

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Jail Appeal No.S-14 of 2020
(*Bhale Dino alias Bhaloo & others v. The State*)

Date of hearing: **18-12-2023**
Date of decision: **18-12-2023**

Appellants: Through Mr. Rukhsar Ahmed M. Junejo,
Advocate.

The State: Through Mr. Shafi Muhammad Mahar,
Deputy Prosecutor General.

J U D G M E N T

MUHAMMAD IQBAL KALHORO, J.- Appellants Bhale Dino alias Bhaloo, Darvesh alias Suhbat Ali and Saindad were tried by learned Additional Sessions Judge-1(MCTC), Khairpur in sessions case No.826 of 2009 (re: *State-Versus Bhale Dino and others*) arising out of crime No.113 of 2009, registered at P.S Ranipur, and through impugned judgment dated 24.01.2020 have been convicted u/s 302 PPC to suffer life imprisonment and to pay compensation of Rs.100,000/-each to be paid to legal heirs of deceased Zulfiqar Ali Bhellar, as required under section 544 CrPC, and in case of default to suffer S.I for six months more with benefit of section 382-B CrPC duly extended to them.

2. As per brief facts, on 12.11.2009 at about 1700 hours when complainant Fida Hussain along with his cousins, namely, Bashir Ahmed and Ulfat Ali was present in a common street in their village Haji Shafi Muhammad Bhellar near their house, appellants armed with hatchets except appellant Saindad with a Lathi came over there and stated to Zulfiqar who had just arrived there that they had forbidden him from coming in their street, but he did not pay attention to it. Saying so, within sight of complainant and PWs, appellants Bhale Dino and Darvesh armed with hatchets in order to commit murder caused straight hatchet blows to Zulfiqar Ali on his head. Saindad caused Lathi blow to him. On cries of complainant party and other villagers coming there, accused left the scene. Complainant found his brother Zulfiqar Ali severally injured and

dead. He then leaving the dead body of his said brother with PWs appeared at P.S and registered FIR as above.

3. After due investigation, appellant Bhale Dino was arrested and against him a trial was conducted, whereas, remaining appellants were declared proclaimed offenders. On culmination of the trial, appellant Bhale Dino was convicted to suffer imprisonment for life and to pay compensation of Rs.100,000/- to legal heirs of deceased under section 544-A CrPC. He challenged his conviction and sentence before this Court and vide judgment dated 02.04.2019, his case was remanded to the trial Court with directions to afford him an opportunity to engage a counsel and proceed with the matter. After that, appellant Saindad was arrested on 21.07.2017 and appellant Darvesh was arrested on 25.09.2018. As such, amended charge was framed against all the appellants. They pleaded not guilty. Hence, prosecution examined as many as 11 witnesses, who have produced all the necessary documents including FIR, all relevant memos, FSL report, postmortem report etc. After which, statements of appellants under section 342 CrPC were recorded. They have denied the case against them and pleaded their innocence. However, by impugned judgment, appellants have been convicted and sentenced in the terms, as detailed in para-1. Hence, this appeal.

4. Learned defence counsel in his arguments has submitted that appellants are innocent and have been falsely implicated in this case; there are material contradictions in the evidence of witnesses, which have not been appreciated by the trial court; that role assigned to appellant Saindad is not proved from medical evidence; that medical evidence is in conflict with the ocular evidence which the trial Court has ignored resulting in miscarriage of justice i.e. conviction and sentence of the appellants on the basis of a consideration of extraneous material which has no nexus with the case.

5. Learned Deputy P.G has supported the impugned judgment but has conceded that the role assigned to appellant Saindad of inflicting lathi blow to the deceased is not established from the evidence.

6. I have heard learned counsel for parties and perused material available on record. The prosecution has examined Medico-legal Officer Dr. Rehmatullah as PW-1. He had conducted postmortem of deceased and found two injuries caused by sharp cutting weapon. First injury is a large incised wound measuring 15 cm x 2.5 cm at occipital region of the scalp bone deep; and the second is incised wound measuring 8 cm x 2.5 cm at lower part of occipital region (oblique) bone fractured. As per his evidence, both injuries were sufficient to cause death of deceased and probable time between injuries and death was instantaneously. His evidence that the injuries were caused to deceased through sharp cutting weapon is in line with the evidence of complainant and PWs Bashir Ahmed and Ulfat Ali who have said that the deceased was caused injuries by straight blows of hatchets. Complainant, however, in his evidence has not assigned any role to appellant Saindad except that he was along with main accused armed with a lathi which is different than the version in FIR, in which appellant Saindad is said to have caused lathi blows to the deceased.

7. PWs Bashir Ahmed and Ulfat Ali in their evidence have deposed that appellant Saindad caused lathi blows on the head of deceased which too is contrary to, insofar as locale of injuries is concerned, with version stated in FIR, in which it is simply alleged that appellant Saindad had caused lathi blows to deceased without disclosing the locale of injuries where he had hit him. PW-4 examined by prosecution is Mashir, namely, Muhammad Waris in whose presence place of incident was inspected, blood stained earth was secured, appellant Bhale Dino was arrested on 02.10.2009, and who on 03.12.2009 had produced hatchet, used in the commission of offence from his house. He has verified all such memos of arrest and recovery, inspection of place of incident in his evidence to be the same and correct. PC-Muhammad Rafique has been examined by prosecution at Exh.24. His role is to the extent of bringing dead body of deceased to hospital for postmortem and returning it to the complainant afterwards.

8. Evidence of Syed Raheel Shah (PW-5) is formal in nature in that he had witnessed arrest of appellant Saindad who was already

confined in Central Prison, Hyderabad in some other case. Evidence of PW-6 Ghulam Sarwar is confined to recording FIR as per verbatim of complainant which he has verified to be the same and correct. PW-7 Rafi Ahmed has disclosed about arrest of appellant Darvesh from a link road near banana garden in his evidence. Evidence of PW-9 Inspector Allah Rakhio is formal in nature. He has verified arrest of appellant Saindad, who was already confined in jail in some other offence. Evidence of PW-9 ASI Abdul Ghafoor is at Exh.32. He has verified arrest of appellant Darvesh in his evidence along with other staff of the police team. In their evidence, eyewitnesses Bashir Ahmed and Ulfat Ali (Exh.34&36) have confirmed story of FIR and have supported complainant on material aspects of the case and have described in detail role of appellants Bhale Dino and Darvesh for causing hatchet injuries to deceased on the fateful day. After such evidence, statements of appellants under section 342 CrPC were recorded and they were confronted with incriminating pieces of evidence, as noted above. They have simply denied the prosecution case without putting up any defence or examining themselves on oath.

9. A perusal of eye account of the incident furnished by three witnesses demonstrates that no contradiction on material facts of the case has come on record. All the three witnesses have been subjected to a lengthy cross-examination. However, no discrepancy worth noting has been pointed out which may create a doubt over the version of events culminating at the death of deceased. They have given all the necessary details in their evidence that on the day of incident they were present in the street when deceased, a brother of complainant, also came there. In the meantime, appellants Bhale Dino and Darvesh armed with hatchets and appellant Saindad armed with a lathi arrived there, called out deceased over not paying attention to their warnings to not come in their street and causing his murder on that score. Nothing has been suggested in their cross-examination which may slightly impinge intrinsic value of this description of the events unfolding entire details of the incident. Deceased was a young man, aged about 25/26 years, as noted by MLO in his evidence, but on a petty matter was murdered by the appellants. The evidence of mashir and police officials is in support of the eye account. The

recovery of a hatchet from appellant Bhale Dino, who was arrested immediately after the incident, on his pointation, is also relevant under the provision of Qanun-e-Shahadat and supports the charge against him that he was armed with it and had caused a fatal blow on the head of deceased along with co-appellant Darvesh. It is apparent from the eye account furnished by three eyewitnesses, supported by evidence given by the police officials and mashirs regarding inspection of place of incident, arrest of appellant Bhale Dino etc. that prosecution has succeeded in establishing the charge against appellants.

10. Notwithstanding, the case against appellant Saindad is not free from a doubt. He is alleged to be armed with a lathi and to have caused lathi blows to deceased. The MLO, however, found no such injury on the person of deceased. After his arrest, no incriminating article was recovered from him either. Complainant in his evidence has simply noted his presence with a lathi at the spot. He has not assigned him any active role, much less causing lathi blows to deceased, which on one the hand is contrary to what he has revealed in FIR and on the other is different to what other witnesses have stated on this point. Their evidence is that appellant Saindad had caused lathi blows on head of the deceased which allegation is not proved by the medical evidence firstly, and secondly even in the FIR, appellant Saindad is not stated to have caused lathi blows on the head of deceased but only that he had caused lathi blows to the deceased. But where the injuries were caused by him has not been revealed.

11. So neither medical evidence supports allegation against appellant Saindad, nor evidence of eyewitnesses is in conformity with each other over his role which creates a reasonable doubt over his alleged act. This is the reason why even learned Deputy P.G has not supported the impugned judgment to his extent and has candidly conceded to his acquittal.

12. In view of above discussions, this appeal is dismissed to the extent of appellants Bhale Dino alias Bhaloo and Darvesh alias Suhbat Ali. The conviction and sentence to them would be deemed to have been awarded under section 302(b) PPC. While the same is

allowed in favour of appellant Saindad. The conviction and sentence awarded to him vide impugned judgment are ordered to be set aside and he is ordered to be released forthwith if no more required in any other custody case. The above are the reasons of the short order dated 18.12.2023.

The appeal is accordingly **disposed of**.

J U D G E

Ahmad