

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD  
Criminal Appeal No.S- 318 of 2010**

**Appellant:** Mazhar Hussain son of Kazim Ali,  
Through Mr. Muhammad Jamil Ahmed,  
Advocate

**Complainant:** Manzoor Ali son of Ghulam Azam,  
Through Mr. Karamullah Memon, Advocate

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

**Date of hearing:** 02.12.2019

**Date of decision:** 02.12.2019

**J U D G M E N T**

**IRSHAD ALI SHAH, J.** The facts in brief necessary for disposal of instant appeal are that appellant 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 complainant party over plot, caused hatchet and lathi blows with intention to commit murder of complainant Imamdad, PWs Sono, Kamil, Pandhi and Mohabat (who died of such injuries), for that they were booked and reported upon.

2. At trial, the appellant and four others did not plead guilty to the charge and prosecution to prove it examined complainant Imamdad and his witnesses and then closed the side.

3. The appellant and four others, 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 or themselves on oath.

4. On conclusion of the trial, learned trial Court acquitted Haji Gul alias Gul Muhammad, Umed Ali, Ameer Ali alias Ameer Bux and Irshad being co-accused while convicted and sentenced the appellant to undergo Imprisonment for life and to pay compensation of rupees two lac to the legal heirs of said deceased for offence punishable u/s 302(b) PPC vide its judgment dated 23.12.2013. It was impugned by the appellant by way of filing an appeal against his conviction and the complainant by filing an appeal against acquittal of co-accused, same as per learned counsel for the complainant was dismissed while appeal preferred by the appellant was accepted, consequently, his case was remanded to learned trial Court for rewriting of the judgment after recording his statement u/s 342 Cr.P.C afresh. It was done accordingly and thereafter, the appellant was again convicted and sentenced to undergo Imprisonment for life and to pay fine of rupees two lac payable to legal heirs of the deceased as compensation and in case of his failure to make such payment to undergo Simple imprisonment for six months for offence punishable u/s 302(b) PPC with benefit of section 382-B Cr.P.C vide judgment dated 21.06.2018, by learned Sessions Judge, Dadu, which is impugned by the appellant before this Court by way of instant appeal.

5. 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 in order to settle its dispute with him over plot; the FIR has been lodged with un-explained delay of about one day; the 161 CrPC statements of the PWs have been recorded with further delay of seven days even to FIR; PWs Pandhi and Sono have not been examined by the prosecution, without lawful justification; the deceased on medical examination was found sustaining no injury with sharp cutting weapon; the property has been subjected to chemical examination with delay of about seventeen days to its recovery; on the basis of same evidence Haji Gul alias Gul Muhammad, Umed Ali, Ameer Ali alias Ameer Bux and Irshad being co-accused have been acquitted while the appellant has been convicted by learned trial Court, which is against the spirit of safe administration of justice. By contending so, he prayed for acquittal of the appellant. In support of his contention he relied upon case of ***Umer vs The State (2009 P.Cr.L.J 1119)***.

6. Learned A.P.G for the State and learned counsel for the complainant by supporting the impugned judgment have sought for dismissal of the appeal of the appellant and in support of their contention have relied upon case of ***Farooq Khan vs The State (2008 SCMR 917)***.

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

8. It was stated by complainant Imamdad and PW Kamil that on 12.06.2009, the appellant, co-accused Haji Gul alias Gul Muhammad, Umed Ali, Ameer Ali alias Ameer Bux and Irshad after having formed unlawful assembly and in prosecution of their common object caused hatchet and lathi blows to them and PWs Pandhi, Sono and deceased Mohabat with intention to commit their murder. Specific role of causing hatchet blow to deceased Mohabat on his head is attributed to the appellant. On arrest, from the appellant has also been secured hatchet allegedly used in commission of incident. Significantly, on recovery, it was found stained with the blood. As per medical officer Dr. Mehboob such injury was caused to the deceased with some hard blunt substance. If the medical evidence is believed to be true, then it not only belies the complainant and PW Kamil that the deceased was done to death by the appellant by causing him hatchet injury on his head, but has also made the recovery of the hatchet from the appellant, allegedly used in the commission of incident to be doubtful one. It goes to suggest that it has been foisted upon the appellant by the police only to strengthen the case with object to make it believes that it has been used by the appellant in commission of incident. Be that as it may, the FIR of the incident has been lodged by the complainant with un-plausible delay of one day; such delay could not be lost sight of. It is reflecting consultation.

9. In case of ***Muhammad Asif vs the State (2008 SCMR 1001)***, it has been held by Hon'ble apex Court that;

*“Delay of about two hours in lodging FIR had not been explained—FIRs which were not recorded at the Police Station, suffered from the inherent presumption that same were recorded after due deliberation.”*

10. PWs Sono and Pandhi being injured witnesses of the incident have been given-up by the prosecution. The inference which could be drawn of their non-examination would be that they were not going to support the case of the prosecution. The 161 Cr.P.C statements of the PWs as per SIO / SIP Jaro Khan have been recorded on 20.06.2009. It was with delay of about seven days even to FIR. No explanation to such delay is offered by the prosecution.

11. In case of **Abdul Khaliq vs. the State (1996 SCMR 1553)**, it was observed by Hon’ble Court that;

*“---S.161---Late recording of statements of the prosecution witnesses under section 161 Cr.P.C. Reduces its value to nil unless delay is plausibly explained.”*

12. Haji Gul alias Gul Muhammad, Umed Ali, Ameer Ali alias Ameer Bux and Irshad being co-accused who allegedly have participated in commission of incident by sharing common intention, have already been acquitted by learned trial Court in (first round of litigation), significantly, on the basis of same evidence. In that situation, it would be hard to maintain the conviction against the appellant.

13. In case of **Sardar Bibi and others vs. Munir Ahmed and others (2017 SCMR-344)**, it was held by the Hon’ble Court that;

*“When the eye-witnesses produced by the prosecution were disbelieved to the extent of one accused person attributed effective role, then the said eye-witnesses*

*could not be relied upon for the purpose of convicting another accused person attributed a similar role without availability of independent corroboration to the extent of such other accused”.*

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

15. 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).”***

16. The case law which is relied upon by learned A.P.G for the State and learned counsel for the complainant is on distinguishable facts and circumstances. In that case, it was held that emphasis should be on quality of evidence and not on its quantity. In the instant matter, there was delay in lodgment of FIR and recording 161 Cr.P.C statements of the PWs and medical evidence was in conflict with the ocular evidence so far use of the crime weapon is concerned.

17. The based upon above discussion, the conviction and sentence recorded against the appellant together with the impugned judgment are set-aside. Consequently, the appellant is acquitted of the offence, for which he was charged, tried and convicted by learned trial Court, he shall be released forthwith in the present case.

18. The appeal stands disposed of in above terms.

**J U D G E**

Ahmed/Pa