

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

CrI. Appeal No. S- 64 of 2013

Bashir Ahmed s/o Saffar by caste Kubar.....Appellant.

Versus.

The State.....Respondent.

Mr. Shamsuddin Rajper Advocate for appellant.

Mr. Abdul Rehman Kolachi, Deputy Prosecutor General for the State.

Date of hearing: 28-07-2017

Date of announcement of Judgment: 04-08-2017

**J U D G M E N T**

**NAIMATULLAH PHULPOTO J.**, Appellant Bashir Ahmed along with Nazir, Siandad and Wazeer (since acquitted) was tried by learned Assistant Sessions Judge, Mirwah for offences under sections 324, 337F(iii),337F(v), 149 PPC.

2. Brief facts of the prosecution case, as disclosed in the FIR are that on 30.09.2010, complainant Ghulam Mustafa lodged FIR alleging therein that he owns agricultural land in Deh Matt. There are houses of Iqbal Kubar and others situated adjacent to his land. It is alleged that Iqbal used to cause damage to his crops by way of their cattle, complainant restrained them but without any result. It is alleged that on 29.09.2010 complainant alongwith his brother Sher Ali went to look after his land, where it is alleged that accused Iqbal, and Bashir were grazing their cattle in the land of complainant. Complainant protested and annoyance was caused to accused, it was 2:00 p.m, it is alleged that accused Muhammad Iqbal armed with rifle, Bashir armed with pistol, Nazir, Saindad both armed with guns, Wazir armed with hatchet and two unidentified persons armed with guns were standing there. It is further alleged that accused Iqbal fired from his rifle upon complainant party with intention to commit murder and fire hit Sher Ali, brother of complainant who fell down by raising cries. On gun shot reports and cries of complainant, it is stated that PWs Meerawal, Shah Nawaz and other villagers

were attracted and accused while seeing PWs went away while making aerial firing. Thereafter, complainant saw that injured had sustained injuries on his right thigh so also on his palm of the hand. Injured was taken to P.S, from where injured was referred to RHC, Mirwah for better treatment. Injured was also referred to civil hospital, Khairpur. Complainant went to P.S and lodged FIR against accused, it was recorded vide crime No. 172 of 2010, for offences under sections 324, 337F(iii),337F(v), 149 PPC.

3. After usual investigation challan was submitted against accused, accused Iqbal was shown as absconder. However, accused Iqbal was declared as absconder and proceedings under section 87/88 CrPC were concluded against him by the trial court.

4. A charge was framed against accused Bashir Ahmed, Nazir, Saindad and Wazeer at Exh.2, to which accused pleaded not guilty and claimed to be tried. At the trial prosecution examined complainant PW-1 Ghulam Mustafa at Exh.5, he produced FIR at Exh.5/A, PW-2 victim/injured Sher Ali at Exh.6, PW-3/I.O ASI Ashique Hussain at Exh.7, he produced mashirnama of place of wardhat at Exh.7/A, mashirnama of injuries at Exh.7/B, PW-4 Shah Nawaz at Exh.8, P W-5 Dr. Abdul Sattar Shar at Exh.9, he produced provisional medical certificate at Exh.9/A final medical certificate at Exh.9/B, PW-6 Zahid Hussina at Exh .10. Thereafter side of prosecution was closed vide statement at Exh.11.

5. Statements of accused were recorded under section 342 CrPC at Exh.12 to 15, in which accused claimed false implication in this case and denied the prosecution allegations. They stated that PWs have deposed against them due to enmity over landed property. Accused did not lead evidence in defence and declined to give statements on oath in disproof of prosecution allegations.

6. Learned trial court after hearing learned counsel for parties by judgment dated 31.07.2013 convicted the appellant for offence under section 324 PPC and sentenced him for 05-years R.I. He was also convicted for offence under section

337F(v) PPC and sentenced to 04-years R.I with fine of Rs. 50,000/- as Daman to be paid to the injured, however, co-accused Nazir, Saindad and Wazeer were acquitted of the charge.

7. The facts of this case as well as evidence produced before trial court find an elaborate mention in the judgment passed by trial court and, therefore the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

8. Learned counsel for appellant mainly contended that there was inordinate delay in lodging of FIR for which no plausible explanation has been furnished. It is further contended that complainant party have made dishonest improvements in their evidence at trial. He further contended that eyewitness Shah Nawaz has replied in cross-examination that he had not witnessed the incident. Lastly, it is contended that co-accused on same set of evidence have been acquitted by the trial court and case of appellant was highly doubtful and conviction was unwarranted in law. In support of his contentions, he has relied upon the cases of *Atta Muhammad v. The State* (2009 P Cr L J 590) and *Tariq Pervez v. The State* (1995 S C M R 1345).

9. Learned Deputy P.G conceded to the contentions raised by learned counsel for appellant and did not support the judgment of the trial court.

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

11. I have come to the conclusion that prosecution has failed to establish it's case against appellant beyond any shadow of doubt for the reasons that it in the FIR (Exh.5/A), there are general allegations, complainant Ghulam Mustafa has mentioned that accused persons fired upon complainant party with intention to kill and fire hit to PW Sher Ali, but complainant at the time of trial has made improvements and deposed that absconding accused Iqbal fired upon Sher Ali

which hit him at his thigh and appellant Bashir Ahmed also fired upon him which hit at palm of left hand of injured Sher Ali. PW-2 injured Sher Ali has deposed that absconding accused Iqbal fired upon him with his rifle, which hit him at his right thigh and appellant Bashir Ahmed fired upon him which hit him at his palm of hand. PW-4 eyewitness Shah Nawaz in cross-examination has replied that he had not seen the appellant by firing upon injured Sher Ali. Evidence of complainant and eyewitnesses is not reliable for the reasons that dishonest improvements have been made in the evidence. According to case of prosecution appellant and absconding accused fired at the same time. It was unbelievable that fire hit by appellant at the palm of hand of injured was seen by complainant party. Moreover, crime weapons were not recovered from the possession of accused. From the mashirnama of place of wardhat dated 30.09.2010, it appears that only one empty of pistol was secured, but it was the case of prosecution that absconding accused and appellant fired from their weapons carried by them and made aerial firing. The trial court acquitted co-accused Nazir, Saindad and Wazeer on same set of evidence while holding that complainant party have made exaggeration, I am unable to understand as to how trial court relied upon same evidence for convicting the appellant. There was also dispute between the parties over cattle grazing. No reliance can be placed upon such type of evidence which is available on record without independent corroboration which is lacking in this case. In this there are several circumstances/infirmities in the prosecution case, which created reasonable doubt in the prosecution case so far involvement of the appellant is concerned. In case of **Atta Muhammad** (supra), Hon'ble Single Judge of this Court has observed as follows:

*“The statement of the complainant on material particulars has not been supported and corroborated, by only eye-witness Manzoor Hussain who is cousin of the complainant as he disclosed that on the day of incident he along with Mureed were going to mountain when he saw the appellant firing at the complainant. In the cross-examination he admitted that two persons, who had muffled their faces*

*were not armed with any weapon; that the appellant firing at the complainant from a distance of 40-50 paces; that the other culprits were at the distance of 15-20 paces from the appellant. The third witness Mureed has not been examined who is an independent witness thus, the statement of complainant and Manzoor is neither supported nor corroborated by Mureed Hussain. The contradiction mentioned above carries weight, because of the fact that there is delay in the lodging of the F.I.R. as the incident took place at 9-00 a.m. and report was lodged at 4-30 p.m. The complainant admitted that he went to his Nek Mard Ghous Bux who advised him to lodge the report and then at 10 a.m. he went to police station for lodging the report. Thus there is no explanation of the complainant in between 10-00 a.m. and 4-30 p.m. Thus unexplained delay caused serious doubt about the prosecution story keeping in view the material contradiction in the evidence and non-examination of Mureed. Further the statement of complainant is also not supported by his Nek Mard Ghous Bux as he has not been examined.*

In the case of **Tariq Pervez** (supra), the Honourable Supreme Court of has observed as follows;

*“It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right”.*

12. For the above stated reasons, the prosecution has failed to establish its case against the appellant beyond any reasonable doubt, therefore, I extend benefit of doubt to the appellant. Appeal is allowed and the conviction and sentence recorded by the trial Court against appellant vide judgment dated 31.07.2013 are set-aside. Appellant Bashir Ahmed Kubar is acquitted of the charge. He is present on bail, his bail bond stands cancelled and surety is discharged.

**JUDGE**