

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 134 of 2017

Appellant : Muhammad Ibrahim
through Mr. Moula Bux Bhutto, Advocate

Respondent : The State
through Mr. Talib Ali Memon, A.P.G.

Complainant : through Mr. Umer Farooq Khan, Advocate

Date of hearing : 1st December, 2022

JUDGMENT

Omar Sial, J.: Murad Bux and his 3 sons, namely, Mohammad Ibrahim, Mohammad Yousuf and Mohammad Hanif were charged with the murder of Abdul Majeed.

2. A brief background to the case is that on 18.05.2007 at about 5:30 a.m., Nazeer Ahmed was woken up from his sleep because of somebody quarrelling outside his house. He went out and saw that Yousuf and Hanif had caught hold of Abdul Majeed whereas Murad and Ibrahim were punching him. Ibrahim then took out a knife and stabbed Majeed in his chest. Majeed succumbed to his injuries soon thereafter. F.I.R. No. 91 of 2007 was registered under sections 302 and 34 P.P.C. at the Pak Colony police station at 8:40 a.m. on 18.05.2007. It seems from the contents of the F.I.R. that there was one other person by the name of Allah Bux, who also took part in the fight by hitting Abid Ali, a relative of Nazeer Ahmed's, with a danda on his face. This Allah Bux remained an absconder hence his role in the whole episode is not discussed.

3. The four accused persons when arrested at 11:45 a.m. on 18.05.2007 were all injured. They pleaded not guilty to the charge and claimed trial. At trial the prosecution examined 8 witnesses. **PW-1 Nazeer Ahmed** was the complainant and an eye witness to the incident. **PW-2 P.C. Shah Jehan Pathan** was a witness to the arrest of all the 4 accused. **PW-3 S.I. Sharif**

Niazi inspected the dead body, prepared the inquest report and recorded the section 154 Cr.P.C. statement of Nazeer Ahmed. **PW-4 Abdul Ghani Bizenjo** was an eye witness to the incident. **PW-5 Abid Ali Bizenjo** was an eye witness to the incident. **PW-6 Mohammad Younus** was also an eye witness. **PW-7 Dr. Ghulam Sarwar Channa** was the doctor who provided first medical aid to the deceased who was still alive at that stage. **PW-8 A.S.I. Shakir Hussain** came at trial to confirm the signatures of S.I. Zakaullah Niazi, the investigating officer who had died by then, on various documents.

4. On 05.04.2013 the accused moved an application under section 540 Cr.P.C. praying that the court summon A.S.I. Tarique and Dr. Aquil S. Khanwada as the investigating officer had deliberately and intentionally excluded their names from the calendar of witnesses. These witnesses, according to the accused, were important to be examined as they would give evidence that all the 4 accused had been beaten and stabbed by the complainant party when the incident is said to have occurred.

5. On 06.04.2013 the learned DDPP for the State filed a statement in court which reflected that the prosecution wished to close its side as the prosecution witnesses could not be found anymore.

6. The accused in their section 342 Cr.P.C. statements denied all wrong doing and blamed their false involvement in the case on an old standing enmity. Accused Murad Bux said that he was returning from his prayers when he had an altercation with the mother of the complainant over the issue of throwing garbage outside their house. She had summoned her husband and sons who had then beat him up. Accused Mohammad Ibrahim and both his brothers submitted that they had come to the place of incident to save their father from a beating he was getting at the hands of the complainant party. Three accused (excluding Mohammad Hanif) elaborated on their defence in their section 340(2) Cr.P.C. statement. Basically they stated what they had said in their section 342 Cr.P.C.

statements but expanded the same by also stating that they too sustained knife injuries in the altercation.

7. **DW-1 A.S.I. Tariq Mehmood**, called in as witness by the defence to support their theory that they too were taken to hospital in an injured condition, unfortunately for the defence testified at trial that “I had not taken accused present in court from P.S. to hospital for their medical treatment.”

8. **DW-2 Dr. Aqeel Saifuddin Khandwala**, however, told the court that all 4 accused had been brought to him on 18.05.2007 at 1:10 p.m. for treatment of knife stabbing as well as injuries sustained by hard and blunt weapons.

9. At the end of the trial, the learned Sessions Judge, Karachi West on 24.02.2017 acquitted Murad Bux, Muhammad Yousuf and Mohammad Hanif; however, Mohammad Ibrahim was sentenced to a life in prison under section 302(b) P.P.C. and also ordered to pay a compensation of Rs. 100,000 to the legal heirs of the deceased. If he did not pay the compensation, he would have to stay in prison for another 6 months.

10. I have heard the learned counsel for the appellant as well as the learned counsel for the complainant and the learned APG. The arguments of counsels are reflected in my observations and findings below.

11. I tend to agree with the defence version as to how the incident unfolded. The fact that the investigating officer and the prosecution, both, intentionally and deliberately tried to conceal that all the 4 accused had also been stabbed and injured in the fight between 2 groups, does not reflect well on their *bonafide*. They tried to keep the defence of the accused out of the whole proceedings in order to strengthen their case. This was not just or proper, in fact tantamount to professional dishonesty. However, the evidence gathered and presented at trial clearly shows that the fight was between a large number of persons from both sides. It seems to be a free for all in which knives and dandas were used freely by both sides in the quarrel.

12. Apart from the above concealment the time, date and place of the incident remained undisputed. Abdul Majeed was stabbed and died was also not disputed. The eye witness account that Ibrahim caused the fatal knife blow to Majeed seems to have been believed by the learned trial court to form the basis of his conviction and sentence. Though the eye witnesses denied that the complainant party too had inflicted injuries on the accused, the fact that the same was proved by other evidence, does not borne well on the credibility of the eye witnesses. They seem to have spoken the partial truth.

13. The learned trial court was of the view that no evidence was led at trial to show that the remaining 3 accused shared a common intention with Ibrahim and thus acquitted them. I tend to agree with the learned trial court that no evidence of such a nature to prove common intention was produced at trial. Be that as it may, as the 3 accused have been acquitted, and no appeal challenging their acquittal was filed, I have not discussed the evidence concerning them.

14. Section 97 P.P.C. provides that every person has a right subject to the restrictions contained in section 90, to defend his own body, and the body of any other person, against any offence affecting the human body. The restrictions contained in section 90 P.P.C. are with respect to consent known to be given under fear or misconception, and are therefore not applicable in the circumstances of the present case.

15. No definite finding about who was the aggressor in the current case. The Supreme Court of Pakistan in **Mushtaq Hussain vs The State (2011 SCMR 45)** has held that the right of self defence can extend to defending another person's body. If an accused wants to take the benefit of the right of self defence, then he is required to show that he was not responsible or at fault or on account of his act the occurrence took place; that he honestly believed that his life was under immediate danger; that there was no reasonable escape and that he had no intention to cause more harm than necessary. Similarly, in **Mukhtar Ahmed vs The State (2002 PLD SC 792)** it

was held that where the plea of self-defence is pressed into service it is to be shown as to who was the aggressor, by whom was the fight initiated and whether the party by whom the plea of self defence has been introduced sustained any injury from the hands of the aggressor and on retaliation what was the degree of violence used. In **Mashal Khan vs The State (1988 PLD SC 25)** it is observed that when in a state of panic the right of self defence is being exercised, action on the part of a person cannot be measured in golden scales.

16. In the present case, the testimony of Dr. Aqeel Saifuddin Khandwala, was important. This witness stated that on 18.05.2007, all 4 accused were brought to him in an injured condition. Murad Bux had a lacerated wound on his right eyebrow and had been beaten by a hard and blunt weapon. Muhammad Ibrahim had a knife wound on his forearm as well as an injury on his toe. Muhammad Hanif was also beaten with a hard and blunt substance. Yousuf had a knife injury on his chin. As far as the injury to the deceased was concerned, it came on record that he had one stab wound on his lower chest. This injury was not proved through a post mortem as none was held and no reason given. It was a photocopy of a medical certificate issued by two doctors of the Civil Hospital, which was used to determine the type and seat of injury. Both doctors were not examined at trial nor was any reason for the absence given. It is quite possible that had they appeared as witnesses, they would have not supported the prosecution case. The learned trial judge while deprecating the investigation in the case, however, was satisfied by the medical certificate produced at trial. The learned trial judge was also of the view that the injuries sustained by the complainant party, though 2 were struck with a knife, were not as severe as the one inflicted by Ibrahim to Majeed.

17. While appreciating the wisdom of the learned trial judge, I with much respect rely on what the Honorable Supreme Court said in the Mashal Khan case (supra) that when in a state of panic the right of self defence is being exercised, action on the part of a person cannot be measured in golden scales. As mentioned above, the complainant and the investigating officer

hiding the fact that the accused were injured in the brawl, does create suspicion on their conduct. It is also important to note that all the accused were beaten by the complainant party and at least 2 were also struck by knives, which would necessarily mean that the complainant party too was armed with knives and dandas. While on the face of it might seem that the right of self defence had been exceeded by Ibrahim, yet when a person is hit on the face and the forearm and knives and dandas are freely used, it does put the exceeding ones right argument under a cloud.

18. The appellant's jail roll shows that he has served out 19 years and 8 months of his sentence. As the record does not conclusively reflect as to who was the aggressor; the reason for death and injury to the deceased was not conclusively proved at trial, a post mortem was not done, an attempt was made by the prosecution to hide the fact that the accused party was also injured in a free fight; and ; lastly that there was evidence that the death occurred due to the accused exercising a right of self defence, I am of the view that it would be appropriate in the circumstances to convert the conviction of the appellant to one under section 302(c) P.P.C. and to reduce his sentence to the one already undergone by him till today, which will also include his imprisonment in lieu of fine.

19. The appeal is dismissed however with the modification in sentence as stated in the preceding paragraph. The appellant may be released if not required in any other custody case.

JUDGE