

IN THE HIGH COURT OF SINDH KARACHI

CIMINAL APPEAL NO.92 OF 2019

Appellants : **1. Karim Bux**
, **2. Muhammad Yameen**
3. Manzoor Ali @ Hyder
through Mr. Jan Muhammad
Khaskheli Advocate

Respondent : **The State**
through Mr. Muhammad Iqbal
Awan, Additional Prosecutor
General for the State

Date of hearing : 30th November 2023

JUDGMENT

OMAR SIAL, J.: Dongar Bhambro was supervising construction work on 12.07.1230. The labourers working at the site were Gul Hassan Jakhro, Qasim Hejab, Karim Bux Jakhro, Umaid Ali Bhambro and Ghulam Mustafa. Soon, eight persons came to the construction site. They were identified as Karim Bux Lassi (armed with a pistol), Farooq Lassi (armed with a hatchet), Abdul Sattar (armed with a pistol), Haider Lassi (armed with a pistol), Babu Lassi (armed with a pistol), Mohammad Ali Lassi (armed with a pistol), Gul Mohammad Lassi (armed with a pistol), Juman (armed with a lathi). The armed men asked Dongar and his men to stop the construction work. After a brief altercation, Juman instigated the other armed men to kill Dongar and his men. His instigation was followed up by:

- a) Farooq Lassi hit Dongar with his hatchet on the wrist of his arm.
- b) Babu fired and injured Dongar's right shoulder
- c) **Karim Bux fired and injured his namesake from the complainant party**
- d) **Abdul Sattar fired and injured Umaid Ali's arm**

e) Haider Bux fired and injured Ghulam Mustafa's right leg

f) Gul Mohammad fired at Haider Bux Bhambro, but the fire did not hit.

2. The appellants and the role assigned to them is highlighted. F.I.R. No. 144 of 2016 was registered under sections 324, 147, 149, 114, 506(2), 427, 504 P.P.C. at the Thatta police station on 13.07.2016.

3. The accused pleaded not guilty and claimed trial. **PW-1 Haider Bux Bhambro** was the complainant. **PW-2 Dongar**, **PW-3 Umaid Ali**, **PW-4 Ghulam Mustafa** and **PW-5 Karim Bux** were injured in the incident. **PW-6 Dr. Mohammad Yousuf** was the doctor who provided first aid to the injured. **PW-7 S.I. Bashir Ahmed** was the investigating officer of the case. **PW-8 Khalil** was a passerby injured. **PW-9 P.C. Sikander Ali** witnessed the preparation of several memos by the investigating officer. The appellant, in their respective section 342 Cr.P.C. statements, denied all wrongdoing and asserted that it was they who were attacked by the complainant party and had received serious injuries in the fight.

4. The learned 1st Additional Sessions Judge, Thatta, on 07.02.2019, convicted Karim Bux under section 324 P.P.C. and sentenced him to seven years in prison. Abdul Sattar Lassi and Manzoor Ali alias Haider Lassi were sentenced to five years imprisonment. At the same time, Farooq Lassi, Rahim Bux Lassi, Mohammad Ali Lassi, Gul Mohammad and Juman Lassi were acquitted.

5. I have heard the learned counsel for the appellants and the learned Additional Prosecutor General. The complainant was present himself during several hearings but did not engage a lawyer to plead his case. In fact, on several occasions, the complainant represented that the parties had made up and that they had forgiven the appellants. His requests, however, had little impact as despite

promising to bring the injured to court to record their statements, he did not do so.

6. The record shows that a one-sided version has been given in this case. Indeed, a counter case had also been registered against the complainant party by the accused party. It also seems that there was a fight between two sets of people, in which injuries were caused to both sides. One can also sense from the record that the fight between the two groups of people was over the possession of land. Land, the ownership of which was claimed by both sides, but land, the documents of ownership, were produced by neither during the trial. Both sides seem to have acted as stooges for the rich and powerful real stakeholders. In this case, the prosecution version's accuracy, integrity and genuineness are doubtful. My reasons for so concluding are as follows.

7. I find it immensely difficult to reconcile with the assertion of the prosecution witness that amid an alleged affray in which weapons were freely being used, the witnesses could notice and identify the sequence of who got injured first and by whom and with which weapon and at which part of his body. It would seem from the prosecution evidence that the accused one at a time were shooting and injuring one person at a time, which detail was noted by the complainant and one of the injured. A large group of persons from the complainant side, if they are to be believed, stood at the spot, only counting who hit whom and where. It also seems incredible that the complainant Haider Bux Bhambro, who admitted at trial that apart from appellant Karim Bux, he did not know any of the other accused, would so accurately, with not only the complete names of the accused but also the names of their fathers, include them in the F.I.R. The delay in lodging the F.I.R. becomes meaningful in these circumstances as it creates doubt about whether the correct people have been nominated, or whether the net has been thrown wide or a tailored F.I.R. was lodged.

8. Another aspect of the case that raises doubt about the presence of the witnesses is their descriptions of the place of the incident and the purpose for which they were present. Haider Bux Bhambro, the complainant, acknowledged at trial that he lived 10 to 15 km away from the place of the incident. His justification to claim that he was present during the incident was that his uncle Dongar had asked him to come there to purchase building materials. He testified that labourers were shuttering on a roof when he reached the spot, as the walls of whatever they were building were already erected. He did not notice any construction equipment but said some cement, sand, and concrete were lying nearby. Dongar had a different version. According to him, the labourers had spades and sickles and were busy excavating the ground as there was nothing constructed on the place of the incident. Umaid Ali and Karim Bux also said that no structure had been built where the incident had occurred and that the labourers had been digging a hole. They both said there was no construction on the plot of land and no shuttering work. To contradict the supposed eyewitnesses, S.I. Bashir Ahmed, who inspected the incident, testified, *"It is correct that I have mentioned that two incomplete shops and two front walls were constructed on the plot at the place of incident."* He could not remember that excavation was going on there at that time. It is somewhat surprising that he did not remember as, according to the eyewitnesses, excavation was the only work done and a big hole had been dug up, and nothing was constructed on the land. In contrast to Umaid Ali's and Karim Bux's testimony, the police officer did not find any construction material, water tanks, stones or cement at the place of the incident. To create further doubt regarding whether the incident even occurred in the manner claimed, no blood stains were found, nor were any bullet casings found at the scene of the incident, nor did the police officers see any footprints. No recovery of the crime weapons or any other incriminating articles was made throughout the case. S.I. Bashir Ahmed acknowledged at trial, *"It is*

correct that I have not recovered any incriminating articles from the possession of the accused persons."

9. It is also quite surprising, but the record reveals that the investigating officer did not record section 161 Cr.P.C. statements of any supposed injured persons. S.I. Bashir Ahmed admitted at trial, "*I did not record the statements u/s 161 Cr.P.C. of all the five injured persons in this case.*" That would mean that it was at trial, nearly two years later, that the injured implicated the appellants. No credence can be given to statements made two years after the incident without any plausible or logical reason for the delay. Let alone a plausible reason; no reason at all was given.

10. The medical evidence in the shape of Dr. Mohammad Yousuf's testimony was also not stellar. The doctor had difficulty justifying the amendments made in the provisional certificates. His opinion regarding the seat of injury on Karim Bux (the chest, according to him) was in contradiction to the remaining prosecution evidence that Karim Bux was shot in the tummy. Surprisingly, the injured were all referred to hospitals in Karachi, even for relatively minor injuries. No record of the injured going to Karachi and being treated there was produced at trial. The doctor admitted that he had made a mistake regarding the injury sustained by Doongar. Therefore, he had opined that Doongar was injured by a firearm and not a "*sharp cutting*" weapon. According to Haider Bux Bhambro, Doongar was hit on his right hand with a hatchet and a bullet on his right shoulder. However, the doctor found no bullet injury on the shoulder. The doctor further admitted that he had issued the final medical certificates based on the discharge slips given to the injured by hospitals in Karachi but did not have those slips. I also find it odd that the doctor said that bullets that had hit Karim Bux and Umaid Ali had entered their bodies but that he had not mentioned exit wounds as the bullets were inside. He then admitted that the discharge slips from the hospitals in Karachi did not show that bullets had been removed. That effectively means that both the injured are roaming around now with bullets inside

their bodies. Medical evidence led at trial was sketchy, incomplete, and contradictory in places to the eyewitness account.

11. A mistake made by the learned trial court, in this case, was that the counter-case, filed by the accused party, in which it was alleged that the complainant side had attacked the accused, was not heard together with the present case. In fact, it seems that case was put on hold for a substantially long time, and the present case was not only decided but its appeal also towards culmination when at the disapproval shown by this court was the other case, heard and all the accused acquitted. In view of all the accused being acquitted in the counter case and five of the accused in the present case being acquitted on the same set of facts and evidence, for the safer administration of justice, it would be appropriate that the appellants, too, receive the same consistency. It also seems from the repeated statements made by Haider Ali Bhambro (the complainant) that the Court acquits the appellants, that the parties have buried the hatchet for a peaceful existence.

12. For the above reasons, the appeal is allowed, and the appellants are acquitted of the charge. They are all present on bail. Their bail bonds stand cancelled and sureties discharged.

JUDGE