JUDGMENT SHEET
IN THE HIGH COURT OF BALOCHISTAN, QUETTA.

Criminal Appeal No.320 of 2024
Muhammad Ikhlas v. the State (CC-100107702919)

J U D G M E N T

Date of hearing: 04-09-2024 Announced on:6th September, 2024

Appellant by: Mr. Habibullah Nasar, Advocate.

State by: Mr. Abdul Karim Malghani, State Counsel.

Muhammad Ejaz Swati, J: Appellant is aggrieved against the judgment dated 26-07-2024 (the impugned judgment), passed by learned Additional Sessions Judge, Loralai (the trial court), whereby appellant Muhammad Ikhlas S/o Maha Gul has been convicted under Section 324 Pakistan Penal Code (PPC) and sentenced to suffer Rigorous Imprisonment (R.I) for a period of eight (08) years, with fine of Rs.50,000/-, in default whereof he has to further suffer for a period of three (03) months Simple Imprisonment (S.I). He was further convicted under Section 337-D PPC and sentenced to suffer for a period of eight (08) years R.I, with fine of Rs.2,252,634/- for causing stab injury to complainant Toor Jan. *Arsh* amount on its recovery be paid to the injured/victim Toor Jan, however, the accused be dealt in accordance with provision of Section 337-X PPC, in default thereof the accused be kept in custody till realization of *Arsh* amount. He was further convicted under Section 337-F (ii) PPC and sentenced to suffer for a period of two (02) years R.I, with fine of Rs.20,000/-, in default whereof, he shall further suffer for a period of one (01) month S.I. and appellant was also convicted under Section 337-F (iii) PPC and sentenced to suffer for a period of two (02) years R.I, with fine of

Rs.40,000/-, in default whereof he shall further suffer for a period of two (02) months S.I. The awarded sentences shall run concurrently. Benefit of Section 382-B Criminal Procedure Code (Cr.P.C) was also extended in favour of the convict/appellant, while brothers of the appellant/accused namely Muhammad Akram, Muhammad Shafi and Muhammad Hassan were acquitted of the charge.

2. Facts of the case are that FIR No.210 of 2022, dated 09.10.2022, at 11:58 pm in respect of incident at 01:50 pm was registered with Police Station Saddar Loralai, District Loralai, under Sections 324, 337, 147, 148, 149 Pakistan Penal Code (PPC), wherein the complainant Toor Jan (injured) averred that on the aforesaid date he got cleaned the area in front of his house through Ghulam Habib, while the appellant thrown garbage infront of his house, where he forbid him. He became annoyed and used abusive language, thereafter he equipped with knife accompanied by his brothers Muhammad Akram holding Kalashnikov, Muhammad Shafi holding stick and Muhammad Hassan alias Gaju holding Knuckle attacked upon him and caused him bodily injuries, when Ghulam Habib reached to rescue him, the accused person also attacked upon him and caused injuries to him.

3. During the trial, prosecution examined seven witnesses. When examined under Section 342 Cr.P.C, the appellant denied the allegations of the prosecution. He neither recorded his statement on oath under section 340 (2) Cr.P.C nor produced any witness or evidence in his defense. The learned trial court convicted and sentenced the appellant as mentioned herein above.

4. The learned counsel for the appellant contended that the prosecution has failed to substantiate its case against the appellant beyond reasonable doubt; that FIR was registered with unexplained delay of 10 hours; that the statement of alleged victim Toor Jan and PW-3 Ghulam Habib is also suffering from dishonest improvements and material contradictions. The statement of PW-3 Ghulam Habib under Section 161 Cr.P.C was recorded with delay of one day and no sufficient explanation has been given thereof; that ocular account furnished by PW-5 Naqeebullah is also not reliable on the ground that he could not justify his presence at the place of incident, besides his unnatural conduct also caused a reasonable doubt; that no bloodstained cloths/shirt of the injured Toor Jan was produced; that one of the alleged eyewitness had not been produced by the prosecution, which further creates doubt in the case of prosecution; that on the same evidence the co-accused person had been acquitted by the trial Court, therefore, the appellant on the basis of rule of consistency is also entitled for such benefit. The learned counsel for the appellant relied upon the cases reported in (2021 YLR Note 152), (2020 YLR 1685), (2020 P.Cr.L.J 503), (2024 P.Cr.L.J 993) and (2024 SCMR 929).

5. The learned State Counsel contended that two victims i.e. PW-1 Toor Jan and PW-3 Ghulam Habib ascribed specific role of causing bodily injuries to them by the appellant, which have been supported by the medical evidence Ex.P/4-A and Ex.P/4-B, produced by the PW-4 Dr. Muhibullah; that in absence of any previous enmity the complainant has no reasons to substitute the accused; that the prosecution has proved

its case beyond reasonable doubt, therefore, the instant appeal is liable to be dismissed.

6. We have heard the learned counsel for the parties and perused the record. The case of prosecution is based on the statement of PW-1 Toor Jan (injured/complainant), PW-3 Ghulam Habib (injured) and PW-5 Naqeebullah (eyewitness), supported by medical evidence of injured Ghulam Habib Ex.P/4-A and injured Toor Jan Ex.P/4-B.

7. There are certain material infirmities in the statement and conduct of the injured witness including complainant on the basis whereof their testimony are not worthy of reliance. According to the FIR Ex.P/6-A, the incident had taken place on 09.10.2022, at 01:50 pm, but the FIR was lodged at 11:58 pm with unexplained delay of about 10 hours while the distance between police station and place of incident was one and half kilometers. Such delay in the circumstances and facts of the instant case caused serious doubt in the prosecution story and directly affect the prosecution case. The delay in the instant case has greater significant and it can be attributed to consultation, taking instruction collectedly, preparing the report, keeping the name of the accused open for roping such person whom prosecution may wish to implicate. The complainant PW-1 while taking the advantage of above delay in lodging the FIR indicted all the brothers of the appellant in the instant case, who were acquitted by the trial Court, vide impugned judgment. In the case titled ***Shaukat Hussain v. The State through PG Punjab and another*** (2024 SCMR 929), the Hon'ble Supreme Court of Pakistan observed that four hours of unexplained delay in lodging FIR,

where the distance of police station from place of incident was 20 kilometers was fatal for the prosecution case.

8. The other material discrepancy of the prosecution is that the incident has taken place on 09.10.2022 at 01:50 pm. According to PW-1 (injured) he was stabbed by the appellant in his abdomen by means of Churri. PW-4 Dr. Muhibullah (the doctor), examined injured namely Toor Jan on the same date at 11:40 pm (prior to incident). The doctor in cross examination No.11 stated that "when both the injured came to him only Ghulam Habib's cloths were bloodstained". Besides, PW-2 (Saifullah constable) has produced bloodstained cloths of both the inured. This witness during cross examination No.3&4 stated as under:

"3- میں نے اپنے بیان میں مضروب طور جان کی خون الود قمیض کا ذکر کیا ہے۔
4- یہ درست ہے کہ ا مروز پارسل نمبر ا سے خون آلود قمیض برآمد نہیں ہوئی۔"

9. The above material aspect of the prosecution case creates a reasonable doubt in respect of receiving injuries by the PW-1 Toor Jan, whereas the testimony of Ghulam Habib (injured) is concerned, his statement under Section 161 Cr.P.C was recorded on 10.10.2022, with delay of one day. To cover such delay, he deposed that after inflicting injury by the appellant on the spot he became unconscious and he regained conscious in the ward of hospital, while the doctor in his cross examination No.12 stated that "both injured were conscious" it appears that the prosecution has failed to reasonably explain the delay of one day in recording the statement of PW-3 statement under section 161 Cr.P.C. It is settled principle that even one or two days unexplained delay in recording the statement of eye witnesses would be fatal and testimony of such witnesses cannot be safely relied upon. Reliance in

this respect is to be made on case titled ***Muhammad Asif v. The State*** (2017 SCMR 486).

10. The contention of learned State counsel that truthfulness of injured witness, supported by the medical evidence is sufficient prove of the guilt of the appellant is not tenable. The alleged injuries will not stamp them to be truthful witnesses because of the above and other material discrepancies. Reliance in this respect is to be made to case titled ***Amin Ali and another v. The State*** (2011 SCMR 323), wherein the Hon'ble Supreme Court of Pakistan observed as under:

> *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 persons of P.Ws. would not stamp them truthful witnesses. It has been held in the case of Said Ahmed supra 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 F.I.R. 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."

11. The ocular account furnished by the PW-5 Naqeebullah is also not worthy of reliance. The alleged eyewitness has claimed to have seen the occurrence, where the appellant inflicted injuries to the PW-1 and PW-3, but surprisingly the said eyewitness had never taken the injured to the hospital for medical treatment nor lodged prompt FIR. Though he stated that he alongwith another eyewitness Hameedullah (not produced) had taken both the injured to hospital on two motorcycles, but the MLC of both the injured negates the above version and indicates that injured Ghulam Habib was brought by Rafay (not produced) and alleged injured Toor Jan was brought by his brothers (who were not eye witnesses), such unnatural conduct of the PW-5 creates a doubt. Reliance is placed on case titled ***Riasat Ali and another v. The State and another*** (2024 SCMR 1224). Besides, PW-5 lived two kilometers away from scene of crime, but no particular reason for coming to the house of injured at that particular part of time had been stated and thus could not justified his presence through any established evidence, thus could not be relied upon. Reliance is placed on case titled ***Mst. Rukhsana Begum and others v. Sajid and others*** (2017 SCMR 596).

12. The prosecution has also withheld PW Hameedullah (an eye witness) without any cause and justification, which further reflects adverse presumption against the prosecution. Reliance in this respect is placed on case titled ***Shaukat Hussain v. The State through PG Punjab and another*** (2024 SCMR 929).

Considering the above discussion and reassessment of the evidence on record, it appears that the prosecution has failed to prove its case against the appellant beyond any reasonable doubt, therefore, the impugned judgment cannot be sustained.

In view of the above, Criminal Appeal No.320 of 2024 is allowed. Impugned judgment dated 26.07.2024, passed by learned Additional Sessions Judge, Loralai is set-aside. The appellant Muhammad Ikhlas S/o Maha Gul is acquitted of the charge in respect of FIR No.210 of 2022/, dated 09-10-2022, registered with Police Station Saddar Loralai, District Loralai, under Sections 324, 337, 147, 148, 149 Pakistan Penal Code (PPC). He is behind the bar shall be released forthwith if not required in any other case.

Quetta:
Announced in open Court. ACTING CHIEF JUSTICE
Dated, Quetta _____ September, 2024

JUDGE