

**IN THE HIGH COURT OF SINDH AT KARACHI
Cr. Appeal No.647 of 2019**

Date of hearing:- 22.01.2025
Appellants: Muhammad Asif, Salahuddin and Nadir Saeed through Raja Babar, advocate.
Complainant: Waqas through Mr. Peer Rehman Mehsud, advocate.
The State: Ms. Rubina Qadir, Deputy Prosecutor General, Sindh.

J U D G M E N T

MUHAMMAD IQBAL KALHORO, J:- On 06.06.2013, a statement of complainant namely Waqas was recorded u/s 154 Cr. P.C., in which, he essentially alleged murder of his father Abdul Rehman and Munir Shaikh, both friends and injuries to two PWs namely Muhammad Athar and Ismail on 05.06.2013 by three unknown accused at Abdul Ghaffar Kabab House, DMCHS Karachi.

2. His statement was latter converted into FIR followed by investigation. On 28.09.2014, after more than one year, accused Asadullah (since dead) was arrested in some other crime at Police Station Super Market, Karachi. In the investigation of which, he admitted his guilt in the present crime stating that this offence was committed by him along with appellants at the instance of absconder accused Abdul Wahab. His confession was recorded on 01.10.2015 by Judicial Magistrate-VI, East-Karachi, in which, he has detailed entire story, that he was employed by one Osama Qadri and in his employment he had met with one Abdul Wahab and at his instance he conducted recce of deceased Abdul Rehman with whom absconder accused Abdul Wahab, his brother, had some enmity. He has also given details of the day of incident viz. 05.06.2013 when accused Salahuddin and Nadir armed with pistols fired at the deceased and the injured witnesses.

3. Appellants were arrested on 17.02.2015 in some other case by the police of PS Jauharabad. They confessed their involvement in this case before the police and on the basis of such disclosure and confession by co-accused Asadullah they were arraigned in the case.

4. During the trial, the Charge was framed against four accused including Asadullah. Later on, accused Asadullah was granted bail. Outside, he died in an encounter with the police. Hence, the case proceeded against the appellants only. When the appellants pleaded not guilty to the Charge, prosecution examined as many as 19 witnesses, who have produced all the relevant documents including Geo Fencing Reports, different memos of arrest and recovery, medical certificates, postmortem reports etc.

5. After the prosecution evidence, statements of appellants were recorded u/s 342 Cr. P.C. They have simply denied the prosecution story without examining themselves on Oath or leading any evidence in defence.

6. On the basis of evidence led by the prosecution, the trial Court vide impugned judgment has convicted and sentenced the appellants to suffer life imprisonment u/s 302 PPC for committing murder of two persons and injuring two persons. Since the appellants have also been convicted in other provisions of PPC causing injuries to the victims they have been burdened with fine and an amount of Rs.7,73,400/- to be paid to the injured as Diyat. The benefit u/s 382 Cr. P.C. has, however been extended to the appellants. Hence this appeal.

7. Learned defence counsel has pleaded that this is a case of no evidence and except a confessional statement of co-accused Asadullah, prosecution has produced absolutely no evidence against the appellants. He further submitted that even after arrest of the appellants, report u/s

173 Cr. P.C. was not submitted in the Court. According to him, the eye witnesses have not identified the appellants in the Court. He submits that only one witness PW-17 Ateeq Ahmed has identified two appellants namely Nadir Saeed and Salahuddin to be the accused in this case but his evidence is full of suspicion in that he was introduced in this case later on. The IO of the case namely Inspector Zafar Iqbal, who was entrusted with investigation on 21.06.2013 has not confirmed the fact that he had recorded statement of Ateeq Ahmed on 24.06.2013 as claimed by the latter. Further, this witness has not stated as to how he knew appellants when admittedly they were not previously known to him. According to him, the confession of co-accused is a weak type of evidence can only be relied upon for recording conviction when it is supported by corroborative evidence. According to him, in this case, the corroborative evidence is lacking and the identification of the appellants to be the accused in this case is not without a doubt. He has relied upon the cases of (1) **IQBAL V. THE STATE and another [2015 P. Cr. L.J 735]**, (2) **MUHAMMAD FAHEEM V. THE STATE [2023 YLR 1084]** and (3) **MUHAMMAD ASIF KHAN V. EHTESAB BUREAU, through its Chairman at Muzaffarabad and another [PLJ 2005 SC (AJ&K) 65]**.

8. On the other hand, learned counsel for the complainant and learned Deputy Prosecutor General have supported the impugned judgment and submit that from geo fencing reports, location of the appellants at the place of incident at the relevant time is established, which is sufficient supporting evidence and confirms contents of judicial confession made by co-accused Asadullah. He has relied upon the case of **SAGHEER alias BILLA V. THE STATE and others [2020 YLR 916]**.

9. I have heard the parties and gone through the evidence with their assistance. From the record, it is clear that the FIR was registered against the unknown accused on the next day of incident viz.

06.06.2013. After more than one year of the incident, initially, co-accused Asadullah was arrested in some other crime and during investigation he admitted commission of the present crime before the police naming the appellants as his accomplices. Accordingly, his judicial confession was recorded in which he stuck to his stance confirming commission of offence and the role played by the appellants in it. Thereafter, sometime in February 2015, the appellants were arrested in some other crime and they went through the rigor of interrogation, in which, they also admitted, like co-accused Asadullah, commission of the present crime. However, they were not produced before the Judicial Magistrate for recording their judicial confession, nor the record shows that any such attempt was made by the Investigating Officer.

10. In this case, the prosecution has examined at least four eye witnesses, two of them are injured namely Muhammad Athar and Ismail. Both the witnesses have not identified the appellants to be involved in the present crime and offence. The third eye witness is Abdul Shehzad Exh.25. He has also deposed that he was present at the spot on the day of incident when suddenly firing started and he went to his house, which was located nearby the Kabab House, in order to save his life. According to him, when he came at the spot after a while, he found four injured persons, two were employees namely Muhammad Athar and Ismail and two other injured were Shaikh Muneer and Abdul Rehman who later died. He too in his evidence has not identified the appellants. It is the last witness namely Ateeq Ahmed (PW-17 Exh-127), who in his evidence, has claimed to be present at the spot for purchasing meal when the incident took place. According to him, he had seen the two accused firing at the spot whom he has identified as appellants Asif and Salahuddin. However, his evidence is not without flaws, as he has admitted that after the incident he did not come forward to record his

statement u/s 161 Cr. P.C. disclosing his presence and the fact that he had identified the accused at the time of incident. In his cross-examination, he has disclosed that his u/s 161 Cr. P.C. statement was recorded on 24.06.2013 after more than 19 days of the incident, however, this is not in conformity with the evidence of IO Inspector Zafar Iqbal (PW-15), who has stated that he was entrusted with the investigation on 21.06.2013, but does not refer to examining PW Ateeq Ahmed on 24.06.2013, as claimed by said PW. Therefore, the suggestion in cross-examination to him that his statement u/s 161 Cr. P.C. was manipulated to be dated as 24.06.2013 is not without substance. When the IO has not verified to examine PW Ateeq Ahmed on 24.06.2013 u/s 161 Cr. P.C., his subsequent introduction in the case as an eye witness cannot be ruled out, not the least when all the three remaining witnesses, who were present at the time of incident at spot, have not identified the Appellants.

11. Among them, most important is the evidence of the injured, whose presence is established beyond a doubt, as far as identity of the appellants is concerned. When they have not identified the appellants, the sole evidence of PW Ateeq Ahmed, whose presence at the spot is by chance and who was purportedly examined after 19 days of the incident under Section 161 Cr.P.C., identifying only the two appellants cannot be looked into with much credibility. Apart from evidence of this witness, another piece of evidence considered against the appellants is confessional statement of co-accused Asadullah. It is a well settled proposition of law that judicial confession of co-accused is a weak type of evidence viz-e-viz co-accused and can only be relied upon when it is supported materially by a corroborative piece of evidence. In my humble view, in the present case, the judicial confession of co-accused is not trustworthy, as it is not espoused by cogent evidence signaling

involvement of the appellants in the commission of the offence. The prosecution case is silent as to why the appellants were not subjected to identification parade after their arrest in the present case when their names did not transpire in the FIR, not the least when there were certain eye witnesses who had claimed to have seen the appellants at the time of incident like PW Ateeq Ahmed. Therefore, prosecution's failure to present the appellants for the identification parade after their arrest and subsequent failure of the eye witnesses to identify the appellants to be accused in this case cannot be ignored. Looking in the same context, the confessional statement of co-accused cannot be made a sole basis for recording conviction to the appellants.

12. Another piece of evidence which has been referred by learned counsel for complainant to support the impugned judgment is reports of geo fencing which purportedly show that appellant Nadir Saeed was in contact with Abdul Wahab on the day of incident. I have seen the geo fencing reports. It is not out of place to mention that in such reports so many numbers have been identified to be present at the spot and does not conclusively infer presence of the appellants at the spot at the relevant time. Appellants Nadir is shown to be present at certain time, but it appears that he was in motion i.e. continuously moving from one place to another as is evident from his different locations. More so, in absence of any other evidence and the fact whether the phone numbers identified in the reports belong to the appellants, the report of geo fencing cannot be taken into account as a conclusive proof of presence of the appellants at the spot.

13. The appellants cannot be held guilty of the offence on the basis of confession before the police officer, or alleged judicial confession made by the co-accused who subsequently could not be examined by the Court to verify its contents or the geo fencing reports allegedly obtained

after more than one month of this incident plus absence of any report from the phone companies that the numbers identified belonged to the appellants or were in use of the appellants at the relevant time for recording conviction to the appellants. The prosecution in the case where the accused are not named in the FIR is not only burdened to bring actual facts against the accused beyond any reasonable doubt but all the pieces of evidence connecting the incident with the neck of accused. Here the evidence as produced by the prosecution, and discussed above, does not fulfil the criteria and therefore cannot be relied upon for upholding the conviction and sentence awarded by the trial Court to the appellants.

14. Therefore, I am of the view that prosecution case against the appellants is not free from a doubt. It is settled law that it is not necessary that there should be many circumstances creating a doubt. If there is a single circumstance in the case, which creates a reasonable doubt over action of the accused to be the culprits or not, its benefit has to be extended to them not as a matter of grace and concession but as a matter of right. The evidence, as discussed above, does not conclusively establish involvement of the appellants nor can be counted as confidence inspiring. I, therefore, extending benefit of doubt, allow the appeal and acquit the appellants.

The appeal is accordingly disposed of in the above terms. These are the reasons of the short order dated 22.01.2025.

JUDGE