IN THE HIGH COURT OF SINDH AT KARACHI

CRL. APPEAL NO.289/2014

Appellant : Salahuddin,
through Mr. Ashraf Ali Shah, advocate.

Respondent : The State,
through Mr. Abrar Ali Khichi, DPG.

Date of hearing : 17.05.2018.

Date of order : 17.05.2018.

O R D E R

Salahuddin Panhwar, J: Through instant appeal, appellant has challenged judgment dated 23.10.2014 passed by IVth Additional District & Sessions Judge, Karachi East, in S.C. No.23/2010 and was convicted and sentenced as under:-

> "Salahuddin is convicted u/s 337-F(i) PPC and sentenced to undergo one year rigorous imprisonment for each for causing injury to complainant; he is convicted u/s 337-A(i) PPC and he is sentenced to undergo one year rigorous imprisonment, u/s 337-A(iv) PPC to undergo three years rigorous imprisonment for injury No.1, 3 and 4, u/s 337-F(i) PPC to undergo one year rigorous imprisonment for injuries No.5 to 8 and u/s 337-F(vi) PPC to undergo three years rigorous imprisonment for injury No.9, for causing injuries to complainant's father; and he is further convicted u/s 337-A(i) PPC and sentenced to undergo one year rigorous imprisonment and u/s 337-L(b) PPC to undergo 1 years rigorous imprisonment for causing injuries to complainant's sister."

2. Precisely relevant facts are that appellant alongwith co-accused Hafizuddin were arraigned for the offence of trespass and theft. Per complainant, both accused persons alongwith one

unknown person entered in their house; caused knife blows to complainant's father and on hue and cry witnesses converged there, one accused was arrested and recovery of knife was effected. It is also alleged that accused apart from their criminal assault also committed robbery of prize bonds, jewellary and cash of Rs.35,000/- from almirah. After full dressed trial accused Hafizuddin was acquitted whereas present appellant was convicted.

3. Admittedly complainant and accused persons were close relatives; FIR is delayed with six hours. Accused persons in their statement under section 342 Cr.P.C. stated that in order to usurp dowry articles of their sister Mst. Surraya, as divorced by the complainant, he managed concocted story, they also submitted copy of family suit No.110/2012, Nikahnama, receipt of dowry articles, divorce deed.

4. *Prima facie,* it was never a disputed position that the present appellant as well acquitted co-accused were real **brothers-in-laws** of the complainant and there was matrimonial dispute between complainant and sister of present appellant. Therefore, possibility of false implication was always there hence in such eventuality it was always the requirement of ***safe administration of justice*** to insist ***independent corroboration.*** Here, it may well be added that mere *injuries* were / are never sufficient to believe the words of the *injured* for convicting one particularly where the parties, including *injured,* has reason to falsely name one. Reference may well be made to the case of *Amin Ali v. State* (2011 SCMR 323) wherein it is held as:-

> "12. Certainly, the presence of the injured witnesses cannot be doubted at the place of incident, but the question is as to whether they are truthful witnesses or otherwise, because **merely the injuries on the person of P.Ws would not stamp them truthful witnesses**. It has been held in the case of Said Ahmed vs. Zammured Hussain 1981 SCMR 795 as under:-
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> > 'It is correct that the two eye-witnesses are injured and the injuries on their persons do indicate that they were not self-suffered. But that by itself would not show that they had, in view of the afore-noted circumstances, told the truth in the Court about the occurrence; particularly, also the role of the deceased and the eye-witnesses. It cannot be ignored that these two witnesses are closely related to the deceased, while the two other eye-witnesses mentioned in the FIR namely Abdur Rashid and Riasat were not examined at the trial. This further shows that the injured eyewitnesses wanted to withhold the material aspects of the case from the Court and the prosecution was apprehensive that if independent witnesses are examined, their depositions might support the plea of the accused.'"

Further, it also needs not be reaffirmed that prosecution story always play a pivotal role and should always pass the test of **reasons**, if applied by a prudent mind. The complainant, *prima facie,* concealed the relationship as well family dispute going on between parties. Be that as it may, it does not stand to reasons and logics that three persons trespassed with intention to commit robbery but only one of them had a *knife* though resistance was sure to be offered. Such action is not expected from a prudent mind hence always leaves cloud over such claim. Further, it is also quite illogical that complainant party made no effort to rescue his father till he had received as many as **nine (09) injuries.** Such conduct always deserved some attention but was not properly appreciated by learned trial Court. Reference may be made to the case of *Zafar v. State* (2018 SCMR 326) wherein it is observed as:-

> "7. The conduct of the witnesses of ocular account also deserved some attention. According to complainant, he along with Umer Daraz and Riaz (given up PW_ witnessed the whole occurrence when their father was being murdered. It is against the normal human conduct that the complainant, Umer Daraz and Riaz (PW since given up) did not make even an abortive attempt to catch hold of the appellant and his co-accused particularly when the complainant himself has stated in FIR and before the learned trial Court that when they raised alarm, the accused fled away. Had they been present at the relevant time, they would not have waited for the murder of their deceased father and would have raised alarm the moment they saw the appellant and his co-accused standing near the cot of their father."

Further, the complainant does not claim to have received any injuries nor claimed his clothes to be stained with blood when he alleged caught the appellant which, undeniably, could not happen without physical attraction. This aspect also makes claimed presence of the complainant as doubtful. Guidance is taken from the case of *Shahzad Tanveer v. State* (2012 SCMR 172) wherein it is held as:-

> "13. ..... It is strange that none of the accused carried any weapon except a small kitchen knife, the total length and width of which was 6-1 x ½ including its handle while going to commit a capital offence. It is also more strange that none of the P.Ws dared to physically intervene in order to save the victim or apprehend the accused at the spot. Neither the clothes of any P.W got stained with blood nor had they received any scratch on their persons. In this view of the mater the presence of the P.Ws at the time of occurrence appears to be doubtful."

Further, it is also a matter of record that the learned trial judge also answered point No.1 and 2 as negative, which are that:-

> 1. Whether accused person Salahuddin and Hafeezuddin on 16.12.2009 at 0830 hours entered illegally inside the house No.E-21/1, Jahangir road, East Karachi having churri in their hands as alleged by the prosecution?

2. Whether accused persons Salahuddin and Hafeezuddin on the above date time and place committed theft at the house of complainant namely Muhammad Jahanzeb Azeem and took away prize bond, cash and gold ornaments as alleged by the prosecution ?

An answer in **'negation'** to point No.1 was always sufficient to hold subsequent act of **stabbing** as doubtful because such subsequent act could not be said to be proved if alleged *first* act i.e **trespass with knife (churri)** is disbelieved. Further, it is also evident from perusal of the impugned judgment of conviction that the learned trial court judge did hold that ***"Prosecution however remained failed to prove the attempt of the accused Salahuddin to commit murder of complainant's father."***

5. Further, it is also a matter of record that allegation against present appellant and acquitted co-accused were similar except that of alleged act of stabbing by appellant which, in view of above discussion, seems to have never been safely proved. In such like situation, the conviction of appellant on same set of evidence which was disbelieved for co-accused, was never in line with **safe criminal administration of justice**. Guidance is taken from principle, so enunciated in number of judgment of honourable Apex Court, including the one reported as *Ulfat Husain v. State* (2018 SCMR 313). At relevant page-318 it is observed as:-

> "8. ..... The learned trial Court acquitted the co-accused of the appellant who had also been assigned the specific and general role of firing at the deceased along with the appellant but no appeal was filed by the complainant or the State in the next higher forum against their acquittal meaning thereby that complainant and State were satisfied with the findings of acquittal to their extent. .... In these circumstances,

> independent and strong corroboration from other pieces of evidence is required to believe the same set of evidence against the appellant which has already been disbelieved by the learned trial Court against his acquitted co-accused, whose roles were quite similar as that of the appellant."

6. In view of above discussion, I am of the clear view that case against the appellant was never established beyond reasonable doubt nor in *peculiar* circumstances of the case it could be safe to convict the appellant by depriving him of benefits of doubts, so floating on chest of the record. Accordingly, appellant was extended benefit of doubt and he was acquitted from the charge by order dated 17.05.2018.

IK **J U D G E**