

63

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

CrI. Appeal No. D- 78 of 2015.

Present:

Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Fahim Ahmed Siddiqui.

Mazari Golo.Appellant.

Versus

The State.Respondent.

Date of Hearing: 16.01.2018.

Date of Judgment: 16.01.2018.

Mr. Mohsin Ali Pathan, Advocate for appellant.

Mr. Habibullah G. Ghouri, Advocate for complainant.

Mr. Khadim Hussain Khooharo, Addl. P.G.

J U D G M E N T

Muhammad Iqbal Kalhoro, J. By means of this judgment, the appeal in hand is being disposed of. Through the impugned judgment dated 22.10.2015, the appellant has been convicted for imprisonment for life for committing an offence under Section 302-B P.P.C, and to pay compensation of Rs.50,000/- to the legal heirs of the deceased and in default thereof to suffer further S.I for six months more. The appellant has also been convicted for offence under Section 365-A Cr.P.C read with Section 149 P.P.C and sentenced to suffer R.I for life, besides for an offence under Section 7-A and 7-E of the Anti-Terrorism Act, 1997, to suffer imprisonment for life and to pay fine of Rs.50,000/- and in case of default thereof to suffer further S.I for six months more. However, all the sentences were ordered to run concurrently and appellant was extended benefit of Section 382-B Cr.P.C.

2. Brief facts of the case are that complainant namely, Shehak son of Bughio Khan Bajkani lodged present F.I.R bearing Crime No. 99/2002 at P.S Tangwani on 11.12.2002 at 08.40 hours, alleging that three unknown accused and co-accused namely, Jeeal, Muhammad Panah, Pakhi, Jamandar, Tharo and Sadoro duly armed with weapons committed house trespass in his house situated in village Ghulam Qadir on the same day at about 3.30 a.m. and attempted to abduct Lal Muhammad, the brother of the complainant, but in the ensuing resistance co-accused Muhammad Panah and Jeeal fired at Lal Muhammad, as a result of which he died at the spot. It is also alleged that during the course of said incident cash of Rs.40,000/- and a licensed gun of complainant was robbed by the said set of accused.

3. After usual investigation, the challan under Section 512 Cr.P.C. against all the above named accused including appellant and two other co-accused namely, Master and Soonharo was submitted before Anti-Terrorism Court Sukkur, where on completion of due formalities all the accused were declared proclaimed offenders and convicted vide judgment dated 02.07.2004 in absentia. However, subsequently accused Master was arrested, who moved an application under Section 19 (12) Cr.P.C of Anti-Terrorism Act, 1997, in terms of which his conviction and sentence in his absentia was set-aside and against him a denovo trial was conducted by the learned Anti-Terrorism Court. After the trial, through the judgment dated 08.09.2014, he was acquitted of the charge.

4. The present appellant surrendered before Anti-Terrorism Court on 18.12.2014 and was granted pre-arrest bail. However, subsequently his pre arrest bail application was dismissed, he was taken into custody. Thereafter, CrI. Appeal No. D-62/2016 filed by him before this Court, which was disposed of by remanding the case to the learned Anti-Terrorism Court . . .

directions to hold a denovo trial against him. Consequent to such directions, the case was proceeded against the appellant, in which prosecution framed charge against him, and examined author of F.I.R ASI Allah Warrayo at Ex.4. Complainant Shehak at Ex.5. Eyewitnesses Bashir Ahmed, Mir Ahmed at Ex.6 & 7. Mashir Din Muhammad at Ex.8. Medical officer Dr. Shahnawaz was examined at Ex.9. The side of prosecution was then closed vide statement of learned S.P.P at Ex.11.

5. Statement of the appellant under Section 342 Cr.P.C was recorded at Ex.12, in which he has denied the prosecution allegations and has claimed innocence. In defence, the appellant has examined one defence-witness namely, Yar Muhammad. After conclusion of the trial and hearing the parties, the appellant has been convicted by the Anti-Terrorism Court vide impugned judgment in terms as stated in para 1. By means of this appeal, the appellant has called into the question his said conviction and sentence.

6. Learned counsel for the appellant has submitted that the name of appellant does not appear in the F.I.R and only after six months of the incident, through statements of witnesses under Section 164 Cr.P.C he was introduced in the present case. He has further pointed out that before such statement under Section 164 Cr.P.C was recorded, the present appellant had already registered an F.I.R bearing Crime No.16/2003 at P.S Guddu against PWs Dino and Mir, out of them Mir is the eyewitness of the incident, but strangely he did not disclose the name of present appellant to the complainant at the time of registration of F.I.R or taken his name subsequently in his statement under Section 161 Cr.P.C. Learned counsel has further submitted that case of the present appellant is at par with the case of acquitted accused Master, whose name was not mentioned in the F.I.R and on the basis of statements recorded under Section 164

Cr.P.C after six months of the incident, he was introduced in the present case, like the appellant. More so, said Master is the brother of the appellant and it is evident that only because of registration of F.I.R by the present appellant against complainant party, he and his said brother were made accused in the present case in order to take revenge from them.

7. Learned counsel for complainant has conceded to the arguments of learned defence counsel and has further submitted that although an acquittal appeal being No. D- 11/2014 was filed against the said accused Master, but then under instructions of complainant it was withdrawn on 15.08.2017.

8. Learned Addl. P.G. also has recorded his objection and has submitted that no confidence inspiring evidence is available against the appellant, as his name was taken by the complainant after six months of the incident; although from the fact of lodgment of F.I.R by present appellant, it is clear that the parties were known to each other.

9. We have considered the submissions of the learned counsel for the parties and have perused the material available on record. Admittedly, the name of the appellant does not transpire in the F.I.R and he was introduced in the present case only after statements of the complainant and his witnesses were recorded under Section 164 Cr.P.C on 16.5.2003. The evidence of the complainant and other witnesses is to the effect that during investigation they had come to know about names of present appellant and two other unidentified accused, to be involved in the present case being unidentified accused. However, neither the source of receiving such information has been disclosed by them, nor the other relevant particulars regarding the time and place of receiving such information has been revealed by them. It is also not clear either as to why the names of present appellant and other

unknown accused were not communicated to the investigating officer of the case for the purpose of investigation. The record also reflects that nothing is available against present appellant except a word of complainant and other witnesses that he is the same unidentified accused, who had committed the offence in his home. The learned trial Court in the case of co-accused Master has observed in para 39 of the judgment dated 08.09.2014 that the name of the accused was introduced at belated stage in the statements under Section 164 Cr.P.C without disclosing the source of information received by the complainant about involvement of the unidentified accused in the case. It is also a matter of record that Acquittal appeal filed against the said acquitted accused namely, Master has been withdrawn by the complainant and the case of present appellant is on same footing to that of him. Therefore, the case against appellant would be seen through the same prism which would lead to a conclusion that case against him is not free from doubt and this appears to be the reason why the counsel for complainant and learned Addl. P.G. have extended their no objection to acquittal of the appellant.

10. Resultantly, this appeal is allowed. The conviction and sentence awarded to appellant is set-side and he is acquitted of the charge. The appellant shall be released forthwith, if not required in any other case. The appeal stands disposed of.

Ansari/*