His deprived the appellant valuable right of cross examination. Be that as it may, the appellant admittedly has been acquitted by learned trial Magistrate in arms ordinance case relating to recovery of above said unlicensed weapon. In that situation, it would be hard to connect the appellant with the recovery of the alleged crime weapon.

13. Admittedly, the hatchet injuries to PW Muhammad Ali with intention to commit his murder have been attributed to co-accused Jumoon and Achoo, who admittedly now have died. In that situation, it too would be hard to connect the appellant with the above said injuries to PW Muhammad Ali on point of vicarious liability.

14. 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), Ghulam Qadir 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)."

15. The discussion involved a conclusion that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt and to such benefit the appellant is found to be entitled.

16. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellant by way of impugned judgment are set-aside. Consequently, the appellant is acquitted of the offence, for which he has been charged, tried and convicted by the learned trial court. The appellant is in custody, he shall be released forthwith if not required in any other custody case.

17. The instant appeal is disposed of accordingly.

J U D G E