

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Ghulam Mustafa Mughal, J.

Criminal Appeal No. 37 of 2016
(Filed on 06.06.2016)

1. Muhammad Anees, son,
2. Razina Fatima, widow,
3. Naheed Kousar,
4. Naveeda Kousar, Daughters of Muhammad Akram, Caste Kashmiri r/o Pang Piran, Tehsil & District Kotli.

..... APPELLANTS

VERSUS

1. Muhammad Ayub s/o Said Muhammad,
2. Masud Ayub s/o Muhammad Ayub, Caste Kashmiri, r/o Pang Piran, Tehsil & District Kotli.

.... RESPONDENTS

3. The State through Advocate-General, Muzaffarabad.

.... PROFORMA RESPONDENT

(On appeal from the judgment of the Shariat Court dated 07.04.2016 in Criminal Appeal No.24/2014)

FOR THE APPELLANTS: Raja Imtiaz Ahmed Khan, Advocate.

FOR THE STATE: Mr. Mehmood Hussain Chaudhary, Additional Advocate-General.

FOR THE ACCUSED
RESPONDENT NO.1:

Mr. Najeeb Raja,
Advocate.

Date of hearing: 17.04.2017.

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C.J.— The titled appeal has been directed against the judgment of the Shariat Court dated 07.04.2016, whereby the appeal filed by the appellants, herein, has been dismissed.

2. In brief, the facts of the case are that Muhammad Akram s/o Said Muhammad, caste Butt r/o Mohra Pang Peeran Kotli, made a report at Police Station Kotil on 06.05.2007 stating therein that there was a dispute over land between him and the accused, Muhammad Ayub. He obtained a status quo order from Revenue Officer, Kotli regarding the land comprising Khewat No.1385, 1370, 821 and 62/36. On 06.05.2007 the accused, Muhammad Ayub, Masood Ayub, Majid Nazir and Nazir started to construct boundary wall on the

disputed land. He forbade them from illegal construction, upon which some harsh words were exchanged. The accused, Muhammad Ayub, hit him with the handle of pickaxe at left ribs, whereas, his son, Masood Ayub, hit him with pickaxe at left ribs and arm. Nazir s/o Lal Din hit him with baton (*danda*) at his right shoulder. Sajid s/o Nazir also gave baton blows to the complainant.

3. On this report FIR No.162/2007 was registered at Police Station Kotli against the accused in the offences under sections 34, 337-F(i), 337-F(vi), APC. After completion of investigation, challan was presented in the Court of competent jurisdiction. The learned trial Court, after necessary proceedings, vide judgment dated 29.03.2013 convicted Muhammad Ayub and Masood Ayub and awarded them the punishment of *daman* of Rs.10,000/- each. The other co-accused were acquitted of the charge by extending benefit of doubt. Feeling aggrieved, the legal heirs of the complainant as well as the convicts/accused filed appeals before the District Criminal Court, Kotli.

The learned District Criminal Court vide judgment dated 29.03.2014 acquitted Muhammad Ayub, accused by giving him benefit of doubt, whereas, the appeal filed by the legal heirs of the complainant was accepted partly in the manner that Masood Ayub shall pay Daman in the sum of Rs.50,000/- and he shall remain in jail till payment of Daman. The appeal filed by the appellants, herein, before the Shariat Court stood dismissed through the impugned judgment, hence this appeal.

4. Raja Imtiaz Ahmed Khan, Advocate, the learned counsel for the appellants after detailed discussion of facts of the case submitted that the impugned judgments of learned trial Court as well as the Shariat Court are against record and the facts. Both the Courts below misconceived and incorrectly drawn the conclusion that the medical evidence is not supportive of the version of the prosecution. He referred to the medical report and submitted that it is clearly proved that not only the ribs were fractured but the nature of injury also indicates that it has been caused by more than one

person. He further argued that the Courts below have not minutely appreciated the medical report in juxtaposition of the statement of doctor and apparently misconceived with reference to injury No.2 which was caused on the shoulder but it has been wrongly deemed to be the injury causing fracture of ribs. The nature and severeness of the injury clearly proves that the same has been caused by more than one person. It is clearly proved from the evidence that the injury has not only been caused by the absconder, Masood Ayub but the respondent, Muhammad Ayub, is the main accused who has caused injury resulting into fracture of the ribs. He further argued that the Courts below also failed to award punishment according to the nature of the evidence and keeping in view the statutory provisions, thus, by accepting this appeal the accused respondent No.1 be awarded maximum punishment for commission of alleged offence and punishment awarded to respondent No.2 may also be enhanced.

5. Mr. Mehmood Hussain Chaudhary, Additional Advocate-General, submitted that the commission of offence is fully proved and established against the respondents, therefore, while accepting this appeal the prayed relief be granted.

6. Conversely, Mr. Najeeb Raja, Advocate, the learned counsel for the accused-respondent No.1 while forcefully defending the impugned judgment submitted that for setting aside the acquittal the prosecution has to satisfy the Court that there is any violation of law or the impugned judgments are perverse or arbitrary, whereas, in this case, the impugned judgments are based upon proper appreciation of evidence and result of complete application of judicial mind. Even, according to prosecution's own stated story and the produced medical report, the arguments of the counsel for the appellants appear to have no substance. According to medical report and statement of doctor there is a single injury causing fracture of ribs and when the allegation of causing

injury is alleged against two persons then how it is possible that both of them caused injury at exact place and the same part of the body. It was the duty of the prosecution to prove causing of injury by the accused-respondents but the prosecution miserably failed. According to the celebrated principle of law, even a minor type of doubt may be made ground for acquittal. In this case the Courts below have rightly passed the acquittal order. The judgments of Courts below do not suffer from any legal infirmity.

7. We have considered the arguments of the counsel for the parties and examined the record made available. The examination of the judgments of Courts below reveals that the Courts below while passing the same have applied judicial mind and carefully analyzed the evidence produced by the prosecution. In the light of the prosecution story and the evidence brought on record, the conclusion has been drawn quite in accordance with law. The trial Court has reproduced the gist and summary of the prosecution evidence in its judgment. The

previous litigation among the parties and enmity is also an admitted fact. All the prosecution witnesses in their statements have alleged that both the accused caused injury on left ribs of the complainant. The medical report reveals that the alleged injury is mentioned as bruise of the size of 10X2cm on left lower chest extending posteriorly laterally. The prosecution failed to recover the article causing injury, however, according to prosecution own story the injury has been caused with the handle of pickaxe. Apparently, it is not possible for two persons to cause injury with handle of pickaxe exactly at one and the same place. In this state of affairs, the conclusion drawn by the trial Court, upheld by the appellate Courts does not appear to be arbitrary or incorrect, specially, when the enmity among the parties is admitted fact and trend of implicating the maximum number of persons of opponent is prevailing. In this state of affairs, awarding the conviction on the allegation that two persons caused an injury at the exact and

same place, cannot be termed to be as safe administration of justice.

8. The minute examination of judgments of Courts below, clearly speaks that the same have been passed after proper appreciation of evidence according to the principle of administration of criminal justice. The burden of proof beyond shadow of doubt always lies on the prosecution. In this case, the prosecution has failed to discharge its duty. The judgments of the Courts below are well reasoned, speaking one which do not suffer from any legal infirmity. In this state of affairs, the appellants could not succeed to make out any valid legal ground for interference.

Therefore, finding no force this appeal stands dismissed.

Mirpur,
.04.2017

CHIEF JUSTICE

JUDGE
(J-II)

Date of Announcement: 20.04.2017