

IN THE HIGH COURT OF SINDH KARACHI

CRIMINAL APPEAL NO.625 OF 2022

Appellants : Ali Murad Magsi & another
through Mr. Riaz Ahmed
Phulpoto, Advocate

Respondent : The State
through Mr. Zahoor Shah, D.P.G.

Date of hearing : 9th and 11th May, 2023

JUDGMENT

Omar Sial, J.: A person by the name of Mohammad Hameed at 12:45 a.m. on 20.05.2019 went to the KIA police station in Karachi and requested that a case be registered against Ali Murad Magsi, Niaz-ul-Magsi, Talib Chandio and Saleem Solangi, as the four of them, the previous day, i.e. on 19.05.2019 at 1:10 p.m. had shot at, and injured Hameed's cousin, by the name of Umar Hayat. F.I.R. No. 584 of 2019 under sections 324 and 34 P.P.C. was registered.

2. The crime scene, which was a small house in a densely populated area, was inspected on 21.05.2019 and 3 empties of a 0.3 bore pistol were found a few steps away from the house.

3. Talib Chandio was held innocent in the police investigation. Accused Saleem Solangi was arrested on 26.06.2019. The record does

not contain the memos of arrest of Niaz-ul-Magsi nor Ali Murad Magsi. At some point in time, Saleem Solangi stopped attending trial and was declared an absconder. Both the Magsis pleaded not guilty and claimed trial.

4. At trial the prosecution examined **PW-1 Mohammad Hameed**, who was the complainant. **PW-2 Umar Hayat** was the injured person. **PW-3 Azeem Munawar** was a companion of the complainant and said to be an eye witness. **PW-4 S.I. Ali Mohammad Soomro** was the first investigating officer of the case; however, his role was restricted to inspecting the crime scene and recovering 3 spent bullet cases from the scene. **PW-5 S.I. Arshad Ali** was the police officer who registered the F.I.R. on Hameed's complaint. **PW-6 Dr. Abdul Ghaffar** was the doctor who conducted the post mortem of the deceased. **PW-7 S.I. Izzat Khan** was the second investigating officer of the case. His role was restricted to arresting Saleem Solangi and recording the section 161 statements of two witnesses. **CW-1 S.I. Imran Ahmed** came to court testify that the third investigating officer of the case i.e. Inspector Ali Khan Sanjrani could not appear as a witness as he was in jail. In their respective section 342 Cr.P.C. statements the accused professed innocence and denied all wrong doing.

5. On 20.10.2022 the learned 10th Additional Sessions Judge, Karachi East convicted Ali Murad Magsi and Niaz-ul-Magsi for having committed an offence under section 324 P.P.C. and sentenced them to a 3 year prison term. They were also convicted under section 337-

D P.P.C. and sentenced to pay arsh equal to 1/3rd of diyat; if they failed to do so they would have to remain in prison for a further period of 2 years.

6. I have heard the learned counsel for the appellants as well as the learned APG. The complainant did not effect an appearance in spite of notice. My observations and findings are as follows.

7. Umar Hayat testified that on 19.05.2019 he was sitting in the office of Mohammad Hameed when he received a phone call from his tenant by the name of Sonia, that Ali Gul Magsi (one of the appellant's herein) and some others were creating a commotion outside the house. Hayat along with Hameed, Azeem Munawar Khan and Shoaib Hassan went to Sonia's house where they saw that Ali Gul Magsi and Niaz-ul-Magsi (the two appellants herein) were holding pistols whereas Saleem Solangi and Talib Chandio had cudgels in their hands. The two appellants, for reasons not disclosed by Hayat, started firing and as a consequence, he was hit by a bullet. Umar Hayat's testimony cannot be accepted without a grain of salt. This is because Hayat had an immensely weak explanation to give when asked to explain at trial as to why there was a delay in the recording of his section 161 Cr.P.C. statement. Hayat claimed that at the time of the incident he went unconscious and that he remained in hospital for 8 days, and that it was another 10 days after his discharge that he recorded his section 161 Cr.P.C. statement. The Discharge Summary pertaining to Hayat, issued by the Hospital shows that he was

discharged from hospital on 25.05.2019. The record does not reveal that he remained unconscious for the period he was in hospital. In fact, Hayat in his cross examination admitted that no police officer came to question him throughout the time he was admitted in hospital. The fact that his statement was recorded 18 days after the incident, creates doubt as to the authenticity, veracity and accuracy of his allegations. This doubt is further magnified when PW-6 Dr. Abdul Ghaffar testified that he had made a note on his report that the investigating officer should ascertain whether the injury sustained by Hayat was self-inflicted or not. Hayat further acknowledged that he had not known or ever met the appellants before the incident and that it was only later that he was told the names of the appellants by the police. In these circumstances it would have been proper if an identification parade was held for the witness to confirm whether the appellants were indeed the assailants. It also seems from the testimony of PW-3 Azeem Munawar that Hayat was shot when he had his back towards the assailants. This claim puts in doubt the accuracy of the testimony of Hayat himself, if Munawar was telling the truth then it had to be someone else who told Hayat who the shooters were. That someone else was the complainant Mohammad Hameed, as he seemed to be the only person who knew all the assailants. Mohammad Hameed recording his section 161 Cr.P.C. 2 days after the incident without any reason whatsoever. This delay also sheds doubt as to whether the

appellants were nominated in the case after discussions and deliberations. The delay in recording statements of 2 important witnesses negatively impacts their allegations. The fact that Talib Chandio was exonerated by the police and no effort was made by the complainant to challenge his discharge also creates further doubt in the allegations made by the complainant.

8. Another unusual thing in this case is that not a drop of blood was found on the scene of the incident. The investigating officer PW-Ali Mohammad Soomro acknowledged that *"it is correct to suggest that I could not find any blood spot on the ground of the place of incident."* Soomro also admitted that let alone the ground of the scene of incident, he was also unable to find any blood in the car in which the injured was supposed to have been taken to hospital. The memo of inspection records that 3 empties were found from the place of incident. I find it very difficult to believe that the incident took place in the afternoon of 19.05.2019 and remained lying at the exact place for another 2 days when the site inspection took place. The investigating officer PW-Ali Mohammad Soomro acknowledged that blood stained clothes of the injured were not handed over to him by the complainant, injured or the doctor. No weapon was recovered from either of the appellants.

9. The whole incident was triggered of by a woman named Sonia complaining that the accused were creating a commotion in front of her house where she was a tenant of the complainant. Sonia

however, as indeed did eye witness Shoaib, did not testify at trial giving rise to the presumption that had they testified they would have not supported the prosecution case.

10. In view of the above, in my opinion, the prosecution was unable to prove its case beyond reasonable doubt. The appeal is therefore allowed and the appellants acquitted of the charge. They may be released forthwith if not required in any other custody case.

JUDGE