

IN THE FEDERAL SHARIAT COURT OF PAKISTAN

(Appellate/Revisional Jurisdiction)

PRESENT

MR. JUSTICE SYED MUHAMMAD FAROOQ SHAH

MR. JUSTICE SHAUKAT ALI RAKHSHANI

Crl. Appeal No.36-K of 2018

Liaquat Ali son of Muhammad Qasim,
Resident of Village Manahi Khan Jatt, Taluka Shaheed Fazal Rahu,
District Badin.

...Appellant

Versus

The State

...Respondent

Counsel for the appellant	---	Mr. Wazeer Hussain Khoso, Advocate
Counsel for the State/respondent.	---	Syed Meeral Shah Bukhari, Additional Prosecutor General Sindh.
Case FIR No, date & Police Station.	---	No. 42/2014 dated 17.12.2014 P.S Khorwah, District Badin.
Date of impugned Judgment.	---	09.11.2017.
Date of institution	---	26.03.2018.
Date of hearing	---	25.04.2019.
Date of decision	---	25.04.2019.

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JUDGMENT.

SYED MUHAMMAD FAROOQ SHAH, J:- Liaquat Ali appellant alongwith five (5) other accused were tried and by pronouncing judgment on 09.11.2017, by the learned 2nd Additional Sessions Judge, Badin, in case FIR No.42/2014 registered on 17.12.2014 under section 17 (4) of The Offences Against Property (Enforcement of Hudood) Ordinance, 1979 and sections 302, 392, 394, 109/34 PPC at police station *Khorwah* for the *Haraabah* and murder of Akbar (deceased), convicted the appellant under section 302 (b) PPC and sentenced him for life imprisonment under *Tazir*. He was also directed to pay Rs.1,00,000/- as compensation as envisaged under section 544 (a) Cr.P.C to the legal heirs of deceased; in default to

further undergo S.I till realization of compensation amount. However, the benefit of section 382-B Cr.P.C was extended to him. Remaining accused namely *Ghulam Rasool, Sodho, Bacho, Nawaz Ali* and *Muhammad Qasim* were acquitted from the charge by extending them benefit of doubt.

2. Relevant facts for disposal of instant appeal are that the complainant Muhammad Saleh @ Saleh Muhammad, a relative of the appellant Liaquat Ali and his brother Nawaz averred in the FIR No.42/2014 that both parties had old enmity. Akbar brother of complainant used to complain to him about advancing threats by the appellant Liaquat Ali and his brother Nawaz. It is alleged in the FIR that on 15.12.2014 in the Mella of *Nango Shah*, the accused Liaquat Ali and Nawaz with three other accused met the complainant and his brother Akbar. They exchanged hot words with Akbar and advanced threats that he will soon know. Thereafter, complainant and his brother Akbar left for their village on motorcycle and their cousins PW Subhan and Khamiso were following them on another motorcycle. When complainant and his brother reached adjacent *Gul Mir Shah Mori* on the *Pacca* road situated on bank of *Kheersari* minor at 10:00 P.M, three persons hidden on left side of the road emerged and waylaid them; their faces were opened, and saw the complainant party on the light of motorcycle. They were the same who were watching the *Mella* with Liaquat and his brother. Out of them, one was armed with pistol, while two others were having sticks. One culprit was having pistol while two others were having *Lathies*. The person having pistol, pointed out pistol upon complainant party and signaled them to stop. The complainant stopped the motorcycle, on which all three culprits encircled them, got them down from the motorcycle; they snatched the motorcycle; on resistance, the person having stick caused stick blows to complainant and to his brother Akbar. Complainant received injuries on his head. Akbar grappled with one of the culprit; in the meantime, the person having pistol made

fire upon Akbar at his back, who on receiving fire arm injury had fallen down. In the meantime, PW Subhan and Khamiso reached at the place of occurrence and on seeing them all three culprits boarded on motorcycle and went away towards northern side. Akbar had succumbed injuries at the spot. Complainant informed about the incident to police station *Khorwah*. The relatives of complainant also reached at the place of occurrence and took him and the dead body of deceased Akbar. After autopsy, the dead body was handed over to the complainant. On burial of deceased Akbar, the complainant had tracked foot prints of culprits through tracker and then lodged FIR, alleging therein that the accused Liaquat Ali and Nawaz due to old enmity instigated unknown persons and got murdered his brother Akbar through them.

3. A perusal of record transpires that appellant Liaquat Ali was apprehended on 19.12.2014, after four (4) days of incident. Thereafter, he had been nominated by the complainant in his supplementary statement, recorded by the police on 25.12.2014, by showing presence of the appellant Liaquat Ali at the scene of occurrence with specific role. On 01.01.2015, identification parade of the appellant Liaquat Ali and three (3) other accused had been conducted, jointly. On completion of usual investigation, the appellant and five (5) other co-accused were challaned before the competent Court of law.

4. On commencement of trial, the appellant and all other five acquitted accused did not admit the commission of offence, punishable under section 17 (4) of The Offences Against Property (Enforcement of Hudood) Ordinance, 1979 and under sections 302, 392, 394, 109 PPC, read with section 34 PPC and claimed to be tried. To substantiate its case, prosecution examined all material witnesses and on conclusion of prosecution evidence, statement of the accused persons were recorded under section 342 Cr.P.C. Once again, the appellant Liaquat Ali and all other accused by professing their innocence vehemently denied the prosecution evidence.

5. We have considered the contentions rose by the learned counsel for the parties and have carefully gone through the evidence brought on record.

6. A perusal of record reveals that the FIR had been lodged after 39 hours and 30 minutes delay. Prior to the registration of FIR, police had arrived at the scene of occurrence on information transmitted by the complainant, conducted the proceedings over the dead body of deceased Akbar, referred the complainant for medical examination and got postmortem of deceased at Taluka Hospital, Golarchi @ Badin and after registration of FIR completed usual investigation as mentioned supra.

7. Following legal and factual contentions have been agitated by the learned counsel representing the appellant:-

(i) *Admittedly, FIR had been registered after 39 hours and 30 minutes delay, against unknown culprits with allegations of Haraabah, after preliminary investigation.*

(ii) *The complainant and eye witnesses are not natural witnesses but they are interested and their testimony is full of improvements, discrepancies, inconsistencies and contradictions.*

(iii) *After arrest of the appellant Liaquat Ali, the investigation officer had recorded further statement of complainant, wherein he had tried to implicate the appellant by assigning him a specific role in commission of offence.*

(iv) *PW Qadir Bux, close relative of the complainant acted as a Musheer of eleven (11) different Musheernamas; either he had been already found present at the pointed place or he had been called to act as Mushir. The recovery of incriminating weapon i.e. pistol and robbed motorcycle was made on pointation of the appellant in custody but it was not made in presence of any independent person or any respectable inhabitant of the locality.*

(v) *That initially charge was framed for the offence of Haraabah but robbery was not proved, so the appellant was convicted for murder; no appeal in respect of his acquittal for Haraabah or robbery has been filed by the complainant side or the State. Moreso, sufficient discrepancies, inconsistencies, contradictions*

and infirmities visible in the prosecution case are creating reasonable doubt in the prosecution story. Learned counsel submitted that even a single circumstance create doubt in a prudent mind about the guilt of the accused, then he shall be entitled to such benefit as a matter of right as held in the cases of Tariq Pervaiz vs. The State (1995 SCMR 1345), Muhammad Ilyas vs. The State (1997 SCMR 25), Ghulam Qadir vs. The State (2008 SCMR 1221) and Hashim Qasim vs. The State (2017 SCMR 986).

(vi) Admittedly, the appellant Liaquat Ali was known to the complainant being his relative and as per his subsequent statement he identified the appellant at the spot, therefore, conduct of identification of the appellant Liaquat Ali in the circumstances was illegal as identification parade of culprits already known to the witnesses has no legal worth. Therefore, the identification parade loses significance being not corroboratory piece of evidence. Moreso, the appellant Liaquat Ali was arrested on 19.12.2014 and had been put in identification parade on 01.01.2015 i.e. after about fourteen (14) days without explaining inordinate delay in conducting the identification parade which having been conducted jointly. To support his contention, learned Counsel placed reliance on the cases of Ziaullah @ Jajj vs. The State (2008 SCMR 1210) and Adrees vs. The State (2002 SCMR 1439).

(vii) Argued that on the same set of evidence, five co-accused had been acquitted by the learned trial Court and on the strength of identical evidence the appellant has been convicted and sentenced, without independent and strong corroboratory evidence brought against him. The set of evidence which had been disbelieved to the extent of acquitted co-accused could not be believed to the extent of the appellant. To support his contention, learned counsel placed his reliance on Muhammad Afzal vs. The State(2017 SCMR 1645) and Munir Ahmad and another vs. The State and another(2019 SCMR 79).

8. Conversely, learned Additional Prosecutor General, Sindh for the State without controverting the aforementioned submissions advanced by the learned counsel for the appellant and without distinguishing the case law relied upon by the learned defence Counsel, supported the impugned judgment merely on the

ground that a person had lost his life. Next argued that it is an admitted position that both parties are having strained relations due to inimical terms, in result of which the incident had taken place. He further submitted that the learned Court below after proper appreciation of evidence had given finding of guilt against the appellant by acquitting remaining five (5) co-accused.

9. *Insofar* as, delay in FIR and supplementary statement of complainant recorded on later stage is concerned, admittedly FIR had been lodged after 39 hours and 30 minutes delay without any sufficient reason or plausible cause of said delay, which provided sufficient time for deliberation and consultation. Even the complainant nominated the appellant Liaquat Ali and his acquitted co-accused, therefore, possibility of fabricated story cannot be ruled out; more particularly, the supplementary statement of complainant made on 25.12.2014 cannot be relied upon as the witness improved his statement dishonestly, therefore, his credibility becomes doubtful on the strength of well-known principle that improvement once found deliberate and dishonest caused serious doubt on veracity of such witnesses as held in the case of *Hadi vs. The State* (PLD 1963 (W.P) Karachi 805) and *Akhtar Ali and others vs. the State* (2008 SCMR 06) wherein it has been held that FIR is an initial document brings the law into motion and any further statement of the complainant recorded during investigation by the police would not be equated with FIR.

10. On same evidence, five (5) accused persons have been acquitted by the learned trial Court, however, the appellant Liaquat Ali had been convicted, though the learned trial Court in paragraph 25 of the impugned judgment observed that the statement of appellant/accused Liaquat Ali, while in police custody inculcating the co-accused in commission of the offence has no evidentiary value; more particularly, neither extra judicial confession or confessional statement of the appellant Liaquat Ali is found

available on the file nor during investigation any such confession of the appellant had been recorded.

11. In paragraph 22 of impugned judgment, the learned trial Court observed that *"from the evidence available on record, it appears that the prosecution has only proved the charge against accused Liaquat Ali only to the extent of offence under section 302 PPC and for remaining offences there is no tangible evidence brought by prosecution on record."*In such view of the observation made by the learned trial Court, the appellant had been exonerated from the charges of *Haraabah*. Such finding of the learned trial court reveals that the appellant Liaquat Ali had never been involved in the offence of dacoity, robbery of motorcycle.

12. It is an admitted fact that the incident had taken place on 15.12.2014, reported after 39 hours and 30 minutes to the concerned police station by lodging FIR without nomination of any culprit. Subsequently, the appellant Liaquat Ali was apprehended on 19.12.2014 and through supplementary statement recorded on 25.12.2014, the complainant/appellant Liaquat Ali involved the appellant by showing his presence at the place of occurrence with active and specific role in commission of offence. Implication of the appellant Liaquat Ali due to admitted grudge, personal vendetta, animosity and bitter acrimonious relations in between the parties cannot be ruled out. We have consciously re-examined the evidence in the interest of justice and fair play. Through supplementary statement of the complainant, the appellant Liaquat Ali had been involved in this case; any such statement or further statement of the complainant recorded during investigation by the police after ten (10) days of the occurrence cannot be equated with FIR nor it can be read as part of it, therefore, such further statement at the most may be considered statement recorded under section 161 or 162 Cr.P.C, having no much evidentiary value. Admittedly, the appellant Liaquat Ali being a close relative of complainant was known to him; therefore, conduct of identification parade is totally illegal as the

identification parade is never conducted about culprits already known to the witnesses. Moreso, the identification parade is defective because of delay in holding the same jointly, had not been explained satisfactorily and the role attributed to the accused was not stated by the witnesses, therefore, their identification had no evidentiary value. Reliance in such regard is placed on Mehmood Ahmad and others vs. The State (1995 SCMR 127), LalPasand Vs. The State(PLD 1981 Supreme Court 142), Ziaullah @ Jaji vs. The State (2008 SCMR 1210), Sabir Ali alias Fauji vs. The State (2011 SCMR 563), Ghulam Rasool and others vs. The State(1988 SCMR 557) and Khadim Hussain Vs. the State (1985 SCMR 721).

13. The observation of learned trial Court in paragraph 22 of the impugned judgment with regard to inapplicability of the doctrine of "**Falsus in uno, falsus in omnibus**" and applicability of the principle "*sifting grain from the chaff*" is concerned, suffice it to say that recently in *Criminal Miscellaneous Application No. 200 of 2019 in Criminal Appeal No. 238-L of 2013*, the Hon'ble Apex Court has been pleased to direct that the rule **Falsus in uno, falsus in omnibus**" shall be an integral part of our jurisprudence in criminal cases. Penultimate paragraph is reproduced hereinbelow:-

"Our judicial system has suffered a lot as a consequence of the above mentioned permissible deviation from the truth and it is about time that such a colossal wrong may be rectified in all earnestness. Therefore, in light of the discussion made above, we declare that the rule "falsus in uno, falsus in omnibus" shall henceforth be an integral part of our jurisprudence in criminal cases and the same shall be given effect to, followed and applied by all the courts in the country in its letter and spirit. It is also directed that a witness found by a court to have resorted to a deliberate falsehood on a material aspect shall, without any latitude, invariably be proceeded against for committing perjury. The office of this Court is directed to send a copy of this order to the Registrars of all the High Courts in the country with a direction to send a copy of the same to every Judge and Magistrate within the jurisdiction of each High Court handling criminal cases at all levels for their information and guidance."

14. In view of whatever discussed above, we do not found any plausible reason for conviction of the appellant by the learned Court below, therefore, the appeal was accepted by a short Order announced today in the open Court, whereby the conviction of the appellant Liaquat Ali was set aside; he was acquitted from the charge and ordered to be released forthwith, if not required in any other criminal case.

These are the reasons of said short Order.

15. Criminal Miscellaneous Application No. 14-K of 2018 for suspension of sentence is infructuous being not pressed.

JUSTICE SHAUKAT ALI RAKHSHANI
JUDGE

JUSTICE SYED MUHAMMAD FAROOQ SHAH
JUDGE

Karachi the
25th April of 2019
M.Ajmal/**.

Approved for reporting

Justice Syed Muhammad Farooq Shah