

ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Jail Appeal No. S – 27 of 2014

For hearing of main case

(Jail Roll received)

Mr. Shabbir Ali Bozdar Advocate for the appellant
Mr. Khalil Ahmed Maitlo, DPG for the State

Date of hearing: 23.9.2019

Date of decision: 23.9.2019

J U D G M E N T

Aftab Ahmed Gorar, J; Through this Criminal Jail Appeal, the appellant namely Khuda Bux S/o Khawand Bux Bhutto has assailed the impugned judgment dated 24.4.2014 passed by learned III-Additional Sessions Judge Mirpur Mathelo, whereby he has convicted and sentenced the appellant u/s 265-H(ii) Cr.P.C to undergo Imprisonment for life u/s 302(b)/34 PPC and to pay fine of Rs.50,000/- to be paid to the legal-heirs of deceased Mir Muhammad alias Meeran as provided u/s 544-A Cr.P.C, in case of failure thereof, the appellant shall undergo S.I for 06 months more. The benefit of Section 382-B Cr.P.C was also extended to him.

2. Succinctly stated facts of the prosecution case are that on 13.09.1994, complainant Abdul Haleem lodged FIR at Police Station Daharki, alleging therein that on the day of incident he along with his brother Mir Muhammad alias Miran left their house by foot to attend the hearing of case registered by Miran against Punhoon and others pending trial in the Court of Assistant Sessions Judge Mirpur Mathen, when at about 07:00 a.m, they reached at thoroughfare leading to Fareed Malik on the bank of Nihal Wah, where they were confronted by accused Punhoon, Dur Muhammad alias Duro and Khuda Bux, having guns. They told the brother of complainant Miran that since he is not withdrawing from the case, therefore, he would not be spared, the accused persons conjointly fired

at his brother Miran, who after receiving gunshot injuries fell down. The complainant raised cries, which attracted his maternal-cousin Allah Warrayo and Allah Wassayo, both sons of Khair Muhammad, who also saw the accused persons. Then the accused persons escaped away. Thereafter they (complainant party) went over Miran and found him dead having injuries on the right side head and left side of chest and was bleeding. The complainant left witnesses over the dead body of Miran, he went to police station Daharki, where he lodged the FIR.

3. The police after usual investigation filed challan, showing the present accused Khuda Bux in custody, Punhoon as absconder, whereas, accused Dur Muhammad alias Duroo as innocent, his name was placed in column No.2, subsequently accused Punhoon was arrested and sent up to face the trial through supplementary report dated 04.11.1996. After supplying case papers to the accused, the formal charge was framed against the accused at (Ex.3) to which they pleaded not guilty and claimed to be tried.

4. The prosecution in order to substantiate its case, examined PW-1 complainant Abdul Haleem at (Ex.7), who produced FIR at (Ex.8); PW-2 Allah Wassayo at (Ex.9), who produced mashirnama of place of incident, inquest report of deceased, and his statement u/s 164 Cr.P.C at (Ex.10 to 12) respectively. The complainant filed an application at (Ex.13) stating therein that he does not want to examine the eye-witness PW Allah Warrayo, hence on such application of the complainant learned D.A given-up the evidence of said witness vide statement at (Ex.14); PW-3 Medical Officer Dr. Javed Hussain at (Ex.15), who produced postmortem report of deceased at (Ex.16); PW-4 SIP Fida Hussain at (Ex.18), who produced mashirnama at (Ex.19); PW-5 Muhammad Siddique at (Ex.20), who produced further statement of complainant at (Ex.21); PW-6 Tapedar Insaf Ali at (Ex.22), who produced sketch of vardat at (Ex.22/A); PW-6 Hussain Bux at (Ex.24). Thereafter side of the prosecution was closed by learned Prosecutor and produced Chemical report along with his statement at (Ex.25).

5. The statements of the appellant and co-accused Punhoon were recorded at (Ex.27 & 28) respectively, in which they denied the prosecution allegations and further stated that they are innocent, whereas, the complainant has falsely implicated them in this false case with malafide intention and ulterior motive. All the P.Ws are related inter se and have falsely deposed against them. The appellant Khuda Bux has also denied the recovery of crime weapon from him and produced certified copy of judgment in case of 165/1995, State vs. Khuda Bux u/s 13(d) Arms Ordinance, Crime No.152/1994 of P.S Daharki at (Ex.27/A) and diary sheet dated 13.9.1994 at (Ex.27/B), while accused Punhoon produced judgment in S.C No.54/92 re- Khuda Bux and others u/s 307, 324 PPC, Crime No.13/1992 of P.S Ubauro at (Ex.28/A).

6. Learned trial Court after hearing the learned counsel for the parties convicted the accused persons namely Khuda Bux and Punhoon for an offence punishable u/s 302(b) PPC and sentenced them to suffer Imprisonment for life and to pay fine of Rs.50,000/- each recoverable as land revenue arrears. In default in payment of fine, they were ordered to suffer 06 months R.I more with benefit of Section 382-B Cr.P.C.

7. The appellant and co-accused preferred Criminal Appeal No.S-80/2006 re- Khuda Bux and another vs. The State before this Court, the said appeal was disposed of with the observation;

“By consent, the impugned judgment is set aside and the matter is remanded to the trial Court with directions to record the statements of appellants / accused afresh keeping in view of the provisions of Section 340, 342 and 364 Cr.P.C and after hearing the parties decide the case in accordance with law.”

8. The learned trial Court on written request of the appellant provided an advocate on State expenses to him. Thereafter fresh statements of the accused persons namely Khuda Bux and Punhoon were recorded at (Ex.36 &

37), wherein they have denied the prosecution allegations and claimed their innocence. However, they did not examine themselves on oath nor led any evidence in their defence. The accused persons relied upon the documents which were already produced by them in their earlier statements u/s 342 Cr.P.C.

9. Learned trial court after hearing learned counsel for parties by judgment dated 24.04.2014, convicted and sentenced the appellant and co-accused Punhoon, as stated above.

6. Learned counsel for appellant mainly contended that appellant is innocent and has falsely been implicated by the complainant party with malafide intentions and ulterior motives. He further contended that evidence adduced by the prosecution at trial was not properly assessed and evaluated by learned trial Court, though the complainant Abdul Haleem and PW Allah Wassayo have implicated the appellant in examination-in-chief, whereas, there are sufficient discrepancies in their evidence, which were not considered by the learned trial Judge while passing the impugned judgment. Furthermore, the evidence of one of the eye-witness namely Allah Warrayo has been given up by the learned District Attorney through his statement, as the complainant filed an application at (Ex.13) that the said witness has intermingled with the accused persons, therefore, he has no confidence upon him. It is further contended that appellant that has also served out major portion of sentence i.e. 15 years and 03 months, therefore, he also prayed for reducing the sentence of the appellant to that of already undergone. In support of his contentions, he relied upon case of **Gul Naseeb v. The State (2008 SCMR 670)** and **Niaz-ud-Din v. The State (2007 SCMR 206)**.

7. Learned Deputy P.G appearing for the State supported the impugned judgment, however, he conceded to the reduction of sentence of appellant to that of already undergone. On query, learned DPG admitted that appellant is not previous convict.

8. I have carefully heard the learned counsel for the parties and scanned the entire evidence.

9. On scanning the evidence of prosecution witnesses, it appears that no doubt PW-1 complainant Abdul Haleem and PW-2/eyewitness namely Allah Wassayo have implicated the appellant in their examination-in-chief with the commission of offence, however, there are material discrepancies in their cross-examination. Furthermore, during trial the complainant Abdul Haleem filed an application at (Ex.13) stated therein that he did not want to examine the eyewitness Allah Warrayo, as he has intermingled with the accused persons, therefore, on such application, learned Prosecutor given-up the evidence of said eyewitness. Moreover, as per jail roll dated 18.09.2019 the appellant has served out his sentence for 15 years and 03 months with remissions earned by him are 05 years, 01 month and 29-days.

10. Upshot of the above discussion is that the learned counsel for the appellant has made out a case for reduction in the sentence of appellant, therefore, while following the dictum laid-down in case of ***Gul Naseeb and Niaz-ud-Din (supra)***, the above Criminal Appeal of the appellant is partly allowed. Consequently, while maintaining the conviction of the appellant, the sentence of the appellant inflicted on him is reduced to that of already undergone including sentence of fine amount. Appellant is behind bars. He shall be released forthwith, if not required in any other case. The instant Criminal Jail Appeal stands disposed of in the above terms.

Judge