

Present:

**Mr. Justice Amjad Ali Bohio.**

**Criminal Appeal No.S-34 of 2023**

Appellants: (1) Soorasingh and  
(2) Mahesh, both sons of Kheto  
Through Mr. Jeelaji Rajput, Advocate

Respondent: The State  
Through Mr. Shahzado Saleem, Additional  
Prosecutor General, Sindh assisted by Mr. Valji  
Rathore, Advocate for the complainant.

Date of Judgment: 07.02.2024

**J U D G M E N T**

**AMJAD ALI BOHIO, J:** This appeal is directed against the judgment dated 20-10-2023, passed in Sessions Case No.158/ 2023 (*arising out of FIR No.95/ 2023, registered at P.S Mithi, under sections 324, 504, 403, 337-A(i), 337-A(v), 337-A(iii), 337-L(2), 34, P.P.C*), whereby the Additional Sessions Judge-II, Tharparkar @ Mithi (*"the trial Court"*) has convicted the appellants and sentenced them, as under:

**"u/s 324 P.P.C**

*Both accuse are sentenced to under R.I for five years and to pay fine of Rs.10,000/= (rupees Ten thousand only) and in case of failure of payment of fine, they shall further suffer S.I for three months more.*

**u/s 337-A(iii) PPC.**

*Accused Saorasingh has caused head injury to the injured Sobhraj, hence, he is sentenced to pay arsh, equal to 10% of Diyat i.e. Rs.675,790/= ( Rupees six lac, seventy five thousand seven hundred and ninety lnly), as the amount of Diyat for the financial year 2023-24 has been declared as Rs. 6,757,902/= (rupees six million seven hubndred fifty seven thousand nine hured and two only). In default of payment of arsh amount, he shall undergo simple imprisonment until he pays the amount of arsh to the injured Sobhrahj.*

*The benefit of Section 382-B Cr.P.C was extended to appellant Mahesh."*

2. On 08.06.2023, at 1730 hours, complainant Devraj lodged above FIR stating therein that he and his brother Sobhraj were working at the land bearing S.No.55 on 06.06.2023 at about 5:30 pm, when accused namely, Soorasingh and Mahesh both sons of Kheto, being armed with hatchets arrived there. Accused Soorasingh, blamed his brother for committing theft of sheep, to which Sobhraj denied the accusation, accused Soorasingh than hit Sobhraj on the right side of his head with a sharp-edged hatchet, intending to kill him. Simultaneously, accused Mahesh hit Sobhraj on the right eyebrow with the backside of a hatchet with the intent to kill. Sobhraj fell to the ground and raised cries. Upon hearing cries, the complainant Devraj, accompanied by witnesses Khanghar, son of Mooroji, and Sooratsingh, son of Lalji Thakur, rushed to the scene. They witnessed the accused continuing to assault Sobhraj with their hatchets. Soorasingh also took Sobhraj's CNIC and mobile phone during the altercation. Upon seeing the severity of Sobhraj's injuries, the accused fled from the scene. Sobhraj was taken to Civil Hospital Mithi, and later referred to Civil Hospital, Hyderabad for further treatment. Devraj lodged F.I.R on 08.06.2023, at 5:30 PM, detailing the events of the assault.

3. After usual investigation, the Investigating Officer, submitted report under Section 173 of the Criminal Procedure Code. Subsequently, charge was framed against the appellants on 18-08-2023, to which they pleaded not guilty and claimed for trial. At the trial, the prosecution has examined P.W-01 Senior Medical Officer Syed Muhammad Irtiza Hadi Naqvi (M.L.O) at Ex.03, P.W-02 Devraj (*complainant*) at Ex.04, P.W-03 Sobhraj (*injured*) at Ex.05, P.W-04 ASI Ali Bux at Ex.07, P.W-05 Kheenghar (*mashir*) at Ex.08, P.W-06 PC Mehtab

Rai (*dispatcher for F.S.L report*) at Ex.09 and P.W-09 SIP Aziz Ahmed (*I.O*) at Ex.11. They produced relevant documents, recovered articles, which were exhibited during their testimony before the trial Court. After the conclusion of prosecution's evidence, the statements of appellants were recorded under section 342 of Criminal Procedure Code at Ex.13 and Ex.14; however, they neither opted for their examination on oath under section 340(2) of the Criminal Procedure Code nor, adduced any evidence in their defense. After hearing, the arguments advanced by the learned counsel for the parties, the trial Court found the appellants guilty and thereby convicted and sentenced them as detailed above.

4. I have diligently heard the arguments put forth by the learned counsel for the appellants, the learned counsel for the complainant, as well as, the learned Additional Prosecutor General. Additionally, I have meticulously examined the entirety of the provided record.

5. The counsel for the appellants has pleaded innocence and false implication of the appellants in the case by the complainant and argued that the impugned judgment is contrary to law, facts, principles of criminal justice as well as material available on record; that insufficient and evidence is brought on record to connect the appellants with commission of offence; that impugned judgment is based on misreading and non reading of prosecution evidence ; that there are material contradictions, malafide improvements and exaggerations in the evidence of witnesses which have been ignored by the trial court; that all private witnesses are related inter se; that the prosecution has not examined any independent witness in corroboration of it's case; that recovery of hatchets is doubtful; that medical evidence is sketchy

and contradictory to oral evidence which has rendered the entire case suspicious. Lastly learned counsel prayed that since the entire prosecution case is full of doubts, the appellants may be acquitted. To support these contentions, the defense cites legal precedents such as Hiddoo alias Hidayatullah and others v. The State (2023 P. Cr. L.J Note 6), Pervaiz Khan and another v. The State (2022 SCMR393), Sudher through Senior Superintendent, Central Prison, Hyderabad v. The State (2023 P. Cr. L.J 25) and Shahbaz Masih v. The State (2007 SCMR 1631).

6. The prosecution, represented by the counsel for the complainant and the Additional Prosecutor General, have made arguments in support of the impugned judgment. Involvement of the Appellants: The prosecution asserts that the appellants were responsible for inflicting hatchet blows on Sobhraj. They highlight the fact that the appellants were arrested and the hatchets used in the assault were recovered. Additionally, these hatchets were dispatched for DNA analysis, and the results matched with Sobhraj's blood sample, providing compelling evidence of the appellants' involvement in the crime. Absence of Ill-Will or Motive: The prosecution contends that the prosecution witnesses had no ulterior motive or ill-will against the appellants to falsely implicate them. This strengthens the credibility of the witnesses' testimony and bolsters the prosecution's case.

7. Proof beyond Reasonable Doubt: The prosecution argues that it has successfully proved its case beyond any reasonable doubt, justifying the trial court's decision to convict the appellants. They assert that the evidence produced, including witness testimony and forensic analysis, is sufficient to establish the guilt of the appellants. In support of their contentions, the prosecution relies on the cases of Willayat Ali

v. State (2004 SCMR 477) and Nasir Ahmed v. State (2023 SCMR 478). Overall, the prosecution maintains that the evidence produced during the trial unequivocally establishes the guilt of the appellants and justifies the trial court's decision. Therefore, they argue that the appeal lacks merit and should be dismissed.

8. I have considered submission of the parties and reviewed the prosecution's case including the case law cited at bar. As per prosecution case, the alleged incident took place on 06.06.2023 at 1730 hours whereas, it's FIR was lodged on 08.06.2023 at 1730 hours after delay of two days. Such delay assumes importance when version in FIR is compared with the evidence and found to contain material contradictions therein. In a case where FIR is promptly registered and the same gives a general description qua role of each accused in the incident, it could be presumed that the complainant was under stress, etc. and therefore was not able to give a detailed account of the occurrence. But when FIR is registered after a considerable time, such presumption would not be available and the complainant's providing general description about role of each accused in evidence would be looked with a certain degree of suspicion.

9. The complainant stated that following the alleged incident, he initially traveled to the village. From there, he contacted P.W. Kheenraj, who was located in Mithi, approximately an hour's drive from their village. He then transported the injured Sobhraj in the vehicle to Mithi hospital. Due to the severity of the injuries, the injured was subsequently transferred to Hyderabad hospital on 07.06.2023. The complainant returned to the police station and lodged the FIR on 08.06.2023. However, P.W. Sobhraj, the injured, testified that his brother

contacted P.W. Kheenraj from Kharo, the location of the incident. As a result, the complainant's account that he first went to the village, then contacted P.W. Kheenraj, and subsequently returned to the place of the incident to transport the injured individual is contradicted by P.W. Sobhraj's testimony. The differing recollections regarding the arrangement of transportation for the injured Sobhraj cast doubt on the coherence of the prosecution's version of events. Furthermore, P.W. Sobhraj's testimony does not corroborate the complainant's claim that he transported the injured individual to Mithi hospital on 07.06.2023 and returned the following day, as P.W. Sobhraj stated that the complainant remained with him in Hyderabad until 09-06-2023.

10. Discrepancies have emerged regarding the nature of the hatchet blow allegedly inflicted by the appellant, Soorasingh. According to the contents of the FIR, it is claimed that accused Soorasingh hit a direct hatchet blow to Sobhraj, and the complainant, Devraj, also stating during cross-examination that one blow was direct while another was a handle blow. However, medical evidence does not support this assertion. The medical examination indicates that a hard and blunt substance caused the alleged injuries to PW Sobhraj. Dr. Syed Muhammad Irtiza Hadi Naqvi, during cross-examination, explicitly stated that no sharp cutting weapon was used in the present case. He further mentioned that the injured was brought by HC Jagji and no relatives were present with the injured at that time. Thus, the prosecution's narrative, as described by the complainant and P.W. Kheenraj, lacks foundation, and the presence of the complainant, P.W. Khanghar, and P.W. Sooratsingh, as claimed by the complainant, remains unproven. If indeed the complainant had contacted Kheenraj,

who then brought the vehicle from Mithi and transported the injured to the hospital there, the medical officer would likely have noted their presence when the injured was brought in for treatment. However, such fact was not mentioned by the medical officer. Additionally, discrepancies exist regarding the timing of the incident, as stated in the FIR and the medical certificate provided by the medical officer. The medical officer's testimony also revealed that, according to the police statement, the injured was allegedly beaten while committing robbery. Despite this contradiction, the prosecution did not challenge the medical officer's evidence, which supports the defense's claim that the accused was arrested while committing robbery and was brought by police officials for treatment. Thus, based on the evidence provided by Dr. Syed Muhammad Irtiza Hadi Naqvi, it appears that no straight hatchet blow was inflicted on injured Sobhraj, and there is no evidence to support the claim that he was transported by the complainant and Kheenraj in a vehicle to Mithi hospital for treatment.

11. Another crucial aspect of the case emerges regarding the discrepancy in the location of the alleged incident. This is highlighted by the DNA report concerning the blood-stained earth collected by the investigating officer (I.O) on 08-06-2023 in the presence of witnesses Kheenraj and Bhamersingh, as documented in memo Exh.8-A. The DNA report produced by the medico-legal officer at Ex.3-I states that no human DNA was detected in the soil collected from the alleged place of incident, item No.2. This inconsistency seriously undermines the prosecution's narrative, suggesting a collapse of the entire case. In this particular case, the supporting evidence is conspicuously absent, and the direct evidence is riddled with improvements and significant

contradictions regarding the hatchet used, and the manner in which injuries were inflicted upon PW Sobhraj. For instance, while the injury is attributed to accused Soorasingh, the medical certificate indicates that it was caused by a hard and blunt substance. There is no evidence to substantiate the claim that PW Sobhraj sustained a direct hatchet blow to his head. Moreover, the involvement of injured Sobhraj in criminal cases is admitted by the complainant, Devraj, who testified during cross-examination that there were cases against his brother, although he was acquitted. Additionally, I.O S.I.P Aziz Ahmed admitted during cross-examination that allegations against the injured of theft and being beaten by a mob were informed to him by a third party. Despite this information, he failed to collect evidence to ascertain the truth. According to the prosecution's narrative, both accused arrived at the scene of the occurrence and allegedly inflicted straight and backside hatchet blows on injured Sobhraj. The complainant, along with P.Ws Khanghar and Sooratsingh, who were nearby, rushed to the cries and rescued PW Sobhraj. However, the memo of the inspection of the scene prepared by the I.O, as produced by Kheenraj, only mentions footprints of three persons. The I.O testified during cross-examination that they inspected the scene with torchlight and only observed footprints of three persons, whereas the FIR states that there were a total of six persons, including the accused, at the scene. He also admitted for not recording statements of independent witnesses from the village and acknowledged that HC Jagji, who brought the injured before the medico-legal officer, was not listed as a witness in the case. Consequently, the prosecution's failure to produce crucial evidence and the withholding of important information severely weakens their case

against the accused, amounting to a clear violation of the provisions of Article 129 (g) of the Qanoon-e-Shahadat Order, 1984. The above provision referred in case of *"Nasrullah alias Momin and another v. The State"* (2023 P Cr. L J 589), the reliance was placed on the case of *"Muhammad Shah Khesro and another v. The State and others"* (2006 P Cr. L J 606), wherein it was held as under:

*"Article-129 (g)-Withholding of evidence-Presumption---If the best piece of evidence is available with a party and same is withheld by him, then it is presumed that the party has some evil motive behind it in not producing that evidence."*

12. The failure of the prosecution to examine HC Jagji, who brought the injured before the medico-legal officer, raises serious concerns and casts doubt on the credibility of the prosecution's case. HC Jagji would have been in a prime position to provide crucial testimony regarding the true facts of the incident. His non-examination by the prosecution suggests a deliberate omission that has effectively undermined their narrative. HC Jagji's testimony could have provided essential insights into the circumstances surrounding the incident, including the manner in which the injured was found and any relevant details about the events leading up to the medical examination. By withholding this critical evidence, the prosecution has significantly weakened their case and failed to establish a clear and coherent account of the alleged incident. As a result, sufficient doubt has been raised regarding the veracity of the prosecution's version of events as narrated by the prosecution witnesses. The omission of HC Jagji's testimony deprives the court of potentially vital information that could have shed light on the true sequence of events and the roles played by the parties involved. In light of this failure to present key evidence, the

prosecution's case appears to be tainted by an "evil eye," suggesting a deliberate attempt to obscure the truth and manipulate the proceedings. As a result, the credibility of the prosecution's narrative is severely compromised, and doubts regarding the alleged incident remain unresolved.

13. Considering the above material contradictions, discrepancies, and irregularities evident in the prosecution's case, coupled with the flaws and shortcomings within it, it becomes apparent that significant doubts have been cast upon the prosecution's narrative. It is a well-established legal principle that the burden lies upon the prosecution to prove its case against the accused beyond any reasonable doubt. However, in light of the aforementioned defects and deficiencies, it can be concluded that the prosecution has failed to meet this burden. It is imperative to underscore the fundamental principle of law that an accused is entitled to the benefit of the doubt as a matter of right. In the present case, there exist multiple circumstances that give rise to doubts regarding the prosecution's case. Even if there were only one circumstance that raises doubt in the prosecution's story, the accused cannot be deprived of the benefit of doubt solely on that basis. Therefore, considering the totality of the evidence and the various uncertainties surrounding the prosecution's case, it is appropriate to afford the accused the benefit of the doubt and acquit them accordingly. This decision is in accordance with the principles of justice and fairness, ensuring that individuals are not unjustly deprived of their liberty based on a case that fails to meet the required standard of proof. In the case of Muhammad Akram v.

State (2009 SCMR 230), the Honourable Supreme Court has held that:-

*"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". Same view has also been taken in the case reported as Muhammad Mansha v. State (2016 SCMR 772), wherein it was also held that "it is better that ten guilty persons be acquitted rather than one innocent person be convicted."*

14. Based on the reasons outlined above, as per my short order dated 07.02.2024, the Criminal Appeal No. S-34/2023 has been allowed. The impugned judgment dated 20-10-2023, passed by Additional Sessions Judge-II, Tharparkar @ Mithi in Sessions Case No.158/2023 (State v. Soorasingh and another), arising from Crime No.95/2023 of PS Mithi under sections 324, 504, 403, 337-A(i), 337-A(iii), 337-A(v), 337-L(2), and 34, P.P.C., has been set aside in terms of conviction and sentence awarded to the appellants, namely Soorasingh and Mahesh, both sons of Kheto. Consequently, the appellants have been acquitted, and a release order has been issued accordingly.

15. These reasons serve as the basis for my short order dated 07.02.2024, wherein the appellants have been acquitted based on the deficiencies and doubts present in the prosecution's case, as outlined in the preceding discussion.

**Judge**