

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Appeal No.S-129 of 2023

Appellants: Manthar son of Shafi Muhammad and Allah Ditto son of Muhammad Qasim both bycaste Mazari **through** Mr. Alam Sher Khan Bozdar, advocate.

The State: **Through** Aftab Ahmed Shar, Additional Prosecutor General.

Date of hearing 12-02-2024

Date of decision 12-02-2024

J U D G M E N T

IRSHAD ALI SHAH, J. It is the case of the prosecution that the appellants with rest of the culprits assembled to commit dacoity and then deterred the police party of PS Reti led by ASI Shahnawaz from discharging its lawful duty as public servants by making fires at them with intention to commit their murder and then made their escape good from the place of incident, for that they were booked and reported upon by the police. On conclusion of trial they were convicted and sentenced to undergo various terms of imprisonment spreading over seven years by learned Additional Sessions Judge Daharki, vide judgment dated 30-10-2023, which they have impugned before this Court by preferring the instant Crl. Appeal.

2. It is contended by learned counsel for the appellants that the appellants being innocent have been involved in this case falsely by the police and have been convicted on the basis of improper

assessment of the evidence, which was doubtful in its character; therefore, they are entitled to their acquittal by extending them benefit of doubt, which is opposed by learned Additional P.G for the State by contending that the prosecution has been able to prove its case against the appellants beyond shadow of doubt.

3. Heard arguments and perused the record.

4. Complainant ASI Shahnawaz, PW/mashir PC Ajab Gul and I.O/ASI Rasheed Ahmed have been found inconsistent with regard to the distance between place of incident and PS Reti, such inconstancy on their part could not be over looked, which prima-facie suggests that their evidence is not transpiring confidence. It is an admitted fact that the firing allegedly made by the appellants and police proved to be in effective one in all respect, which appears to be surprising. None has been robbed. The appellants during course of their examination u/s 342 Cr.P.C have pleaded their innocence, such plea on their part could not be lost sight of.

5. The conclusion which could be drawn of the above discussion would be that the prosecution has not been able to prove its case against the appellants beyond shadow of reasonable doubt and to such benefit, they are found entitled.

6. In the case of *Muhammad Mansha vs. The State (2018 SCMR 772)*, it has been held by the Hon'ble Apex court that;

"4....Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".

7. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellants under impugned judgment are set aside, they are acquitted of the offence for which they were charged, tried, convicted and sentenced by learned trial Court; and shall be released forthwith, if not required to be detained in any other custody case.

8. The instant Criminal Appeal is disposed of accordingly.

J U D G E