

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Appeal No.S- 120 of 2013

Appellants: Abdul Majeed alias Majeed son of Khan
Mohammad Mallah and Rafique son of Khan
Mohammad Mallah,
Through Mr. Rashid Ahmed Qureshi,
Advocate.

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

Date of hearing: 20.12.2019

Date of decision: 20.12.2019

J U D G M E N T

IRSHAD ALI SHAH, J. The facts in brief necessary for disposal of instant appeal as per prosecution are that they with one unknown culprit in furtherance of their common intention caused fire shot injury to PW Irfan Ali with intention to commit his murder and then went away by maltreating him, 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 Mst. Malooka and her witnesses and then closed the side.

3. The appellants, in their statements recorded u/s 342 Cr.P.C have denied the prosecution allegation by pleading innocence, they however, did not examine anyone in their defence or themselves on oath to disprove the prosecution allegation against them.

4. On conclusion of the trial, learned Ist Additional Sessions Judge, Hyderabad found the appellants to be guilty for offence punishable

u/s 337-F(iii) PPC and then convicted and sentenced them to Rigorous Imprisonment for three years, vide his judgment dated 12.09.2013, which is impugned by the appellants before this Court by way of filing instant appeal.

5. It is contended by learned counsel for the appellants that the appellants being innocent have been involved in this case falsely by the complainant party in order to satisfy its matrimonial dispute with them; the FIR has been lodged with delay of about nine days; there is no recovery of any sort from the appellants and they have been convicted by learned trial Court on the basis of evidence, which was doubtful in its character. By contending so, he sought for acquittal of the appellants.

6. Learned A.P.G for the State by supporting the impugned judgment has sought for dismissal of the instant appeal.

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

8. In first instance the incident was recorded in Roznamcha under entry No.33 dt: 16.09.2011. It does not contain the name of any of the culprit involved in the incident. The FIR of the incident was lodged formally on 25.09.2011 with un-plausible and unexplained delay of nine days, therein have been disclosed the names of the appellants, such disclosure of the names of the appellants obviously is appearing to be result of deliberation and 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. The parties admittedly are disputed over matrimonial affair. No blood mark was found available at the place of incident. No effective role in commission of incident is attributed to appellant Reafique. The injury sustained by Pw Irfan was not on vital part of his body. It was on lower part of his left leg and perhaps for this reason no conviction has been awarded to the appellants for offence punishable u/s 324 PPC. PW Mashir Baboo was not able to disclose the name of co-mashir, such omission on his part could not be overlooked. In these circumstances, it would be safe to conclude that the prosecution has not been able to prove its case against the appellants beyond shadow of doubt.

11. 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).”

12. In view of the facts and reasons discussed above, the conviction and sentence recorded against the appellants together with the impugned judgment are set-aside. Consequently, they are acquitted of the offence, for which they have been charged, tried and convicted by learned trial Court, they are present on bail, their bail bond stands cancelled and sureties are discharged.

13. The captioned appeal is disposed of in above terms.

J U D G E