

ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Jail Appeal No. S – 24 of 2018

1. For orders on MA No.2850/2019
2. For hearing of main case
(notice issued)

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

Date of hearing: 14.12.2020

Date of decision: 14.12.2020

J U D G M E N T

Aftab Ahmed Gorar, J; Through this Criminal Jail Appeal, the appellant namely Sikander Ali S/o Muhammad Buxa alias Buxan Solangi, has assailed the impugned judgment dated 30.01.2018 passed by learned Additional Sessions Judge, Moro, whereby he has convicted and sentenced the appellant u/s 265-H(ii) Cr.P.C in the following terms;

- (i) *Under section 397 PPC sentenced for the period of 07 years R.I.*
- (ii) *Under section 337-F(v) PPC sentenced to suffer R.I for 02 years and Rs.10000/- as Daman payable to injured.*
- (iii) *Under section 337-F(vi) PPC, sentenced to suffer R.I for 03 years and Rs.10000.00 as Daman payable to injured.*

The benefit of Section 382-B Cr.P.C was extended to the appellant/accused.

2. Precisely the facts of the prosecution case are that on 24.02.2016 complainant Muhammad Juman lodged the FIR with Police Station Dars, stating therein that his brother Ahfaque Ahmed had business of Chaff and they used to reside in one and same house and they own their truck, whereas on 22.02.2016 at night hours, he along with his brother Ashfaque Ahmed, relative Lakhmir and Muhammad Sharif alighted from the same truck at Manaheen and were going towards their houses, when they reached near Railway crossing, and saw and identified accused Sikander S/o Buxan Solangi armed with repeater along with three unidentified accomplices encircled them, they were seen on electric bulb light, can be identified, if seen again. Out of them, accused Sikander on the force of weapons robbed cash of Rs.10000.00 from Ashfaque Ahmed and on his resistance accused Sikander Ali made direct fires of repeater upon him with intention of murder, which hit on his buttock and near right Knee and he cried and fell down, which attracted the nearby people, who rushed to the place of incident. On the cries and firearm reports, the accused persons fled-away. Then the complainant brought his brother who was rushed to Taluka Hospital Moro from where he was referred to PMCH for further treatment, then such FIR was lodged at Police Station Dars.

3. The formal charge was framed against the appellant / accused at (Ex.2) to which he pleaded not guilty and claimed to be tried. Thereafter learned ADPP given up the evidence of PC Ghulam Nabi Rajper and then requested for amendment in the charge, which was allowed and amended

charge was framed at (Ex.05), to which again the accused pleaded not guilty and claimed trial through his plea recorded at (Ex.05-A). The prosecution in order to substantiate its case, examined PW-1 complainant Muhammad Juman at (Ex.6), who produced FIR at (Ex.06); PW-2 Ashfaq Ahmed at (Ex.07); PW-3 Lakhmir at (Ex.08); PW-4 Sadaruddin at (Ex.09), who produced mashirnama of inspection of injuries, mashirnamas of site inspection and recovery of empties, seizure of kameez of injured, arrest of accused and recovery of robbed amount and unlicensed repeater at (Ex.9-A to 9-E) respectively; PW-5 ASI Ghulam Abbas at (Ex.10), who is author of FIR and Investigating Officer, who produced carbon copy of interrogation entry No.08, departure and arrival entries 09 and 11 at (Ex.10-A); PW-6 Dr. Ghulam Mustafa Buriro (Ex.11), who produced carbon copy of police letter at (Ex.11-A), provisional medico-legal certificate at (Ex.11-B) and he had also produced final medico-legal certificate at (Ex.11-C) and two discharge slips of Liaquat National Hospital at (Ex.11-D & E) respectively. Thereafter side of the prosecution was closed by learned DDPP for the State, vide statement at (Ex.12).

4. The statement of the appellant / accused was recorded u/s 342 Cr.P.C, in which he denied the prosecution allegation and further stated that he is innocent and has falsely been implicated in this false case. He neither examined himself on oath nor examined any witnesses in his defence.

5. Learned trial Court after hearing the learned counsel for the parties convicted the appellant /accused, as stated herein above.

6. Learned counsel for appellant mainly contended that appellant is innocent and has falsely been implicated by the police 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 there are sufficient discrepancies in their evidence, which were not considered by the learned trial Judge while passing the impugned judgment. It is further contended that appellant has also served out sufficient portion of his sentence, therefore, he also prayed for reducing the sentence of the appellant to that of already undergone. In support of his contentions, he relied upon cases of **Gul Naseeb v. The State (2008 SCMR 670)** and **Muhammad Mumtaz vs. Mehtab and another (2020 SCMR 200)**.

7. Learned Deputy Prosecution General 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 heard the learned counsel for the parties and carefully scanned the entire evidence. Admittedly, there is dispute between the appellant and the complainant party over the property as the appellant had purchased landed property from the mother of the complainant; the complainant and the appellant are related to each other, whereas, their

houses are situated adjacent to each other. There is inordinate and unexplained delay of two months in lodgement of the FIR, for which no plausible explanation has been furnished by the complainant, such delay could not be overlooked. The incident has allegedly taken place on 22.02.2016 at 10:00 pm, whereas, from the evidence of complainant Muhammad Juman, PWs Ashfaq Ahmed and Lakhmir so also medical officer Dr. Ghulam Mustfa Buriro, it appears that the injured Ashfaq Ahmed was brought at the same time *i.e.* at 10:00 pm at Taluka Hospital Moro for his examination and treatment; that in the entire evidence neither the truck number or its documents have been produced by the complainant. After perusing the evidence of prosecution witnesses, it appears that the complainant Muhammad Juman, PWs Injured Ashfaq Ahmed and Lakhir have given contradicted each other on material aspect of the case. The identity of the appellant has been shown on the bulb light, whereas, it is settled principle of law that the source of identification of accused on the bulb light has always been treated a weakest type of evidence. Moreover, the appellant has served-out sufficient portion of his sentence excluding the remissions earned by him. Consequently, 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 cases of ***Gul Naseeb and Muhammad Mumtaz (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 and the term of sentence in default in payment of fine. The appellant is present on bail, his bail bond stand cancelled and surety is discharged. The instant Criminal Jail Appeal stands disposed of in the above terms.

Judge

ARBROHI