

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Revision Application No. 23 of 2019

Date	Order with signature of Judge
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1. For order on office objection at 'A'
2. For hearing of case
3. For hearing of MA No. 739 of 2019

Date of Hearing: 28.11.2023

Date of Judgment : 14.12.2023

Mr. Syed Hussain Haider advocate for the applicants alongwith applicants.
Mr. Tayyab-ur-Rehman Durrani advocate for respondent No. 2 alongwith respondent No.2
Mr. Abrar Ali Khichi, Additional PG

J U D G M E N T

ADNAN-UL-KARIM MEMON, J Applicants being aggrieved by and dissatisfied with the impugned Judgment dated 20-12-2018 passed by the learned VIth Additional Sessions Judge (East), Karachi, in Criminal Appeal No.38/2017 (*Muhammad Ali and Muhammad Abu Bakar V/s. The state*) whereby the conviction awarded by the learned trial Civil Judge/Judicial Magistrate vide Judgment dated 09-09-2017 in J.M. No.2871/2014 arising out of FIR No.178/2014 under Section 337-A(i), 337- A(iv)/504/34-PPC P.S. Aziz Bhatti Karachi-East was maintained.

2. It appears from the record that the learned trial court convicted and sentenced the applicants to pay Daman to the extent of Rs. 10,000/- each and Arsh to the complainant i.e. 15% of Diyat amount as a whole as per the prevalent rate and in case of default to suffer simple imprisonment for one year each with the benefit of Section 382-B Cr.P.C. An excerpt of the Judgment is reproduced as under:-

"I have heard the learned counsel for the applicant/accused in the criminal appeal filed on behalf of the accused Muhammad Ali and Muhammad Abu Bakar and learned ADPP for the state and learned counsel for the complainant who filed criminal revision for enhancement of the conviction against the accused as the conviction has not been adequately awarded by the learned trial Court. The contention of the applicant/accused counsel is that the learned trial Court has not appreciated the evidence of the witnesses and evidence of defense witness Abid Rahim who supported to the version of the accused and who was present at the time of alleged incident. The people of vicinity were not made witnesses in the alleged incident and there was the family dispute between the parties and accused were involved by the complainant in the alleged incident. The perusal of the Judgment passed by the learned trial Court, the complainant Danish Khan has fully supported the version as narrated by him in the F.I.R that accused Muhammad Ali and Abu Bakar in furtherance of their common intention used abusive language and gave kicks and fists to him due to this he received injuries on head and face. The complainant was also Cross-examined by the defense counsel but his evidence was not discredited but the version of complainant was also supported by the Medical officer MLO Dr. Kaleem. The complainant/injured was referred to the hospital for medical examination and issuance of certificate after examination. The MLO Dr. Kaleem also issued final certificate in respect of injury received by him. The MLO Dr. Kaleem was cross examined by the defense counsel on the issuance of medical certificate but nothing has come on the record that such medical certificate was managed one by complainant. The accused persons had not challenged the same injuries or medical certificate at the initial stage that the same was managed one by the complainant party. Therefore, the evidence of the complainant finds corroboration from the medical certificate in respect of the injuries received by him. The learned counsel for the applicant has also held that the independent witnesses were not associated in the incident but it has been also seen that the

persons of vicinity who are always reluctant to be witness in such cases and to avoid to give evidence. Therefore, non-association of independent witnesses is not fatal in the case but the evidence of complainant and medical officer cannot be brushed aside and discarded away from the consideration. Therefore, I see no justification in the arguments of the defense counsel to discard the evidence of complainant as well as medical evidence.

So far as the evidence of defense witness namely Abid Rahim who was examined by the accused. This witness deposed that the complainant had not received the injury on the hands of accused persons but no any documents was produced by him in this regard that any NC was lodged or medical letter was produced that the complainant/injured received injuries from the hands of some other persons. Therefore, the evidence of defense witness cannot over weigh the evidence of complainant and medical officer. The learned trial Court has properly appreciated the evidence of prosecution witnesses. Hence, the evidence of defense witness find no weight.

So far as the conviction awarded by the learned trial Court and accused persons were sentenced to pay Daman to the extent of Rs. 10,000/- each and Arsh to the complainant i.e. 15% of Diyat amount as a whole as per the prevalent rate provided under the law. The learned trial Court taken lenient view in awarding sentence to the accused persons on the reason that there is admitted family dispute between the complainant party and accused and accused are not having hardened or criminals. The learned trial Court has also referred the decision of Hon'ble High Court in 1999 MLD 2450 and it was observed by the Hon'ble High Court that the punishment of Arsh has mandatory and the punishment of imprisonment was discretionary which could or could not be awarded by Court keeping in view the facts and circumstances of each case.

In the light of above discussed circumstances of the case. I find no illegality in the impugned Judgment passed by the learned trial Court in awarding sentenced to the accused namely Muhammad Ali and Muhammad Abu Bakar after taken lenient view. I also find no merits to the criminal revision filed by the applicant/complainant for enhancement of the conviction against the accused. Therefore, I see no merits to the instant Criminal appeal No. 38/2017 and Criminal Revision No. 56/2017 and same are hereby dismissed.”

3. The brief facts of the prosecution case are that on 22.04.2014 at about 1430 hours complainant Danish Khan lodged the F.I.R against the applicants alleging therein that on 17.03.2014 at about 1830 hours, he took his wife shopping at Shaz Store, while they were there way to home, in the intervening period, the quarrel took place between the spouses, which factum attracted the family of his wife who in connivance with their accomplices caused injuries to him. Police after registration of the case arrested the applicants and after usual investigation submitted a challan before the Trial Court. The Trial Court framed the charge and started recording the evidence of prosecution witnesses viz, complainant Danish Khan, Zahid Khan, Investigating Officer Shakeel Ahmed, and MLO Dr. Kaleem. The statement of applicants under section 342 Cr. P.C. was recorded respectively wherein they denied the allegation of prosecution and claimed themselves as innocent. However, they did not examine themselves on oath but produced one Abid Raheem in their defense as provided under section 340(2) Cr.P.C. the learned trial court after hearing the parties convicted applicants under 245(ii) Cr. P.C. and sentenced them to pay Daman to the extent of Rs. 10,000/- each and Arsh to the complainant i.e. 15% of Diyat amount and in default they were ordered to suffer R.I. for one year each vide Judgment dated 09-09-2017. The applicants being aggrieved by and dissatisfied with the Judgment dated 09-09-2017 preferred statutory Criminal Appeal No.38/2017 before learned VIth Additional Sessions Judge (East), Karachi, which was also dismissed vide Judgment dated 20-12-2018.

4. The Charge against the applicants is that on 17.03.2014 at about 2130 hours they caused injuries on the face and head of the complainant

and also abused him, which attracted the offenses punishable under Sections 504/337-A(i)/337-A(iv) PPC.

5. The entire case depends upon the testimony of the Medico-Legal Officer, whether injury caused to the complainant is of such a nature to award conviction to the applicants.

6. MLO Dr. Kaleem in his cross-examination has admitted that on the appearance of the injured, he had not seen the blood oozing from any of his injuries. Regarding the original Medico-legal Certificate, he deposed that the same has not been produced.

7. Complaint has admitted in his cross-examination that his father-in-law did not beat him. He admitted that he did not lodge F.I.R. police on their own accord F.I.R. He admitted that the accused person received an MLO letter for treatment. He admitted custody of a minor issue, which was handed over to his wife by the court. He admitted that his ex-wife obtained Khula from him and has one child. he admitted that he lodged a non-cognizable offense report.

8. The father of the complainant Zahid Khan was examined and admitted in the cross examination that the Contents of F.I.R were/are false. He also admitted that his son did not receive the injuries anywhere on the body. He admitted that the accused person received injuries on their body. He admitted that his son used the influence of the Air Force and a Medical report was prepared. He admitted that there was litigation between the spouses over the custody of minors.

9. When the eye-witnesses i.e. father of the complainant produced by the prosecution were narrating different stories, how the complainant could be believed to the extent of causing injuries at the hands of his brother in laws, then the testimony of the complaint could not be relied upon to convict the applicants without availability of independent corroboration to that extent.

10. The applicants have been convicted and sentenced by the learned trial Court for an offense punishable under section 337-F(i) PPC for which he was not charged at all by the learned trial Magistrate. In that way, the applicants have been deprived of the right of their lawful defense at trial. There is no recovery of any sort from the applicants. The parties are already disputed over family issues. If the involvement of the applicants is examined in that context, then it appears to be doubtful. For giving benefit

of doubt to an accused there doesn't need to be many circumstances creating doubt- if a simple circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right.

11. In view of the facts and circumstances discussed above, this Criminal Revision Application is allowed, consequently the impugned judgments of the learned Trial and Appellate Court are set aside and consequently, the applicants are acquitted of the offenses for which they were charged, tried, and convicted by learned trial and appellate Court.

JUDGE

