

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD

Cr. Rev. Appln. No.S-200 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
1. For orders on office objections. 2. For hearing of main case.	
Date of hearing	: 22.12.2022
Date of judgment	: 22.12.2022
Applicants/accused Lakhmir and others	: Through Mr. Nisar Ahmed Channa, Advocate.
The State	: Through Mr. Shahid Ahmed Shaikh, Additional P.G.

JUDGMENT

Muhammad Saleem Jessar, J.- Through this Criminal Revision Application, applicants/convicts have assailed judgment dated 03.12.2021 passed by Ist Additional Sessions Judge, Tando Allahyar (Appellate Court) in Criminal Appeal No.06/2021 (Re: Lakhmir and others v. The State) whereby Appellate Court dismissed the appeal filed by applicants/convicts and maintained the judgment dated 30.10.2021 passed by Civil Judge & Judicial Magistrate-I, Tando Allahyar (Trial Court) in Criminal Case No.100 of 2021 (Re: The State v. Lakhmir Keerio and others) being outcome of FIR No.24 of 2021 of P.S Dasori, under Sections 353, 224, 225, 511, 147, 148, 149, 337-A(i), 337-F(i), 504 PPC, who after full dressed trial, found the applicants/convicts to be guilty of the charges; hence, convicted and sentenced them to simple imprisonment for 02 years with fine of Rs.500/- each, in default thereof, to undergo for one month more; however, with benefit of Section, 382-B Cr.P.C.

2. The allegations against the applicants / convicts as leveled by the prosecution are that they alongwith other co-accused, duly armed with axes and *lathies* being members of unlawful assembly and in prosecution of their common object of

said assembly, assaulted the complainant party, used criminal force to deter the police party from discharging of their lawful duties and intentionally resisted to lawful apprehension of accused Lakhmir and Abdul Khaliq, attempting to rescue them from their lawful apprehension and also created rioting as well used abusive language to the police party, which resulted into lodging of instant F.I.R.

3. After completion of usual as well legal formalities a formal charge against the applicants / convicts was framed to which they pleaded not guilty and claimed to be tried. The case proceeded before the trial Court and after full dressed trial, the trial Court found the applicants / convicts guilty of the offence and were sentenced as mentioned above; which sentences have been maintained by the Appellate Court; hence, this Criminal Revision Application has been preferred by the applicants / convicts.

4. Learned Counsel for the applicants/convicts submits that instant case is nothing but outcome of F.I.R No.23 of 2021 registered at P.S Dasori under Section 392, 34 PPC. He next submits that after investigation, said case was challaned and was tried by the Court of Civil Judge and Judicial Magistrate-II, Tando Allahyar vide Criminal Case No.41 of 2021 (Re: The State v. Lakhmeer and two others). He next submits that after full dressed trial the accused Lakhmir, Abdul Khalique and Mashooque Ali were found innocent; therefore, trial Court acquitted them of the charges by extending them benefit of doubt vide judgment dated 06.10.2021. In support of his contention, he submits certified copy of said judgment; taken on record. He further went on to say that police had also registered case being Crime No.25 of 2021 with P.S Dasori under Sections 324, 353, 395, 341, 224, 225, 504, 147, 148, 149 PPC read with Section 6/7 of ATA, 1997 in which 22 persons were arrayed as accused. The said case was tried by the Court of Anti-Terrorism Court No.1, Hyderabad, vide ATC Case No.38 of 2021 (Re: The State v. Lakhmir and others). After full dressed trial, all the accused were found innocent and were acquitted by the trial Court through judgment dated 29.10.2022.

In support of his contention, he submits certified copy of judgment; taken on record. He further submits that instant case is outcome of said cases and per evidence adduced by the prosecution, not a single scratch was caused to police personnel; therefore, no resistance was made which may warrant application of Section 353 PPC; hence, prosecution has not come with its clean hands against the applicants; therefore, by considering the lacunas and flaws left by the prosecution itself in its evidence, they may be acquitted of the charges.

5. Learned Additional P.G appearing for the State after going through the evidence does not oppose the appeal on factual side.

6. Heard and record perused.

7. After going through the evidence minutely, it has transpired that allegation against applicants is that the police party headed by SIP Muhammad Idrees Lund went to arrest the applicants Lakhmir and Abdul Khalique, who were wanted under Crime No.23 of 2021 registered at P.S Dasori under Section 392, 34 PPC. In consequence thereof, both wanted applicants resisted and on their resistance other co-applicants came, who too resisted; thus, on their resistance and allegedly assaulted upon police party, accused Lakhmir and Abdul Khalique got released from the clutches of police party. The allegation leveled by the prosecution that due to resistance made by applicants, the police party released the wanted accused. It is; however, noted that on resistance of all these sixteen applicants as well other persons as alleged by the police party, none of the police personnel received any grievous scratch or any hurt was caused to any of the police member which may warrant application of Section 353, 224, 225 PPC. I have also gone through the contents of F.I.R which reveals that it was an attempt which could not be fulfilled; hence, in my view the prosecution has not established its charge against the applicants. Moreover, the applicants/accused alongwith others were nominated as accused in F.I.R No.23 of 2021 of P.S Dasori and F.I.R No.25 of 2021 of P.S Dasori; however, all the accused

were acquitted of the charges; therefore, it reflects that police have cooked up instant case against the applicants falsely; hence, they cannot be burdened with the charge leveled against them by the prosecution. No evidence, either ocular or documentary has been led by the prosecution to prove that police party was in fact assaulted by the applicants; hence, the probability of vague story fabricated by the prosecution cannot be brushed aside. Moreso, after examination of evidence adduced by the prosecution, it appears that prosecution has miserably failed to prove its charge against the applicants/accused beyond any reasonable shadow of doubt. It is well settled principle of law that if there creates a single doubt about the guilt of accused, the benefit whereof should go to accused as of his right but not grace or concession. In this respect, reliance can be placed upon the case titled as MUHAMMAD AKRAM v. The STATE (2009 SCMR 230), wherein at page-236, it has been held as under:-

“ It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace. It was observed by this Court in the case of Tariq Pervez v. The State 1995 SCMR 1345 that for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right.”

8. In view of what has been stated above, I while considering the flaws and lacunas in the prosecution story as well evidence, allow instant revision application. Consequently, conviction and sentences awarded to the applicants by the Courts below are set aside. Consequently, applicants are acquitted of the charges by extending them benefit of doubt. The applicants are present on bail; their bail bonds stand cancelled and surety(ies) is/are hereby discharged.

JUDGE

