

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD

Cr. Appeal No.S-18 of 2014

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For hearing of main case.

Date of hearing : 24.10.2022

Date of judgment : 24.10.2022

Appellants Gul Muhammad S/o Lashkari and Ali Hassan S/o Noor Muhammad are present in person (on bail).

Mr. Muhammad Ali Noonari, Deputy Prosecutor General, Sindh.

Complainant Gul Muhammad S/o Lal Bux is also present in person.

JUDGMENT

Muhammad Saleem Jessar, J.- Through instant criminal appeal, appellants have assailed judgment dated 29.01.2014 passed by learned Ist Additional Sessions Judge, Dadu in Sessions Case No.169/2012, (re: State v. Gul Muhammad and others), arising out of FIR No.11/2012 registered at P.S Rukkan, under Section 395 PPC, whereby they were convicted and sentenced to suffer rigorous imprisonment for 05 years and to pay fine of Rs.10,000/- each; in default thereof, to suffer simple imprisonment for six months more; however, benefit of Section 382-B Cr.P.C has been extended to them.

2. The crux of the prosecution case is that on 14.02.2012 the complainant after having dinner with PW Gulsher (his son) and PW Nawab (his cousin) went on to sleep. On 15.02.2012 at about 01:30 a.m. (night) he heard commotion of knocking the door and his son voiced to which he opened the door. On opening the door, his son and PW Nawab entered into the house; meanwhile, five outlaws duly armed with deadly weapons had also entered into the house. The faces of bandits

were opened, out of them two were identified on the light of electric bulbs, to be the present appellants duly armed with kalashnikov as well gun while remaining three were unknown. After entering into the house, the bandits took one licensed gun, one pistol, two mobile phones, cash amount of Rs.49,000/- and other belongings and then disappeared from the scene. On following morning, the complainant approached to the accused for return of robbed property, who kept them on false hopes and ultimately refused to return; therefore, instant FIR was registered.

3. After completion of usual-cum-legal formalities, the challan of the case was filed which subsequently was assigned to Ist Additional Sessions Judge, Dadu (trial Court) where formal charge against the appellants was framed to which they pleaded not guilty and claimed to be tried.

4. To prove its charge, the prosecution examined PW-01 Gul Muhammad (complainant) at Ex-05, PW-02 Nawab Ali Solangi at Ex-06, PW-03 LNC Ghulam Hyder Solangi at Ex-07. However, PW Gulsher was given up and PW-04 Ghulam Mustafa Bhatti was examined at Ex-09; then the prosecution closed its side vide statement Ex-10.

5. The statements of appellants under Section 342 Cr.P.C were recorded at Exs-11 & 12 respectively, whereby they denied the allegations leveled by the prosecution against them and professed their innocence.

6. Appellants present in person submit that the FIR is delayed for about four days and they being co-villagers to each other have got political rivalry with complainant; hence, they have falsely been implicated by the police at the behest of influential persons of the area. The appellants further state that their house is alone in the village and the complainant of this case at the behest of DSP Usman Malik wanted to reshuffle their residence by ousting them from the village but they

refused to leave their village; therefore, instant case has been managed. As far as instant offence as claimed by the prosecution is concerned, appellants submit that no such incident had ever occurred and they are innocent. They next submit that nothing incriminating was recovered from their possession and they have been languishing / dragging in this case right from 2012 and submit that no charge has been established against them; hence, they may be acquitted of the charge.

7. Mr. Muhammad Ali Noonari, learned D.P.G present on behalf of the State submits that nothing incriminating is shown to have been recovered from possession of the appellants nor the prosecution had produced anything showing that the appellants having any nexus with the crime. He next submits that alleged robbed articles were not recovered by the police nor the complainant even produced any valid licenses or permit for the robbed weapons viz. pistol and gun. He further submits that alleged robbed currency notes were not specifically mentioned in the FIR as well memo, even the complainant during trial had not given the discrepancy of the denomination notes. He after having consultation with the complainant, who is present before the Court in person, submits that no charge as claimed by the prosecution was established against the appellants; therefore, he has no objection if the appellants are acquitted of the charge.

8. Complainant Gul Muhammad is present in person and submits that he had no grudge against the appellants and being co-villager intends to maintain peaceful life; hence, does not want to prosecute the appellants anymore. He; however, very candidly submits that he will have no objection if instant appeal filed by the appellants is allowed and they are acquitted of the charge.

9. Heard appellants in person, learned D.P.G appearing for the State as well as complainant in person and have gone through the evidence available on record.

10. Perusal of the FIR available at Page-17 of the paper book vide Ex-5/A reveals that incident had occurred on 15.02.2012 at 0130 hours (at night), whereas, FIR was lodged on 19.02.2012 at 1345 hours with delay of about 04 days for which no explanation has been furnished by the prosecution for such an inordinate delay. The delay in criminal cases has always been deprecated by the superior Courts and has been held to be fatal for the prosecution. In instant case, the offence as shown had allegedly occurred in odd hours of the night and the complainant allegedly saw the appellants on the light of electric bulbs at the time of incident; however, during investigation the I.O did not recover any bulb nor noted the installation place as well as location of the bulb where it was installed. This being the case of dacoity / robbery and the complainant as claimed had identified the appellants at the time of incident remained mum for about 4/5 days and the explanation furnished by him is nothing but to justify the delay he had caused in lodgment of FIR. Appellant Ali Hassan was arrested by the police during investigation on 21.02.2012 and remained under police custody; yet nothing was recovered from him connecting him with the commission of alleged offence. Per contents of the FIR, the alleged DBBL gun as well pistol were licensed but the complainant did not produce copies of such licenses before the I.O nor got the same exhibited in evidence before the trial Court, which shows that nothing was robbed away but he had deposed against them on flimsy accusation. Since the offence had occurred at odd hours of the night and the source of identification was the electric bulb which was not secured by the I.O; therefore, identification of the appellant in odd hours of night on such flimsy ground cannot safely be held to be true, more particularly when nothing incriminating was secured from their possession or was produced by them during investigation. Such glaring features on the part of prosecution show that the prosecution has failed to prove its charge against the appellants. It is well settled principle of law that prosecution

has to stand on its own legs to prove charge against accused and benefit of doubt, even if slightest, arises, shall go in favour of the accused. Reliance in this respect can be placed upon the case of **Muhammad Akram V. The State (2009 SCMR 230)**, wherein at page-236, it has been held by Apex Court as under:-

“It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace. It was observed by this Court in the case of Tariq Pervez v. The State 1995 SCMR 1345 that for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right.”

11. In another case reported as **Wazir Mohammad V. The State (1992 SCMR 1134)** it has been held by Hon'ble Supreme Court as under:

*“In the criminal trial whereas it is the duty of the prosecution to prove its case against the accused to the hilt, but **no such duty is cast upon the accused, he has only to create doubt in the case of the prosecution.**”*

12. In view of above discussion coupled with no objection extended by learned D.P.G as well complainant himself for allowing this appeal as well as acquittal of the appellants, instant appeal is hereby allowed. Consequently, impugned judgment dated 29.01.2014 is set aside. The appellants are present on bail, their bail bonds stand cancelled and surety is hereby discharged.

JUDGE

