

**HIGH COURT OF SINDH, CIRCUIT COURT AT
HYDERABAD**

Cr. Jail Appeal No.S-155 of 2019

[Ameer Shah versus The State]

DATE	ORDER WITH SIGNATURE OF JUDGE
Appellant:	Through Mr. Abdullah Soomro advocate
State:	Through Ms. Safa Hisbani, APG
Complainant:	None present
Date of hearing:	07.08.2020
Date of Decision:	07.08.2020

JUDGMENT

ABDUL MAALIK GADDI, J:- Through this Criminal Jail Appeal the appellant has called into question the legality and propriety of the impugned judgment dated 18.06.2019, penned down by learned IIIrd Additional Sessions Judge, Dadu in Sessions Case No.230 of 2018 (***Re: The State versus Manzoor @ Gudoo & Others***) arising out of Crime No.26 of 2018 registered with PS A-Section Dadu under Section 336, 337-A(i), 147, 148, 149 & 504 PPC, whereby, the learned Trial Court after full dressed trial convicted and sentenced the appellant as stated in point No.2 of the impugned judgment. For the sake of convenience point No.2 of the impugned judgment is reproduced below:

POINT NO.2

“For the reasons discussed above, I am of the view that the prosecution has proved the charge u/s 336 PPC against the accused Ameer Shah son of Syed Qurban Ali Shah beyond shadow of reasonable doubt and he is found guilty to the charge committing offence u/s 336 PPC therefore he is convicted and sentenced to RI for 7 years and to pay Arsh amounting to Rs.6,00,000/- (six lacs) to be paid to the injured Anwar Ali. In case of default of payment of Arsh he shall suffer S.I six months more. The benefit of section 382-B Cr.P.C is also extended to Ameer Shah for the period for which they (sic) remained in custody. Accused Ameer Shah is present on bail, his bail bonds cancelled and surety discharged and he is taken into custody and remanded to Central Prison Hyderabad through Superintendent District Jail Dadu together with warrant of commencement of sentence in order to carry out his sentence.”

While the prosecution has failed to prove its charge against accused Asif @ Asoo S/o Shamsuddin Solangi and Rafique @ Naeem Babar S/o Abdul Majeed Babar they are extended benefit of doubt and are acquitted u/s 265-H(i) Cr.P.C. They are present on bail their bail bonds stand cancelled and sureties discharged.

The case against absconding accused Manzoor @ Gudo be kept on dormant file till his arrest."

2. Brief facts of the prosecution story in nutshell are that on 04.01.2018 complainant Mst. Kazbano Solangi alongwith her son Anwar Ali (injured) went to attend the marriage ceremony of her relative Imran Solangi at Hussainabad Colony Dadu; there were two portions of marriage function, one for ladies while second for gents; at that time accused Ameer Shah (present appellant) alongwith co-accused Gudo Mallah, Asif @ Asoo, Naeem Babar and four unknown persons were standing outside the ladies portion while holding glasses of drinking wine in their hands and started abusing son of complainant Anwar Ali, as he reprimand them that it is ladies function, on which accused persons annoyed and accused Ameer Shah (appellant) and Gudo Mallah caused blow crystal glasses at the left eye of Anwar Ali, while other accused crystal glasses at the right leg of Anwar Ali and also on head and other parts of his body; on hue and cries relatives of complainant found her son bleeding due to injuries and took him at police station and obtained letter from there for medical treatment at Civil Hospital Dadu and after first aid her son was shifted to Hyderabad for further treatment and after admitting her son at Hospital at Hyderabad she filed application before concerned learned Justice of Peace for registration, which was allowed and present FIR was lodged against appellant and co-accused persons.

3. After usual investigation police submitted the final challan. Then after supplying copies to accused charge was framed against them at Ex.05, to which they pleaded not guilty and claimed trial.

4. In order to prove the case the prosecution has examined PW-1 complainant Mst. Kazbano at Ex.9, she produced copy of order dated 13.01.2018, her statement and FIR at Ex.09/A to 09/C. PW-2 injured Anwar Ali at Ex.10. PW-3 Dr. Talib Hussain at Ex.11, who produced police letter, provisional and final medico legal certificate of injured, record of injured issued by Sindh Institute of Ophthalmology and visual sciences (sivos) @ Eye Hospital Hyderabad i.e OPD slip, in codoor record

complete blood counter report, X-ray film and screening report at Ex.11/A to 11/D. PW-4/mashir Zulfiqar Ali Solangi at Ex.12, who produced memo of injuries and memo of wardhat at Ex.12/A and 12/B. PW-5 ASI Muhammad Sadiq at Ex.14, who produced memo of arrest of accused Ameer Shah at Ex.14/A. PW-6 HC Faiz Muhammad at Ex-15 and PW-7 PC Shah Muhammad at Ex.16. Then prosecution side was closed at Ex.17.

5. Statements of accused persons u/s 342 Cr.PC were recorded at Ex.18 to 20, wherein they denied the allegations leveled against them and claimed their false implication. However, neither they examined themselves on Oath nor produced any witness in their defence. Thereafter, learned Trial Court after hearing the arguments of learned counsel for parties convicted and sentenced the present appellant, as stated supra, hence present appeal.

6. Learned counsel for the appellant contended that appellant is innocent and he has been falsely implicated in present case due to enmity with the complainant party; that appellant has not committed any offence but the son of complainant was intoxicated and obtaining bhatta from the persons of locality as well as from appellant and on refusal of appellant to pay the same, he has falsely been implicated in the present case; that the alleged injury was sustained by the injured while taking intoxicant at some other place, however, complainant being greedy lady has concocted the story and implicated the appellant in the present case; that there are contradictions in FIR and application filed by complainant u/s 22-A Cr.P.C; that there is also contradiction in between memo of injuries and medical evidence; that there is delay of about 22 days in lodgment of FIR without any plausible explanation, which could be presumed to be the result of deliberation; that all the private witnesses are relative to each other, hence false implication of appellant cannot be ruled out; that ocular evidence is not supported by medical evidence; that co-accused have been acquitted on the same set of evidence. He lastly prayed that instant appeal may be allowed and appellant may be acquitted of the charge.

7. In contra, Ms. Safa Hisbani, learned Assistant Prosecutor General Sindh while supporting the impugned judgment submits that the prosecution has fully established its case against the appellant beyond any reasonable doubt by producing consistent/convincing and reliable evidence and the impugned conviction and sentence awarded to the appellant is the result of proper appreciation of evidence brought on

record, which needs no interference by this Court. Lastly she prayed that instant appeal may be dismissed and conviction may be maintained.

8. I have given my anxious thoughts to the contention raised at the bar and have also gone through the case papers so made available before me.

9. From perusal of FIR it reveals that present appellant is nominated in FIR with specific role. The allegation against the appellant is that at the time of incident he was available at the place of incident alongwith co-accused and due to exchange of some hot words with injured Anwar Ali he and accused Gudo Mallah (absconding accused) caused crystal glasses blow at left eye of PW Anwar Ali, who is son of complainant. I have carefully gone through the evidence of injured PW Anwar Ali, in which he has categorically implicated the appellant in the present case by stating that the present appellant caused crystal glass blow at his left eye. The version of injured PW Anwar Ali has been supported by the evidence of complainant, who admittedly was available at the time of incident. Though both these witnesses were cross-examined at length, but their evidence has not been shattered. It also appears that soon after the incident injured PW Anwar Ali was shifted to Civil Hospital Dadu for treatment through police letter, where, Senior Medical Officer Dr. Talib Hussain examined him, whose evidence is also available on record at Ex.11, who while producing his evidence opined in medical certificate that the injured Anwar Ali had got the *scleral perforation, which resulted into poor visual prognosis permanently in the left eye and said injury was declared as itlaf-Salahiyat-Udw and same was caused by sharp cutting weapon*, which corroborates the version of injured PW Anwar Ali as well as complainant.

10. During the course of arguments I have specifically asked the question from learned counsel for the appellant that whether the injury received by PW Anwar Ali is self-suffered, on which he has answered in negative. Now question arises that who caused the said injury to PW Anwar Ali? Under these circumstances, no victim can let off his real culprit. So for as the argument with regard to delay in registration of FIR and false implication of appellant in the present case is concerned, I am not impressed with this argument of the learned counsel for the appellant for the reasons that alleged incident took place on 04.01.2018 and just after the incident was over the complainant party approached the concerned Police Station for registration of FIR but the same could not be registered.

However, it was finally registered at the orders of learned Justice of Peace on the application of complainant filed under Section 22-A Cr.P.C. In this view of the matter the delay in registration of FIR has plausibly been explained and no malafide appear on the part of complainant party.

11. I have also gone through the other evidence so brought on record with able assistance of learned counsel for parties, but did not find any material contradiction in the evidence of prosecution witnesses to disprove the charge. The ocular evidence of complainant as well as injured PW Anwar Ali is at same lines and the same is supported by medical evidence. The presence of appellant at the place of incident has not been denied. As far as the argument of learned counsel for the appellant with regard to inimical terms between the parties is concerned, I am again not impressed with this argument, as appellant has not produced any documentary or oral evidence on record nor examined any witness in his defence to establish this fact. Mere stating that enmity was existing between the parties and that is why appellant has been falsely implicated in this case, is not enough to disbelieve the version of complainant party, supported by medical evidence. It is also argued by the learned counsel for appellant that all the private witnesses are relative to each other, therefore, false implication of the appellant in this case due to relationship of witnesses cannot be ruled out. Suffice it to say that mere relationship of the witnesses is not sufficient to question the credibility of their evidence and the same cannot collapse the prosecution case.

12. It is also argued by the learned counsel for the appellant that co-accused have been acquitted by the learned Trial Court in this case while present appellant has been convicted on the same set of evidence, therefore, impugned judgment is against the law and on facts. I am not impressed with this argument for the reasons that co-accused have been acquitted by the learned Trial Court on the basis of sound reasoning. Besides, the case of co-accused (acquitted accused) is all together on different footings to that of present appellant, therefore, this ground is not helpful to the appellant.

13. Nothing has been brought on record by the appellant's counsel to show any illegality or irregularity in the impugned judgment. Since serious allegations have been leveled against the appellant that he had caused crystal glass blow at the left eye of PW Anwar Ali due to which his eye was badly damaged, which has also been proved by the evidence of

prosecution witnesses as well as medical evidence, therefore, prosecution evidence is inspiring confidence and credible and all the prosecution witnesses appearing trustworthy. From the careful perusal of impugned judgment it also reveals that learned Presiding Officer of Trial Court has dealt with all the aspects of the case quite comprehensively in the light of relevant laws applicable in the matter and now before me the appellant is unable to demonstrate that the impugned judgment is suffering from any illegality or misconception.

14. For what has been discussed above, I am of the view that appellant has failed to point out any illegality or irregularity in the impugned judgment so that the same requires interference by this Court. Consequently, instant Criminal Jail Appeal stands dismissed alongwith listed application.

JUDGE

Sajjad Ali Jessar