

JUDGMENT SHEET
IN THE LAHORE HIGH COURT
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

Criminal Appeal No. 161 of 2013
(Sadiq & another vs. The State & another)
Criminal Revision No. 125 of 2013
(Muhammad Bakhsh vs. The State & 2 others)
PSLA No. 30 of 2013
(Muhammad Bakhsh vs. The State & 4 others)

J U D G M E N T

Date of Hearing: 27.10.2021
Appellants by: Malik Aamir Manzoor Awan Advocate
State by: Mr. Muhammad Laeeq-ur-Rehman Khan
ADPP
Complainant: Mr. Ghulam Rasool (brother of
complainant)

By way of this single judgment criminal appeal (*161 of 2013*) filed by Sadiq and Ghulam Muhammad alias Pakkhi (*appellants*), petition for special leave to appeal/PSLA (*30 of 2013*) and criminal revision (*125 of 2013*) filed by Muhammad Bakhsh (*complainant*) are being decided together as arise out from the judgment dated 11.03.2013 passed by the learned Additional Sessions Judge, Tehsil Jampur district Rajanpur resulting into conviction and sentences of appellants as under: -

SADIQ

- (i) Under Section 302(c) PPC to undergo 14 years *RI*¹ with fine of Rs.15000/- and in default thereof to further undergo 6 months *SI*².

¹ Rigorous imprisonment

² Simple imprisonment

- (ii) *Under Section 324 PPC to undergo 7 years RI and fine of Rs.30000/-. In default of payment of fine to further undergo 3 months SI.*

Ghulam Muhammad alias Pakkhi

- (i) *Under Section 324 PPC to undergo 7 years RI and fine of Rs.10000/-. In default of payment of fine to further undergo 3 months SI.*

2. It was directed that sentences of Sadiq will run concurrently³ and both appellants shall be entitled for benefit under Section 382(B)⁴ Cr.P.C.

3. On the basis of same judgment Sabaz Ali, Hazoor Bakhsh, Akbar alias Koroo and Muhammad Hanif (*accused*) were acquitted from the case.

4. Appellants on the strength of their appeal have challenged their conviction whereas, complainant pursuant to PSLA has called in question the acquittal of accused and he, by way of criminal revision, has also desired enhancement of sentences awarded to appellants.

5. The above decision is outcome of a private complaint instituted by Ahmad Bakhsh/complainant (*Pw-1*). It is important to mention here that with regard to same occurrence by same complainant FIR⁵ No.86 (*PB*) was registered on 03.03.2010 under Sections 302/324/148/149 PPC at Police Station Noor Muhammad district Rajanpur and the record shows that both the state and complaint cases were consolidated.

6. In complaint, filed on 03.05.2010 after two months of the FIR, complainant asserted that on 03.03.2010 he came to know that Sabaz Ali (*accused*) who was occupying his/complainant's house, after sale, wanted to transfer its possession to some other person; he along with Habib Ullah,

³ Section 35 Cr.P.C

⁴ Where a Court decides to pass a sentence of imprisonment on an accused for an offence it shall take into consideration the period, if any, during which such accused was detained in custody for such offence.

⁵ First information report under Section 154 Cr.P.C

Ramzan (*Pw-2*), Hafeez, Abdul Rahim (*brothers*), Shamim, Izzat Mai and Kalsoom Mai arrived at the house of Sabaz Ali on a vehicle; when he called Sabaz Ali etc. and asked about shifting of house and also desired its possession, at that occasion Sadiq (*appellant*) armed with 12-bore pistol, Sabaz Ali (*accused*) in possession of gun, Akbar alias Koroo (*accused*) equipped with 12-bore gun, Hazoor Bakhsh (*accused*) in possession of 30-bore pistol, Hanif (*accused*) having a revolver and Ghulam Muhammad alias Pakkhi (*appellant*) with a hatchet came there; they raised a *Lalkara*⁶ where after Sadiq (*appellant*) fired a shot that hit on the right side of chest of Habib Ullah; Akbar alias Koroo made a fire and the pellets hit on the head and left thigh of Hafeez; the fire made by Hanif hit on the right thigh of Abdul Raheem and subsequent thereto Ghulam Muhammad alias Pakkhi gave an injury on the back side of head and back of Ramzan; Sabaz Ali made a fire with 12-bore gun which hit on his/complainant's right ear and left chest; Hazoor Bakhsh had been firing with 12-bore pistol but none of the fires hit anyone; Habib Ullah died at the spot; on hue and cry of the females, appellants and accused stopped firing who then escaped from crime scene.

7. The ultimate version of complainant was that, although police registered the case and got his thumb impression but the statement was not read over to him and that Ghulam Fareed Sub Inspector (*Cw-5*) also recorded incorrect statements of the witnesses.

8. On issuance of processes, appellants and the accused turned up to face trial. On 10.02.2011, a charge⁷ was framed against all accused except Akbar alias Koroo. When *Challan* to his extent was also submitted, an amended charge was framed on 01.10.2012 against all of them under Sections

⁶ Challenge, Shout, Blare

⁷ Chapter XIX Cr.P.C

302/324/148/149 PPC for which they pleaded not guilty and demanded their trial.

9. In support of its case complainant had produced following witnesses: -

Pw-1 Muhammad Bakhsh is the complainant and injured eyewitness.

Pw-2 Muhammad Ramzan is also an injured eyewitness.

Pw-3 Qaiser Abbas SI is the author of FIR.

Pw-4 Zulfiqar Ali ASI being Moharrar kept parcels in Malkhana and transmitted to concerned offices.

Pw-5 Dr. Gul Hassan conducted the medical and post mortem examination of all injured and deceased.

Pw-6 Bilal Ahmad is a witness to securing of blood stained earth and recoveries at the instance of accused.

Pw-7 Shah Alam Khan DSP is the second Investigating Officer.

10. The learned trial court also examined following persons as court witnesses: -

Cw-1 Shabbir Anjum Constable deposited the parcels in the concerned offices.

Cw-2 Ghulam Mustafa Constable is a witness to recovery of hatchet at the instance of Ghulam Muhammad alias Pakkhi (appellant).

Cw-3 Muhammad Arif Constable had escorted the dead body for post mortem examination.

Cw-4 Shamas-ud-Din SI had arrested Sabaz Ali accused.

Cw-5 Ghulam Fareed SI is the first Investigating Officer.

Cw-6 Nazeer Ahmed SI caused the arrest of Hazoor Bakhsh, Akbar, Hanif and Sabaz Ali.

Cw-7 Shafiq-ur-Rehman ASI had arrested Ghulam Muhammad (appellant).

11. On the statement of learned counsel for complainant, Abdul Rahim/injured, Naseem Mai, Izzat Mai and Kalsoom Mai (being unnecessary) and Ghulam Fareed SI (being won over) were given up.

12. After the prosecution's evidence was closed, appellants and accused were called for their examinations

under Section 342 Cr.P.C. To the question that why this case was against him, version of Sadiq (*appellant*) was as under: -

“I am innocent. I am student. On 03.03.2010 at 09:00 am, I along with women folk of my family was present at my house. Complainant along with 20/30 persons armed with deadly weapons launched attack on us to get the possession of our house. The complainant along with his companions entered in our house from northern and southern outer gates of our house and started indiscriminate firing upon me and other family members. We saved our lives by concealing ourselves in rooms. Due to the above said indiscriminate firing, Habib Ullah deceased expired as he received firearm injury on his back from close range. Muhammad Bux, Abdul Rahim and Hafeez sustained injuries as a result of above said indiscriminate firing. On arrival of inhabitants of the locality, the complainant party fled away. Sabaz Ali, Hazoor Bux, Akbar alias Koroo and Hanif were not present at the place of occurrence as they had proceeded to Rajanpur early in the morning to appear in the court of Mr. Khaliq Ishaque, learned Magistrate Section 30, Rajanpur in criminal cases pending there. In the absence of my brothers and nephew, complainant party launched attacks to get possession of house and land owned by Provincial Government. My father got constructed the house wherein we are residing. The complainant party also wanted to abduct my wife Mst. Fatima daughter of Sajjad Dhandla. My father had been cultivating the above said land since 1991. There was civil as well as criminal litigation inter se the parties with regard to above said land and house. Under the said grudge, we have been falsely involved in this case.”

13. Same version was of Ghulam Muhammad alias Pakkhi (*appellant*).

14. The learned trial court did not believe the prosecution's version by holding that in fact complainant party lunched the attack to take possession of disputed property where only appellants were present and they acted in self defence but exceeded hence both were convicted.

15. Learned counsel for appellants maintains that the learned trial court once disbelieved the prosecutions' story, there was no question for scrutinizing and analyzing the defence plea which has to be accepted in totality without making any pick and choose hence conviction of appellants cannot sustain.

16. On the other hand, learned ADPP argued that the learned trial court made correct analysis of material produced in this case and by sifting the grain from the chaff rightly came to a view that appellants although acted in self defence but they exceeded that right therefore, rightly convicted Sadiq under Sections 302(c)/324 PPC and Ghulam Muhammad alias Pakkhi under Section 324 PPC.

17. HEARD

18. Before the prosecution's evidence and defence plea is discussed in the light of material produced in this case, I will like to respond on the contention of learned ADPP that as Muhammad Bakhsh (*Pw-1*) and Ramzan (*Pw-2*) are the injured witnesses so, on this ground alone their reliability and credibility cannot be taken to any exception. This is not the absolute position under the law. No doubt that presence of an injured witness at crime scene cannot be disputed or doubted because of injuries on his body⁸ but at the same time this recognized principle cannot be skipped that injuries on the person of witness will not show that what he has stated in the court that is the truth and not less than truth⁹ and that said injuries do not give him a stamp of truth on his testimony¹⁰. This principle also cannot be kept out of sight that his testimony is to be tested and appraised on the principles applied for appreciation of any other prosecution's witness¹¹.

⁸ Amin Ali vs. the State 2011 SCMR 323

⁹ Said Ahmad vs. Zamarrud Hussain 1981 SCMR 795

¹⁰ Muhammad Hayat v. State 1996 SCMR 1411

¹¹ Mehmood Ahmad vs. State 1995 SCMR 127

19. As both the parties in this case have come forward with a contrast version about one and the same occurrence, therefore, I will also like to refer the settled principles on the subject as recapitulated and summarized by the apex Court¹² in its latest pronouncement and those are as under: -

- i. *The burden, in a criminal case, to prove the guilt of the accused is always on the prosecution. Therefore, the court, in the first instance, is to discuss and assess the prosecution evidence, in order to arrive at the conclusion as to whether or not the prosecution has succeeded in proving the charge against the accused on the basis of its evidence.*
- ii. *In a case where the accused has not taken any specific plea (e.g. self defence, grave and sudden provocation etc.) or has not produced any evidence in his defence, the court should decide the question of success or failure of the prosecution in proving the charge against the accused on the basis of the prosecution evidence alone.*
- iii. *In a case where the accused has taken a specific plea or has produced evidence in his defence, the court should appraise the prosecution case and the defense version in juxtaposition, in order to arrive at a just conclusion. Even in such situation the burden remains on the prosecution to prove the necessary ingredients of the offence charged against the accused, and it does not shift upon the accused merely by taking a defence plea or producing evidence in his defence.*
- iv. *The burden shifts upon the accused under Article 121 of the QSO¹³ to prove his defense plea, only when a prima facie case is made out against him by the prosecution on the basis of its evidence. **If the prosecution fails to prove its case against the accused, the question of shifting of burden on the accused does not arise.***
- v. *The primary purpose of section 342 Cr.P.C is to enable the accused to*

¹² Ali Ahmad & another vs. The State & others PLD 2020 SC 201

¹³ Qanoon-e-Shahadat Order, 1984

know and to explain and respond to the evidence brought against him by the prosecution. A direct dialogue is established between the Court and the accused by putting every important incriminating piece of evidence to the accused and granting him an opportunity to answer and explain.

- vi. *If the prosecution fails to prove its case against the accused, the court can take into consideration the statement of the accused under section 342 Cr.P.C whether in favour of or against the accused; but it must take into consideration that statement in its entirety and cannot select and place reliance on the Inculpatory part of the statement only.*
- vii. *In the last mentioned circumstance, the facts narrated by the accused in his statement under section 342 Cr.P.C are to be accepted without requiring their proof.* The court, however, should examine the said facts in order to give due effect to them under the law. The object of such examination is to determine whether or not the facts narrated by the accused constitute an offence under the law or fit into any exception of the offence provided under the law.
- viii. *An admission or confession made in statement under section 342 Cr.P.C, which is improbable or unbelievable, or is not consistent with the overall facts and circumstances of a case do not have any probative value and thus it cannot be relied upon by the court for reaching a conclusion.*
(Emphasized)

20. By applying the principles referred above, I proceed to examine prosecution's story in first instance. Since beginning, it appears that, complainant was not fair while setting up his case which he changed when he came in court by filing the private complaint. What was his complaint that has already been referred in the earlier paragraphs of this judgment and the following comparison table will show that

how complainant deviated from the original story he set up in FIR: -

Complaint	FIR
<ul style="list-style-type: none">➤ Sadiq fired a shot that hit on the right side of chest of Habib Ullah.➤ Akbar alias Koroo made a fire and the pallets hit on the head and left thigh of Hafeez.➤ Fire made by Hanif hit on the right thigh of Abdul Raheem.➤ Ghulam Muhammad alias Pakkhi gave an injury on the back side of head and back of Ramzan.➤ Sabaz Ali made a fire with 12-bore gun which hit on complainant's right ear and left chest.➤ Hazoor Bakhsh had been firing with 12-bore pistol but none of the fires hit anyone.	<ul style="list-style-type: none">➤ Sadiq made a fire that hit on the right side of chest of Habib Ullah.➤ Akbar alias Koroo, Hazoor Bakhsh and Hanif with their weapons made firing causing injuries to Ramzan, Hafeez and Rahim.

21. The comparison of above two stories clearly indicates that in FIR there was no specific allegation against any of the accused except Sadiq (*appellant*) and even it was not alleged that fire of any accused hit on the person of complainant. So much so, Ghulam Muhammad alias Pakkhi (*appellant*) although was shown armed with hatchet but no role whatsoever in FIR for causing any injury to any person was assigned to him.

22. Muhammad Bakhsh in complaint maintained that his statement (*Cw-5/D*) was not recorded correctly and also was not read over to him. His simple words in particular when this is a case of capital charge cannot destroy the veracity and authenticity of the complaint (*Cw-5/D*), which is a well drafted document with his thumb impression and having the endorsement of Ghulam Farid SI (*Cw-5*). If it is admitted that complainant was lodged in hospital being injured where

he remained for few days, still question remains that immediately after discharge, what action he had taken against Ghulam Fareed SI? There is nothing on record to show that Muhammad Bakhsh raised his voice before any authority, if the complaint (*Cw-5/D*) was not recorded in accordance with his version. He was also completely silent that what those circumstances were on the basis of which Ghulam Fareed SI misused his official position and reduced into writing a wrong statement. Complaint was filed after two months of the occurrence so a single line statement that Ghulam Freed SI did not record correct version of complainant and the witnesses, was a so called and unsuccessful attempt to defeat the most important document/complainant of this case on the basis of which FIR was recorded.

23. The time of the occurrence has been stated by the witnesses as 07:30 am and by defence at 09:00 am. Even here prosecution is under serious challenges. This is in evidence that occurrence was over within maximum 20 minutes where after complainant and injured remained at crime scene for 10/12 minutes and when they reached at ‘*Pull Saya Wala*¹⁴, Ghulam Fareed SI (*Cw-5*) met them. Said place was at distance of about two miles from crime scene. Under any circumstance keeping in view what the witnesses had claimed, they met Ghulam Fareed SI at the most by or before 08:30 am but the complaint (*Cw-5/D*) shows that it was recorded at 09:30 am. Without wastage of time and after preparation of necessary documents, all the injured were sent to hospital for medical examination which was at a distance of about 4 miles from the venue of information. Statement of Dr. Gul Hassan (*Pw-5*) and medico legal reports of Muhammad Hafeez (*PC*), Muhammad Bakhsh (*PD*), Abdul Raheem (*PE*), and Muhammad Ramzan (*PF*)

¹⁴ Name of a bridge

show that they were examined in between 12:20 to 12:30 pm. This fact further creates doubt in prosecution's story with reference to meeting of complainant with Ghulam Fareed SI at 09:30 am, immediately referring the injured to the hospital and medical examination without wastage of time.

24. Complainant was dishonest since beginning while giving the time of occurrence at 07:30 am and that was with a specific purpose. On the strength of documentary evidence (*DM/I*) it was proved that on 03.03.2010 Sabaz Ali, Hazoor Bakhsh, Ghulam Akbar alias Koroo and Muhammad Hanif were present in the court of a Magistrate as accused in a criminal case. The said proceedings show that one Rehmat Ullah the complainant of that case alleged that said accused had appeared in court after commission of some offences at '*Pull Saya Wala*' but in response thereto accused unanimously maintained that they arrived in the court premises at 09:00 am. Who out of two parties was correct before the Magistrate that controversy is not relevant for this Court but one fact is established that said accused were present in the court of Magistrate at 09:00 am, which venue was far and far away from the crime scene. How was it possible for them to be present in the court if they had committed the crime which has not been proved at 07:30 am but much later thereto?

25. The plea of alibi Sabaz Ali, Akbar alias Koroo, Hazoor Bakhsh and Hanif was successfully established by them during the investigation, which they had taken at the first available opportunity. It was verified by Ghulam Fareed SI (*Cw-5*) who finally declared them innocent, recommended their discharge and that was agreed by a Magistrate. As the value of investigation made by the first Investigating Officer is of worth, therefore, the investigation conducted by Shah Alam Khan DSP (*Pw-7*) after more than four months showing no level of responsibility cannot defeat the

investigation made by Ghulam Fareed SI merely on the reason that Shah Alam Khan was senior officer in rank.

26. With regard to above said four accused their acquittal was not on the basis of doubt but on the strength of absolute position that they were present in the court of Magistrate at the relevant time. Said absolute position is therefore a serious blow for prosecution that how Muhammad Bakhsh (**Pw-1**) and Ramzan (**Pw-2**) can be believed qua the appellants. The rule of ‘*sifting the grain from chaff*’ is no more applicable in Pakistan as held by the Honourable Supreme court of Pakistan¹⁵, where it has been finally resolved that Rule “*falsus in uno, falsus in omnibus*” shall henceforth be an integral part of our jurisprudence in criminal cases.

27. Occurrence had taken place outside the house of Sadiq (**appellant**) where admittedly complainant party came from a considerable distance on a vehicle on the dispute of house but prosecution could not prove that complainant was having ownership of the said property which in fact has been established to be under the title of the government of Punjab. In these circumstances, the view taken by the learned trial court is quite convincing that the complainant party in fact launched the attack at the house of accused.

28. Coming to the medical evidence, it requires no detail discussion with regard to injuries on the witnesses and deceased. However, as observed earlier, this piece of evidence is a barrier for the worth of prosecution’s version about the time of occurrence. It indicates that FIR was result of consultation, fabrication and concoction. All injured were examined in between 12:20 pm to 12:30 pm whereas they were brought to hospital much earlier to that. There is also another serious question that why the post mortem of Habib Ullah was conducted at 05:30 pm? This delay in post

¹⁵ PLD 2019 SC 527

mortem examination, too, has brought the case under heavy clouds of doubts¹⁶.

29. Coming to defence version appellants never stated that they made any firing in exercise of their right of defence but what they maintained that complainant and his companions made indiscriminate firing; they/appellants and their family members saved their lives by concealing in a room; due to indiscriminate firing, Habib Ullah expired as he received firearm injury on his back from close range; Muhammad Bakhsh, Abdul Raheem and Hafeez also sustained injuries as a result of above said indiscriminate firing. The learned trial court only on the basis of presumptions held that appellants made firing in exercise of their defence which they exceeded. The learned trial court by holding so committed serious illegality and did what it was not supposed to do. In **Razas' case** (*ibid*) the Apex Court while discussing the question '*whether reasonable possibility of the defence plea of being true can benefit the accused*' was pleased to observe as under: -

In Woolmington, a famous English case, Viscount Sankey, Lord Chancellor, in his "Golden thread" speech laid down: "While the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence. ... Throughout the web of the English Criminal Law one golden thread is always to be seen that it is the duty of the prosecution to prove the prisoner's guilt ... If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is entitled to an acquittal." The application of the Woolmington principle in Pakistan was considered by the Federal Court of Pakistan

¹⁶ Khalid alias Khalidi & 2 others vs. The State 2012 SCMR 327, Mina Sohail Ahmad & others vs. The State & others 2019 SCMR 956 and Irshad Ahmed vs. the State 2011 SCMR 1190

in Safdar Ali. Abdul Rashid, CJ, in that case, held:

"If, after an examination of the whole evidence, the Court is of the opinion that there is a reasonable possibility that the defence put forward by the accused might be true, it is clear that such a view reacts on the whole prosecution case. In these circumstances, the accused is entitled to the benefit of doubt, not as a matter of grace, but as of right, because the prosecution has not proved its case beyond reasonable doubt...."

30. The defence plea could not be construed by the learned trial court on the basis of surmises and conjectures unless there had to be clear evidence helping the court to arrive at such decision. The principles referred in earlier discussion were imposing a duty on the learned trial court that once prosecution's version was disbelieved, there was no authority with the court to make pick and choose of defence plea and then to proceed to record the conviction.

31. In view of above, when both versions discussed and analyzed in juxtaposition, the prosecution's case has been found based on dishonesty, malafide, improved version and false assertions by the witnesses whereas, defence plea is probable and nearer to possibility. So the final outcome is that prosecution has badly failed to prove its case beyond reasonable doubt also against Sadiq and Ghulam Muhammad alias Pakkhi (*appellants*). Criminal Appeal No.161/2013 is therefore, **allowed**. Impugned judgment is **set aside** and the appellants are **acquitted** from the case. They are on bail and discharged from terms and conditions of bail bonds. The deliberations further resulted into dismissal criminal revision and PSLA filed by the complainant.

(Sohail Nasir)
Judge

Approved for Reporting

(Judge)

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