JUDGMENT SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Appeal No.S-181 of 2003

Appellants:	Umer and Inayat, in person.
Respondent:	The State through Ms. Sana Memon, Assistant Prosecutor General Sindh.
Date of hearing:	27.08.2021
Date of decision:	27.08.2021

J U D G M E N T

KHADIM HUSSAIN TUNIO, J,- Through instant criminal appeal, the appellants have challenged the conviction and sentence awarded by the learned Additional Sessions Judge, Shahdadpur, through judgment dated 10.07.2003, passed in S.C No. 46 of 2000 *[Re- State v. Umer and another]* emanating from crime No.41/1999 registered at PS Shahdadpur for the offence punishable under sections 324, 147, 148 and 149 PPC, whereby the appellants were sentenced for the offence under section 324 to undergo R.I. for four years and to pay fine of Rs.50,000/- (Rupees fifty thousand only). However, the appellants were extended benefit of section 382-B Cr.P.C.

2. Facts relevant to the appeal are that the appellants allegedly had a dispute with the complainant over matrimonial terms. On 09.10.1998, complainant along with his wife and brother took the complainant's younger son to the doctor. On their way back, at around 04:00 p.m. they reached an abandoned building where they were approached by the appellants and co-accused armed with lathies. After an exchange of harsh words, the complainant allegedly received several injuries at the hands of the appellants and co-accused and then fled the

scene. The complainant, after his treatment, then appeared at the police station on 10.04.1999 and lodged the FIR.

3. After completing investigation, the Investigating Officer submitted the challan against the accused before competent Court of law, showing all the accused as absconders. The learned trial Court after compliance under section 265-C Cr.P.C. framed a formal charge against the accused, declaring them as pro-claimed offenders. Subsequently, the present appellants were arrested after which the charge was amended. In order to substantiate the charge, prosecution examined a total of 5 witnesses and thereafter prosecution closed its side.

4. Statements of accused u/s 342 Cr.P.C were recorded, in which they denied the case of prosecution, claimed their false implication due to enmity and pleaded their innocence. However, they neither examined themselves on oath nor examined any witness in their defence.

5. After hearing the learned counsel for the appellants/accused, learned counsel for complainant and learned DDPP for the State, learned trial Court convicted the appellants in the manner as stated above, hence, this appeal.

6. Appellants, present in person, coupled with the grounds mentioned in the memo of appeal, contended that they are innocent and have been falsely implicated in the case by the complainant; that there is a matrimonial dispute between them; that all the eye-witnesses are interested and related to the complainant; that there is a 6 months delay in the lodging of FIR; that the delay in filing the appeal was beyond their control and was due to a misunderstanding between them and

their attorney. They have prayed for their acquittal and condonation of delay.

7. Conversely, learned A.P.G. for the State has supported the impugned judgment.

8. I have heard the appellants, learned A.P.G. for the State and minutely examined the material available on the record.

9. It was brought to the Court's attention that the appeal was filed with a delay for which an application u/s 5 of the Limitations Act was filed. It would be pertinent to deal with the same first as the same would entail whether the case carries forth on merit or not. It is undeniable that the right to appeal is an extensive right which, to be simply brushed aside due to technicalities, is rather unjust and unfair. Condonation of delay would not affect this case on its merits and would only allow for safe administration of justice and would only right the wrongs, if any. It is settled principle of law that the law favours the decision of a *'lis'* on merits without making technicalities of law as hurdles in the way of doing substantial justice. Refusal to condone delay can result in a meritorious matter being dismissed at the very threshold, thus defeating the cause of justice. As against this, the highest that can happen on condonation of delay is that a case would be decided on merits after hearing the parties.

10. A perusal of S. 5 of the Limitations Act *(herein under referred to as "The Act")* provides, in layman's terms that an appeal or whatever the case be ***'may be admitted'*** if the Court choose to extend the period of limitation in a case where the appellant satisfies the Court that he had ***'sufficient cause'*** for not preferring an appeal within the prescribed period of limitation. The words ***"may be admitted"*** indicates that a vast

discretionary power is granted to the court under this section. No parameter is given to determine the sufficient cause. It depends entirely on the will to court to declare any cause as sufficient enough to keep the party away from filing any appeal, review or revision. The term "***sufficient cause***" should be considered with pragmatism in a justice-oriented approach rather than technical detection of sufficient cause for explaining the delay. To determine what constitutes as "***sufficient cause***" under S. 5 of the Act, there is no straitjacket formula. It is a rather elastic term that enables this Court to apply the law in a meaningful manner which serves the ends of justice. The appellants explained that the delay in filing of the appeal was caused due to a misunderstanding between them and their counsel while the appellants were in jail, who had assumed that the appellants would have filed the appeal through jail authorities as they were incarcerated. This, to me, seems a justifiable reasons as to why the appellants could not move this Court. The present case has gone on for over a decade now and it is rather shocking, let alone pitiful. In most if not all cases, condonation of delay is subject to giving a reasonable explanation which might have prevented party in approaching the Court. Therefore, while deciding on the question of limitation, the circumstances claimed to have prevented one in moving the Court, would always be decisive and the Court's approach rather liberal. Needless to add here that where circumstances pleaded appear to be reasonably justified or even have the slight likelihood of being believable, though without proof, then the delay must always be condoned. That is so because of the reason earlier established that it would only enable a party to plead its case and the Court to establish the merit of the case. Reliance in this respect is placed on the case of *Fazli Hakeem and another v. Secretary, State and Frontier Regions Division and others* **(2015 SCMR 795)** wherein it was observed by the Hon'ble Apex Court as under:-

> "7. Even otherwise, the Courts of law are not supposed to perpetuate what is unjust and unfair

> by exploring explanation for an act which is prima facie against law and thus void. They should rather explore ways and means for undoing what is unfair and unjust. Even the question of limitation, if at all, created any impediment in the fair adjudication of the case, has to be looked from such angle of vision…"

Moreover, the case of *Miraj Din alias Nawaz v. The State* **(1999 SCMR 1457)** provides that considering the circumstances of the appellant, being helpless when it came to filing the appeal, and seeing that this was his chance of appeal provided by law for examining on merits, the legality and propriety of his conviction and sentence was to be seen and it was just and proper that the case was to be gone through on merits. It was observed that:-

> "In the present case, considering condition of the appellant and the fact that no male person is available to prosecute the litigation on his behalf and he was an utterly helpless person, the delay involved is excusable. In any case interference is called for considering the fact that the prosecution has utterly failed to bring home the guilt of the appellant Miraj Din, and in these circumstances the conviction and sentence awarded to him is illegal and unjust."

Similar observations were taken in the case of *Ghulam Abbas and others v. The State* **(2003 SCMR 510)**.

11. Furthermore, I have scanned the material of the case available before me. From the perusal of record, it reveals that the complainant had nominated six persons, one of whom named Badar with the allegation that he held them at gun point to keep them quiet whereas for the appellants along with the other that they, armed with lathies, attacked upon the complainant and allegedly broke his legs and arms. Duly admitted, the appellants are nominated in the FIR that was lodged after a delay of 6 months, it does not specify with names of any accused let alone the appellants to have caused **specific** injuries and all there is left are general allegations. In the instant case, the witnesses have claimed to have witnessed the incident, but after perusing their

evidence and keeping it in juxtaposition with the medical version; I am unable to understand as to whether all the witnesses have adduced their testimony based on truthfulness. All the eye-witnesses have deposed in a very mechanical manner and a perusal of the same shows that they are recorded in the same pattern as in the crime report. Even during the course of investigation, nothing was brought on record nor was anything recovered from the possession of the appellants that would remotely connect them with the offence, not even the lathies allegedly used in the commission of offence. The version furnished by the eye-witnesses appears to be highly unbelievable as per them, an accused was present on scene with a T.T pistol, and the accused had come all the way from Umerkot which was their place of residence to Shahdadpur to make an attempt at the life of the complainant, however they only used lathies in the commission of offence, a non-lethal weapon at that despite the presence of a firearm. It is also admitted position that the eye-witnesses were related with each other, therefore, their testimony would fall under the category of interested witnesses, which casts further doubt on the reliability. In a case of this nature where there is disbelief in the ocular account being furnished by eye-witnesses of the occurrence qua other corroborative/supporting evidence then it becomes duty of prosecution to establish its case through cogent and convincing evidence, which element is missing in the case in hand. In this regard, some convincing and justifiable substance must have been put forth but in its absence, the evidence of PWs would fall within the category of suspect evidence and cannot be accepted on its face value. Reliance is placed upon the case of ***Sughra Begum v. Qaisar Pervaiz*** **(2015 SCMR 1142).** In the case in hand, the witnesses have claimed to have witnessed the incident, but I am unable to understand the circumstances which prevented them from rescuing the injured. I am not prepared to believe that eye witnesses remained calm and silent because accused were armed with "**deadly weapons**", those being lathies and one armed man with a T.T pistol. The injuries on the person of the complainant appear

rather doubtful as well and from the cross-examination of the medical officer examined at Ex. 18 who also noted that the injuries and swelling received by the complainant can also be caused if one falls from a tree.

12. Besides the above, this case was registered at Police Station Shahdadpur under orders of the Sessions Judge Sanghar on 10.04.1999 regarding an occurrence alleged to have taken place on 09.10.1998, being 6 months apart from each other. Appearing before the learned trial Court, the complainant and other witnesses deposed that they moved *"higher authorities"* and the Sessions Judge for registration of the FIR, however nowhere was it stated by them that their pleas of registering the case were denied by the police; even otherwise such an assertion was not substantiated by any documentary evidence, if any. All the eye-witnesses deposed that police had reached the place of incident as well and helped transferring the complainant to the hospital, and such fact was admitted by the Medical Officer who was examined at Ex. 18 as well. However, even then he was unable to register the FIR and set the machinery of justice in motion for reasons best known to him. Such a shocking delay of 6 months cannot and will not escape sight before this Court and holds great gravity. Guidance was sought in this matter from the case of *Altaf Hussain v. The State* **(2019 SCMR 274)** wherein it was held by the Hon'ble Apex Court that:-

> "3. This case was registered under sections 337-F(iv), 336 and 34, P.P.C. at Police Station Shorkot City District Jhang under the orders of the learned Justice of the Peace Jhang on 19.03.2006 regarding an occurrence alleged to have taken place on 09.02.2006 and as such there is a delay of forty days in reporting the crime to the Police without any plausible explanation. While appearing before the learned trial court as PW.3 Saeed Ahmad complainant stated in his examination-in-chief that they reported the matter to the police repeatedly but the case was not registered, however, this assertion was not substantiated by any document... Moreover, it has been observed by us that Sajjad

> Ahmad *(deceased)* was medically examined in injured condition through police on 09.02.2006 at 1.45 p.m. i.e. the date of occurrence. Therefore, this inordinate delay in setting the machinery of law in motion speaks volumes against the veracity of prosecution version."

13. In the case of *Tariq Ali Shah and another v. The State and others* **(2019 SCMR 1391)**, it has been held by the Hon'ble Apex Court that:-

> "The High Court itself viewed the above injury with suspicion for being incompatible/inconsistent with the weapon, seized with appellant's arrest. It casts away the hypothesis of appellant's arrest soon after the occurrence alongside the weapon of offence. Witnesses do not appear to have come forward with the whole truth and given the formidable past hounding both sides, patent discrepancies cannot be viewed as trivial, particularly after prosecution's failure qua three of the co-accused albeit with somewhat different roles. It would be unsafe to maintain the conviction. Criminal Appeal No.299-L/2017 is allowed; impugned judgment is set aside; the appellant is acquitted from the charge and shall be released forthwith, if not required in any other case. As a natural corollary, Criminal Appeal No.298-L/2017 is dismissed."

14. In another case of *Mohammad Mansha v. The State* **(2018 SCMR 772)** whereby the Hon'ble Supreme Court of Pakistan has held as under:-

> "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 Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v, The State 2009

SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749)."

16. Therefore, it is a well-settled principle of criminal law that it is for the prosecution to prove its case against the appellants/accused beyond reasonable shadow of doubt. For the foregoing reasons, I am of the humble opinion that the prosecution has failed to establish its case beyond reasonable shadow of doubt, therefore, the appeal was allowed and the delay was condoned, impugned judgment was set aside and appellants were acquitted of the charge through my short order dated 27.08.2021 and these are the reasons for the same.

JUDGE

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