

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Revision No. S – 101 of 2008

Applicants/accused	:	Ghous Bakhsh and Riaz Ahmed, through Mr. Shamsuddin N.Kobhar Advocate
Complainant	:	None present
Respondent	:	The State, through Mr. Shafi Muhammad Mahar, Deputy Prosecution General
Date of hearing	:	28.10.2019
Date of decision	:	28.10.2019

JUDGMENT

AFTAB AHMED GORAR, J.- Through instant Criminal Revision Application, the applicants / accused have called in question the impugned judgment dated 16.12.2008 passed by learned 1st Additional Sessions Judge Sukkur, in Criminal Appeal No.19/2008 re- Saleem and others vs. The State, whereby the conviction and sentence awarded to the applicants vide judgment dated 26.11.2008, passed by learned 1st Civil Judge & Judicial Magistrate Pano Akil, in Criminal Case No.122/2004 St. Vs. Saleem and others and others arising out of Crime No.125/2004 registered at Police Station Pano Akil, was maintained.

2. The facts of the prosecution case are that on 10.7.2004, complainant Mst. Habiban lodged her FIR, stating therein that there is going on dispute over landed property with Ghous Bux and others and such cases are pending adjudication. On the day of incident, she along with her husband Muhammad Punhal, son Ashfaq and Dhani Bux were present in their house, it was 8:00 a.m, there came accused Ghous Bux empty handed, Riaz Ahmed with pistol, Altaf Ahmed, Sajjad Ahmed, Muhammad Khan, Gul Hassan, Asif Ali, Saleem, with hatchets and lathies intruded into her house. Out of them, accused Ghous Bux instigated his other accomplices on which accused Riaz Ahmed made aerial fires, whereas, the remaining accused

caused lathi and hatchet blows to the complainant party, they entreated them in the name of Almighty Allah, hence they went away. The complainant received injuries on her head, back, shoulder of right arm and on left arm; PW Punhal, Ashfaque had also sustained injuries on the different parts of their bodies, they were bleeding. Thereafter they went to Taluka Hospital Pano Akil for first aid and then she went to police station and lodged her FIR.

3. After registration of the FIR and usual investigation, the applicants/accused were challaned to face their trial for the above said offence in accordance with law.

4. The formal charge was framed against the applicants/accused and co-accused, which they denied and prosecution to prove its case, examined PW-1/complainant Mst. Habiban; PW-2 Punhoon Khan; PW-3 Ashfaque; PW-4 WMO Dr. Farzana Shaikh. Thereafter the learned State counsel closed the prosecution side.

5. The statements under Section 342 Cr.P.C of the present applicants/accused were recorded, in which they denied the prosecution allegations by pleading their innocence. The applicants neither examined himself on oath nor led any evidence in defence, except applicant Raiz Ahmed, who examined DW PC-Dhani Bux Korai in his defence. Thereafter learned counsel for the applicants filed an application U/s 540(A) Cr.P.C, which was allowed and evidence DWs Dhani Bux and PC Jameel Ahmed was recorded then the side was closed.

6. On conclusion of the trial and after hearing the learned counsel for the parties, the learned trial Court convicted and sentenced the applicants/accused in the following terms;

“In view of the discussions held in points supra, I have come to the conclusion that prosecution has succeeded in establishing its case beyond the shadow of reasonable doubt with regard to the house trespass and

injuries caused by accused persons jointly upon complainant and her witnesses, at the instigation of accused Ghous Buksh, namely Punhal and Ashfaq Ahmed, therefore, I find that accused Saleem, Ghous Bux, Asif and Riaz Ahmed are liable to be convicted for committing house trespass, consequently accused Saleem s/o Ali Nawaz, Ghous Bux s/o Allah Bux, Asif s/o Ali Nawaz and Riaz Ahmed s/o Ghous Bux are convicted and sentenced to suffer imprisonment R.I for two years u/s 245 (ii) Cr P.C for offence punishable u/s 452 PPC. I further find that accused Saleem and Asif are guilty for causing injuries jointly to the person of complainant and her witnesses for offences punishable u/s 337-A(i), 337-F(i), 337-F (v), 337-L (ii) PPC hence accused Saleem and Asif are convicted for offences punishable u/s 337-A (i), 337-F(i), 337-F (v), 337-L(ii) PPC each and sentenced to suffer imprisonment R.I for one year u/s 245 (ii) Cr P.C and to pay Daman amount of Rs.1000/- by each accused to be paid to the complainant, injured Punhal and Ashfaq Ahmed separately. In case of non-payment of Daman amount, accused shall remain in jail till payment of Daman amount. The accused Ghous Buksh is convicted for instigating other co-accused for causing injuries on the complainant and her witnesses as such he is liable to be convicted for the offence punishable u/s 114 P.P.C and is sentenced to suffer R.I for one year. All sentences awarded shall run concurrently. The accused Riaz Ahmed stands acquitted u/s 245 (i) Cr P.C by extending benefit of doubt to him on the charge of offence U/S 337-H(ii) P.P.C. Accused Saleem is extended benefit of section 382 (b) Cr P.C w.e.f 12-08-2004 to 12-10-2004 for a period accused remained as UTP as per case diaries. Accused Saleem, Ghous Bux, Asif and Riaz Ahmed are present on bail and they are taken into custody hence their bail bonds stand cancelled and their sureties are discharged. Accused Saleem, Ghous Bux, Asif and Riaz Ahmed are remanded to Central Prison-I Sukkur along with conviction warrant to serve out above mentioned sentences, awarded to them according to Jaw. The case against proclaimed offenders/accused Altaf, Mohammad Khan, Gul Hassan and Sajjad be kept on dormant file till their arrest".

7. The applicants along with co-applicants impugned the conviction and sentences recorded against them by learned 1st Civil Judge and Judicial Magistrate Pano Akil by way of filing an appeal which was dismissed by learned 1st Additional Sessions Judge Sukkur with the following observation;

“I have also perused the evidence which has some minor contradictions but the same are not on material points. In the case in hand it has to be seen whether the incident took place or not and if answer is in affirmative then what is the specific role of each accused. The trial Court while determining the points of discussion considered all the aspect of the case. The case mainly based on medical evidence which is supported by the Medical Officer's statement as well as the statements of the witnesses who received injuries during the alleged incident. The evidence proves the presence of the complainant and accused parties at the place of incident. It is further noticed that there was a dispute between the parties over a piece of land and there would be a motive of crime. The trial Court while awarding sentence considered all the aspect. The finding of the trial Court does not require any interference. The criminal appeal is dismissed.”

8. It is pertinent to mention here that the complainant and injured compromise with two of the applicants namely Saleem and Asif and filed their compromise application, which was allowed vide order dated 13.02.2019 and they were acquitted of the charge by way of compromise.

9. It is contended by the learned counsel for the applicants/accused that the case is false and the applicants have been implicated by the complainant with malafide intentions due to enmity over the landed property and the case registered against them; that no specific role of causing injuries is attributed to any of the present applicants, whereas, as per version of the complainant that the applicant Ghous Bux instigated the co-accused and applicant Riaz

Ahmed has made aerial fire; that the injuries which are allegedly sustained by the complainant Mst. Habiban, injured Punhal and Ashfaq Ahmed, which are attributed to the co-accused which are also general in nature; that the learned two courts below have misread the evidence and facts available on record in shape of the evidence adduced by the prosecution. He lastly prayed that the impugned judgments passed by two courts below are liable to be set-aside and the applicants may be acquitted of the charge.

10. Mr. Ather Iqbal Shaikh Advocate who was engaged by the complainant did not turn up despite repeated chances given to him, whereas, the matter is old one and pending since 2008 requires early hearing, therefore, due to non-attendance of the counsel for the complainant the matter cannot be kept pending for an indefinite period, though in the month of October, 2019 three consecutive chances were provided to the counsel for complainant.

11. Learned DPG appearing for the State supported the impugned judgment by stating that there is sufficient material available on record for conviction of the applicants, as they have actively participated in the commission of the offence applicant Ghous Bux has instigated the co-accused, whereas, applicant Riaz Ahmed has made fires from his pistol in the air just to facilitate the co-accused. He prayed that the instant criminal revision application may be dismissed.

12. I have considered the above arguments and perused the record. There is evidence of complainant / injured Mst. Habiban and two injured PWs namely Punhal and Ashfaq Ahmed, they are related inter se being the members of one and same family. As per evidence of the eye-witnesses that the applicant/accused Ghous Bux instigated the co-accused, whereas, as per evidence of the eyewitnesses the role of the applicant/accused Riaz Ahmed is that he made a fire which went in the air. Meaning, thereby that no such

injury was caused by both the applicants/accused to any of the injured, as such the case of the present applicants/accused is distinguishable from the case of main accused Saleem and Asif and others, they have been assigned the role of causing hatchet and lathi blows to the complainant and two eyewitnesses. Moreover, except role of instigation to accused Ghous Bux no overact has been attributed to him. The complainant in her evidence has stated that accused Riaz Ahmed was armed with pistol at the time of incident, but no such firearm injury was caused to anybody. If it is believed that applicant Riaz Ahmed was armed with pistol and made aerial firing but it is not brought on record that what circumstances prevented him from directly firing at the complainant and eyewitnesses except the role of making a single fire in the air. There is no such recovery of crime weapon i.e. pistol and the empty shell from the place of incident, though the FIR was registered promptly within two hours of the incident and the police had visited the place of incident.

13. In this regard reliance is placed upon the case of ***Hassan vs. The State (1969 SCMR 454)*** Honourable Supreme Court of Pakistan has held that mere presence of accused was not sufficient for conviction. Proof of some overt act on the part of each accused in furtherance of common intention is necessary. Relevant portion thereof is reproduced as under:-

“It appears from the observations of the High Court that the High Court was still thinking of the charge of rioting and that mere presence or being a member of the unlawful assembly was sufficient to warrant a conviction. The Sessions Judge had applied section 34 to the case and in order to support a conviction under that section mere presence would not be sufficient, but there must be proof of some overt act on the part of each accused done in furtherance of the common intention. Here the evidence is clear that the appellant was

empty handed and he did not assault Suleman, as was stated by P. W. 3. Neither of the Courts has considered the case of this appellant separately or the evidence against him. He went to the place empty handed and there is no evidence that he assaulted anybody or that in the circumstances he could have intended to cause a grievous hurt to, anybody. Judged by the standard applied by both the High Court and the Sessions Judge to the case of the three acquitted persons, the case of the appellant stands on a much more favourable ground and we see no justification for upholding his conviction. The appeal is, therefore, allowed and the conviction and sentence on the appellant are set aside and he is acquitted.”

14. In view of the facts and circumstances discussed above, the instant Criminal Revision Application is allowed, consequently the impugned judgments of learned trial and appellate Court are set aside and the applicants are acquitted of the offence for which they were charged, tried and convicted by learned trial and appellate Court. Their bail bonds stand cancelled and surety is discharged.

Judge