

IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS

Criminal Appeal No. S-176 of 2024

Appellant : Irshad son of Muhammad Ramzan
Through Mr. Mir Naeem Akhtar, Advocate

Respondent : The State
Through Mr. Shahzado Saleem,
Additional Prosecutor General, Sindh

Complainant
Rahim Bux : In person

Date of Hearing : 15-08-2024

Date of Judgment : 23-08-2024

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J U D G M E N T

Adnan-ul-Karim Memon, J. Appellant Arshad has filed the instant Criminal Appeal against the judgment dated 25.03.2024, passed by the learned Additional Sessions Judge-II Mirpurkhas in Sessions Case No. 597 of 2023 (Re-The State v Irshad & others) arising out of FIR No.103 of 2023 under section 324, 114, 147, 148, 149, 506(ii), 337-A(i), 337-A(ii) and 337-L(ii) PPC of Police Station Jhuddo, whereby the appellant has been convicted and sentenced as under:-

- (i) *The accused Irshad is convicted for the offense under Section 324 PPC and it sentenced to suffer Imprisonment for 05 years R.I.*
- (ii) *The accused Irshad is also convicted for the offence under section 337-A(ii) PPC for causing Shajah-i-Mudihah to the injured Ali Dino and is sentenced to suffer imprisonment for 02 years as Tair and shall also pay Arsh to the extent of 5% of Diyat to the injured.*
- (iii) *The accused Irshad is also convicted for the offence under Section 337-A(i) PPC for causing Shajjah-i-Khafifah to the injured Ali Dino and is sentenced to suffer imprisonment for 01 year as Tazir and shall also pay Daman in the sum of Rs.50,000/- to the injured.*
- (iv) *The accused Irshad is also convicted tor the offence under section 337-L(ii) PPC for causing hurt to he*

injured Ali Dino and is sentenced to suffer R.I for 01 years."

All accused persons named above are present on bail. The bail of accused Irshad son of Muhammad Ramzan is canceled and he is taken into custody and is remanded to the Central Prison, Mirpurkhas, along with conviction warrant with direction to the Superintendent CP Mirpurkhas to serve to the above sentence awarded to the accused in accordance with law. The remaining co-accused Munnawar Ali, Muhammad Ramzan, Qurban and Khamiso are acquitted under section 265-H(i) Cr.P.C by extending benefit of doubt. Their bail bonds are canceled and surety discharged."

2. Essentially, the charge against the appellant is that on August 22, 2023, he in connivance with his accomplices assaulted the complainant's son Ali Dino with a sharp-edged weapon, causing him serious injuries on his head. Such report of the incident was given to Police Station Jhudo by Complainant Rahim Bux on 23.08.2023, who lodged FIR No.103 of 2023 under sections 324, 114, 147, 148, 149, 337-A(i), 337-F(i) & 506(ii) PPC, subsequently section 337-A (ii) and 337-L (ii) and 34 PPC were added in the charge.

3. The charge was framed on 2.11.2023 at Exh.2, to which all the accused, including the appellant, pleaded not guilty and claimed to be tried vide pleas at Exh. 2/A to Exh. 2-E. At trial, the prosecution examined **PW-1 complainant Rahim Bux** at Exh.3 who produced FIR at Exh.3/A. **PW-2 injured Ali Dino** was examined at Exh.4. **PW-3 Mashir Ehsan** was examined at Exh.5 who produced mashrinama of injuries at Exh 5/A and mashirnama of site inspection at Exh.5/B. **PW-4 Dr. Kashif Fayyaz M.O Taluka Hospital Digri** was examined at Exh.6, who produced police requisition letter, provisional MLC, radiologist opinion and final MLC at Exh.6/A to Exh.6/D. **PW-5 LO/ASI Arbab Ali** was examined at Exh.7 and he produced entry No.11 at Exh.7/A, entries No.17 & 18 at Exh.7/B.

4. The statement of accused persons U/S 342 Cr.P.C were recorded at Exh.9 to Exh.13 wherein they denied the allegations of prosecution declaring the same as false. The accused persons neither showed their willingness to examine themselves on oath nor led defense to disprove the charges as required U/S 340(2) Cr.P.C. According to the accused Irshad,

Muhammad Ramzan and Munawar on the alleged day of the incident, they were at Mirpurkhas for the court hearing, while the remaining two accused Qurban and Khamiso also stated that they were at Mirpurkhas for labor work. They claimed innocence and prayed for justice.

5. Learned counsel for the appellant contended that the appellant has been falsely implicated in this case with malafide intention and ulterior motives. Learned counsel for the accused persons contended that on the day of the alleged incident accused persons were not present at the site but at Mirpurkhas and they had been involved in this false case due to a previous grudge between the parties. He further contended that there are material contradictions in the evidence of PWs for which accused persons are entitled to acquittal. He further contended that all the private PWs are relatives inter se and no independent person has been associated to witness the alleged incident. He further contended that evidence of the Complainant, mashir, and the injured does not inspire confidence and the complainant party has lodged several FIRs against the accused persons. In support of his contentions, he has relied upon the cases of Muhammad Iqbal Vs. The State & another [2024 SCMR 1133], Pervaiz Khan Vs. The State [2022 SCMR 393], Munir Ahmed Vs. The State [2019 SCMR 2006], Nawab Khan Vs. The State & 02 others [2024 YLR 457], Muhammad Rafique Vs. The State [2014 YLR 865], Noor Ahmed & another Vs. The State [2019 YLR 2576], Umair Ahmed Vs. Yousif Ali Khan Ghouri & another [2014 MLD 953]. He prayed for the acquittal of the accused in the circumstances extending the benefit of the doubt.

6. Learned Additional Prosecutor General assisted by the complainant who is present in court contended that appellant Irshad caused dagger blows to the injured Ali Dino and his injuries are corroborated by MLC. He next contended that the motive of causing injury and previous enmity is mentioned in the FIR as well as in evidence of private PWs, hence prosecution successfully proved its case beyond shadow of reasonable doubt. He lastly prayed for the dismissal of the Criminal Appeal.

7. I have heard learned counsel for the parties and have perused the material available on record.

8. It appears from the record that no specific role had been assigned to co-accused Muhammad Ramzan, Qurban, Munawar Ali and Khamiso by the all PWs in their respective evidence and this is the reason they were acquitted from the charge by the trial court by giving them benefit of doubt, however the trial court opined that all witnesses implicated the appellant Arshad of causing dagger injuries on the head of injured Ali Dino, which were declared by the MLO under Sections 337-A(ii), 337-A(i) and 337-L(ii) PPC.

9. It appears that the learned trial court has based its findings on the statement of injured Ali Dino who deposed that on 22-08-2023 at 05.00 p.m., accused Khamiso and Qurban instigated other accused persons hence accused Arshad inflicted dagger blows on the right side of his head and right little finger, while remaining accused persons overpowered him and on cries, his father, brother Ali Raza and cousin Ehsan came to rescue him, then he was taken to Jhudo hospital to Digri hospital and then to LUMHS Hyderabad for treatment.

10. It is shocking to note that the injured in his cross-examination admitted that in his statement before the police, he disclosed that his father had given the name of the accused Khamiso and Qurban due to some misunderstanding. If this is the stance of the of the complainant Rahim Bux, the entire story becomes faulty for the reason that all witnesses deposed that they were together and on the instigation of Khamiso, remaining co-accused caused stick blow and beaten Ali Dino with intent to commit his Qatl-i-Amd and he sustained injuries, whereas Medical Officer Dr. Kashif Fayyaz of Taluka Hospital Digri deposed that on 22-08-2023 at 7.30 p.m., injured Ali Dino was brought with history of assault, he examined him and found three injuries on his person, one incised wound 1.2cm x 2.5cm on right temporal region with bone exposed, one incised wound 0.5cm x 0.8cm on right front-parietal region cut wound 0.3cm x 1.1cm on right hand little finger. After receipt of the radiological opinion, he issued final MLC. However in the final MLC, he opined the injury No.1 as 337-A (ii), injury No. 2 as 337-A (1), and injury No.3 337-L(ii). In cross-examination, he admitted that no fracture was caused to the injured. The evidence of the witnesses explicitly shows that there were no

injuries caused by the co-accused whereas they deposed that the co-accused caused a stick blow and beat Ali Dino. It also appears from the record that no recovery of the alleged weapon was made from the present appellant and in the absence of such a crime weapon, the injuries sustained by the injured lack corroboration. Merely, the evidence of the MLO cannot be the basis to award a conviction to the appellant, until and unless corroborated by cogent material as the witnesses have given contradictory statements in their depositions.

11. Now moot point involved in the case is that when a charge has not been proved against the co-accused, then either in peculiar facts and circumstances of the case, the appellant can be convicted and sentenced under Section 324, 114,147,148,149, 337-A (i), 337-F(i), 337-A (ii) and 337-L (ii) 506(ii) and 34 PPC.

12. It is a trite law that in such a state of affairs there is no need to discuss the defence version. Suffice it to say that co-accused persons having a similar role were acquitted by the learned trial court through judgment, therefore, the conviction of the appellant on the same set of evidence needs to be thrashed out in its true perspective for the reason that the appellant's case is based on the same set of evidence and the role ascribed to him is similar to that of the co-accused. The conduct of the prosecution witnesses casts serious doubt on their credibility. The somersault taken by the complainant regarding the accusation leveled against the appellant and co-accused since acquitted persuaded us to extend the benefit of the doubt to the appellant not as a matter of grace but rather as a matter of right. In this regard, reliance is placed on the judgment of the Supreme Court of Pakistan reported as **2022 SCMR 1527**. The Supreme Court further held in the case of *Muhammad Iqbal Vs. The State* [**2024 SCMR 1133**] that once the testimony of the witness is disbelieved with respect to co-accused, then ordinarily they cannot be relied upon qua the other co-accused, unless their testimony is sufficiently corroborated through strong corroboratory evidence coming from unimpeachable source. The Supreme Court further held in the case of *Pervaiz Khan Vs. The State* [**2022 SCMR 393**] that once the evidence is found

to be doubtful against the co-accused and the same cannot be used for sustainability of conviction against the other accused of similar role.

13. Primarily under the criminal jurisprudence, it needs no reiteration that for the purpose of giving benefit of doubt to an accused person, more than one infirmity is not required, a single infirmity creating reasonable doubt in the mind of a reasonable and prudent mind regarding the truth of charge-makes the whole case doubtful. Merely because the burden is on the accused to prove his innocence it does not absolve the prosecution to prove its case against the accused beyond any shadow of doubt in this duty does not change or vary in the case on the aforesaid proposition I am guided by the decision of the Supreme Court in the case of Ghulam Qadir Vs. The State (2008 SCMR 1221).

14. For the aforesaid reasons, instant criminal Appeal is allowed, as a result whereof, impugned judgment dated 25.03.2024, passed by the learned Additional Sessions Judge-II Mirpurkhas in Sessions Case No. 597 of 2023 (re-The State v Irshad & others) arising out of FIR No. 103 of 2023 under section 324, 114, 147, 148, 149, 506(ii), 337-A (i), 337-A (ii) and 337-L(ii) PPC of Police Station Jhudo, whereby the appellant was convicted and sentenced (as mentioned above) is set-aside. The Appellant Irshad son of Muhammad Ramzan is acquitted of the charge; he is on bail, as during the pendency of this appeal, his sentence was suspended by this Court, therefore, his surety stands discharged from his all liabilities.

JUDGE

"Ali Sher"