

**HIGH COURT OF SINDH CIRCUIT COURT,  
HYDERABAD**

**Cr. Appeal No.S-124 of 2020**  
[Abdul Razak alias Arbelo versus The State]

**Cr. Jail Appeal No.S-192 of 2020**  
[Zahid Ali versus The State]

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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**Appellants :** Through M/s Ahsan Gul Dahri & Ghulam Haider Baloch advocates

**Complainant:** Through Mr. Om Parkash H Karmani advocate

**The State :** Through Ms. Safa Hisbani, Assistant P.G Sindh

**Date of hearing:** 10.02.2023, 13.02.2023, 17.02.2023, 20.02.2023 & 27.02.2023

**Date of judgment:** 10.03.2023

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

**KAUSAR SULTANA HUSSAIN, J:** This single judgment will decide the fate of captioned appeals, as both have been directed against same judgment passed in same Crime. Appellants were charged and tried by the Court of learned 1<sup>st</sup> Additional Sessions Judge/MCTC Shaheed Benazirabad in Crime No.221 of 2014 registered at P.S Kazi Ahmed for offences punishable under Sections 302, 147, 148, 149, 506 and 337-H(ii) PPC and finally vide impugned Judgment dated 26.08.2020, passed in Sessions Case No.146 of 2015 [**Re: The State versus Abdul Salam Panhwar & Ors**], present appellants were convicted and sentenced to suffer Imprisonment for Life with directions to pay Rs.2,00,000/- each as compensation to the legal heirs of deceased and in case of failure they have to further suffer simple imprisonment for six months. Accused Arbelo was also awarded benefit of Section 382-B Cr.P.C. Whereas, by way of same judgment co-accused Asghar Ali was acquitted while the case against accused Abdul Salam was kept on dormant file.

2. The allegation against the appellants/accused is that on 29.11.2014 at about 1940 they alongwith co-accused persons committed Qatl-i-Amd of Arshad Ali, who was brother of Complainant by causing him firearm injuries. After registration of aforesaid FIR Investigation Officer conducted investigation and then submitted challan before the learned Magistrate concerned, wherein all the accused persons were shown as absconders and the learned Magistrate after necessary formalities sent the R&Ps to learned District Judge for trial. Thereafter,

appellant/accused Arbelo after obtaining bail joined the trial then copies were supplied to him at **Ex.04** and Charge was framed against him at **Ex.05**, to which he pleaded not guilty and claimed trial at **Ex.06**. Thereafter accused Asghar Ali also joined the trial, as such copies were supplied to him at **Ex.07** and Charge was amended at **Ex.08** to which he pleaded not guilty and claimed trial at **Ex.10** and fresh plea was also signed by accused Arbelo at **Ex.09**. The prosecution examined five witnesses at **Ex.11 to 15** and during trial accused Zahid Ali also joined trial, therefore, Charge was again amended at **Ex.16** to which he pleaded not guilty at **Ex.19** while fresh pleas were also signed by accused Arbelo and Asghar Ali at **Ex.17 and 18**.

3. In order to prove its case, prosecution examined eight witnesses, which include Complainant, MLO, Investigation Officer and mashirs at **Ex.20 to 28**, who exhibited and recognized certain documents at **Ex.20/A to 26/A** then prosecution closed its side at **Ex.29**. The statements under Section 342 Cr.P.C of appellants/accused were recorded at **Ex.30 to 32**, wherein they denied the allegations, however, neither they examined themselves on Oath nor any witness in their defense. Finally the learned trial Court after hearing arguments of the parties awarded sentences to present appellants, as mentioned supra, while acquitted the co-accused Asghar Ali, hence present appeals.

4. Mr. Dahri led the case and argued that the impugned judgment is entirely against the norms of law; that no role has been assigned to present appellants/accused; that nothing was recovered from the appellant Arbelo; that no role of even instigation, abetment or otherwise has been alleged against the present appellants/accused; that no injury has been attributed to the present appellants; that both the present appellants have convicted on the basis of mere alleged presence; that though it is claimed that one Asghar, who is brother of deceased and Complainant, had informed the police about the incident and also identified the dead body of deceased during postmortem, yet he was not cited as witness; that though brother of deceased Muhammad Ashraf was claimed as eyewitness of the incident, yet he was also not examined; that empties recovered from the place of incident were not sent for FSL; that present appellants/accused have been implicated due to dispute over Cabin which was situated in front of the Medical Store of Complainant party; that on same set of evidence co-accused Asghar Ali has been acquitted, therefore, appellants are entitled for role of consistency; that entire Sindh, including Kazi Ahmed, city was closed on that day due to assassination of JUIF leader Dr. Khalid Mehmood Soomro and appellant Arbelo's Cabin was also closed and he was present at his home at the time of alleged incident. He lastly prayed for acquittal of appellants/accused.

5. Mr. Baloch, who is representing accused Zahid, adopted the arguments advanced by Mr. Dahri.

6. On the other hand learned APG, assisted by learned counsel for the Complainant vehemently opposed the appeals and argued that appellants/accused are nominated in FIR with specific rule and ocular evidence is fully supported by the prosecution witnesses; that prosecution has fully established its case beyond any shadow of doubt; that there are no contradictions in the evidence; that advocates appearing on behalf of present appellants before learned trial Court did not cross-examine the prosecution witnesses rather they simply adopted the cross-examination conducted on behalf of accused Asghar Ali, hence evidence against present appellants remained unchallenged and that appellants neither examined themselves on Oath nor produced any witness in their defence, which proves that they have nothing to offer in their defence. In support of arguments learned counsel for the Complainant relied upon (i) 1995 SCMR 1776, (ii) YLR 770, (iii) 2007 SCMR 1519, (iv) 2006 SCMR 1857 & (v) 1995 SCMR 1793.

7. I have heard the learned counsel for the parties and have also perused the material available on record with their able assistance.

8. Unnatural death of deceased is not disputed. As per evidence of PW-06 Dr. Muhammad Hashim examined at Ex.25, who had conducted the postmortem of the dead body, the death of the deceased had occurred due to hemorrhage and shock as a result of firearm injury and the deceased had only one firearm injury, which had got entry as well as exit.

9. At present only two appellants viz: Abdul Razzak @ Arbelo and Zahid Ali have preferred captioned appeals, as both these appellants have been convicted in present case while accused Asghar Ali has been acquitted of the charge while the case against accused Abdul Salam is on dormant file, as he is still absconder as per available record. Therefore, I would like to only discuss the role, if any, assigned to present appellants Abdul Razzak @ Arbelo and Zahid Ali and evidence brought against them, if any. In this regard I have perused the evidence of eyewitness i.e Complainant Akbar Ali and PW Nadeem Arshad, who is son of deceased. Complainant, who is brother of deceased deposed that on 29.11.2014 at about 07:40 pm he alongwith his brother Arshad (**deceased**), Nadeem Arshad (**PW-2**) Ashraf and Asghar Ali (**brothers of deceased and complainant**) were present at their medical store, when accused Abdul Salam Panhwar Memon, Zahid Ali Panhwar Memon and Arbelo Jokhio all duly armed with pistols came over there and accused Abdul Salam Panhwar gave hakal to deceased by saying that he had abused him, therefore he will kill him and made straight fire shot on

deceased Arshad, which him on right side of face above the lip then all accused persons went away while issuing threats. PW.2 Nadeem Ahmed, who is son of deceased, had also deposed on similar lines as that of Complainant. Per medical evidence deceased had only one firearm injury and both these witnesses have not mentioned anywhere that either of the present appellants Abdul Razzak @ Arbelo and Zahid Ali had caused any firearm injury to deceased or otherwise. Though both these witnesses deposed that all accused persons had made aerial firing, however, same fact is not mentioned in FIR.

10. I have also perused the evidence of Investigation Officer as well as evidence of PW-3 Abdul Ghaffar, who is witness of site inspection. PW-3 Abdul Ghaffar deposed that on 29.11.2014 police inspected the place of incident in his presence and got recovered blood stained earth as well 10 empty shells of .30 pistol. Whereas the Investigation Officer SIP Ali Hassan though also deposed about recovery of 10 empty shells of .30 bore pistol(s) from the place of incident, however, he admitted in cross-examination that *“I have not obtained report of ballistic expert that whether the empty bullet shells recovered from the place of incident were fired from same weapon or from different weapons”*.

11. From the above discussion it appears that both present appellants have not been attributed any injury. Further neither any recovery has been effected from them nor there is any FSL report about recovered empty bullet shells from the place of incident. Both these appellants have been convicted on the basis of mere presence and common intention, however, learned trial Court has failed to assign any reason in this regard.

12. In view of the above, I am of the view that prosecution has failed to prove charge against present appellants through confidence inspiring evidence, therefore, conviction and sentence recorded by the learned trial Court against on the basis of evidence available on record cannot be maintained. Accordingly, captioned appeals are **allowed**. Resultantly conviction and sentence awarded to the present appellants by the learned trial Court through impugned Judgment dated 26.08.2020, passed in Sessions Case No.146 of 2015 [**Re: The State versus Abdul Salam Panhwar & Ors**] is set aside. The appellants, who are in custody, be released forthwith, if not required in any other custody case.

Captioned appeals are disposed of accordingly.

JUDGE

Sajjad Ali Jessar