

137

ORDER SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Crl. Acquittal Appeal No.D-33 of 2021.

Date

Order with signature of Judge

Present:

Mr. Justice Muhammad Saleem Jessar,
Mr. Justice Khadim Hussain Soomro,

1. For orders on office objections 'A'.
2. For orders on M.A.No.3943/2021.
3. For hearing of main case.

21.11.2023

Mr. Asif Ali Abdul Razak Soomro, advocate for the appellant.

ORDER

MUHAMMAD SALEEM JESSAR, J- Instant appeal against acquittal has been directed against the order dated 12.07.2021, passed by learned Ist. Additional Sessions Judge(MCTC) Larkana (trial Court) over an application under section 265-K, Cr.P.C filed by the respondent whereby he (respondent No.1) has been acquitted of the charge vide Sessions Case No.256 of 2013, being outcome of Crime No.142/2009 of Police Station Shahdadkot, under Sections 302, 324, 34, PPC. The appellant being aggrieved by that order has maintained this appeal on the ground that trial Court was required to record evidence instead acquitted the respondent No.1 at earlier stage.

2. According to the case of prosecution, as per FIR lodged by the complainant Kafeel Ahmed on 01.7.2009 are that about a year ago complainant's father died and at that time he was residing in Hyderi Mohalla Larkana. Complainant's maternal uncle Sabit Ali asked complainant to sell his house and to give him amount but he refused, to which Sabit Ali was annoyed. Thereafter complainant rented out his house and shifted to Shahdadkot, where he started residing. On

178

01.7.2009 complainant along with his brothers Shakeel Ahmed, Khalil Ahmed, mother Mst. Musrat and other house inmates were sitting in courtyard of the house, at about 1700 hours everyone Sabit Ali, Parvez with Pistols, Laloo with repeater and Bakhat with K.K came there. On coming accused Sabit Ali and Parvez on the pretext of refusal of payment of sale consideration of the house, made straight fires upon complainant's mother Mst. Musrat which hit her and she fell down. Complainant tried to resist but accused Sabit Ali also made fire upon him with intention to kill him but he saved himself by falling on the ground and fire was missed. Thereafter complainant party raised cries. Fire shots and cries attracted neighbours and on seeing them coming all accused escaped away on two motorcycles. The complainant noticed her mother was lying injured and he shifted her to hospital, where she succumbed to her injuries. Then complainant appeared at P.S, where he lodged instant FIR.

3. After registration of FIR, police submitted challan by showing accused Parvez in custody while accused Sabit Ali, Bakhat were shown as absconders and accused Laloo was let-off by police by placing his name in column No.2. Learned Magistrate after completing necessary formalities sent up the case to the Court of Sessions, wherefrom this case was transferred to the Court of Additional Sessions Judge Shahdadkot (trial Court), where charge against accused Parvez was framed. Later on, case was transferred to the Court of Sessions Judge, Larkana (trial Court); however, co-accused Parvez stood his trial before the trial Court/ 1st Additional Sessions Judge, Larkana and after full-fledged trial he was acquitted under section 265-H(l) Cr.P.C and case against present respondent No.1 was kept on dormant file. Said acquittal was challenged by way of filing Crl. Acquittal Appeal No.D-34 of 2019 before this Court but the same was dismissed for non-prosecution vide order dated 24.06.2020. Subsequently learned trial

Court was intimated regarding detention of respondent No.1 and case against him was proceeded and at later stage, respondent No.1, filed application u/s 265-K, Cr.P.C, which was allowed through the aforesaid impugned order.

4. Learned counsel submits that trial Court without recording evidence has acquitted the respondent No.1, Sabit Ali from the charge by way of impugned judgment, therefore such an immature order requires interference by this Court, hence prays for interference.

5. We have gone through the averments as well as evidence adduced by the prosecution before the trial Court and find that respondent Pervaiz, Sabit Ali, Bakhat and one let off co-accused Laloo duly armed with pistols, repeaters and K.K, in furtherance of their common intention had committed Qatl-e-Amd of deceased Mst. Mehran by causing her fire arm injuries; however, after recording evidence and hearing the parties the trial Court vide its judgment dated.21.8.2019 had acquitted co-accused Pervez Ali Khuhawar. The appellant filed appeal against his acquittal vide Crl. Acquittal Appeal No.D-34/2019, which was dismissed in default by way of order dated.24.6.2020 and no application for seeking its restoration or otherwise was moved. Consequently, the acquittal of co-accused Perviaz Ali had attained finality. Later, the respondent Sabit Ali was arrested and during pendency of his trial he moved an application under section 265-K, Cr.P.C before the trial Court which after hearing the parties was allowed through order dated.12.7.2021, hence instant appeal against his acquittal has been maintained. The trial Court while discussing the evidence at length regarding accusation of respondent in paras-13, 14 & 15 of the impugned order, has observed as under :

13. Undisputedly the Doctrine of "Falsus in Uno, Falsus in omnibus" (false in one thing, false in all), has been revived and made applicable in the prevalent system of criminal administration of justice, by recent judgment of Honourable

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Supreme Court of Pakistan, and now same is of universal application that when a witness has been found false with regard to the implication of one accused about whose participation he had deposed on oath the credibility of such witness regarding involvement of the other accused in the same occurrence would be irretrievably shaken or that where some accused were not found guilty the other accused would ipso facto stand acquitted. Admittedly, co-accused Lalo was let-off by police and learned Magistrate agreed with such report, but complainant did not challenge such order of learned Magistrate, hence undisputedly, it appears that complainant has exaggerated the facts, which renders his testimony unworthy of reliance. Not only has this, but so many other inconsistencies & infirmities are discussed in detail at para No.18 to 21 of the acquittal judgment and finally it was observed at Para No.23 that "it appears that eye-witnesses account in this case is so unreasonable and inherently improbable that no amount of corroboration can rehabilitate it".

14. Complainant Kafeel and P.W Shakeel are examined today, while one P.W Khalil has already been expired. Complainant Kafeel changed his version and today he deposed that only accused Sabit fired upon deceased; accused fired from the distance of 3 to 4 feet, while as per doctor deceased sustained fire from the distance of 10/12 feet, as there was no blackening and charring. However, in his previous statement complainant deposed that accused fired from the distance of 6/7 paces upon his mother. Previously complainant deposed of making complaint before Guftar and Wajid, but today he made improvements in his statement and denied of having making complaint against accused to any one. Today, he deposed that site was visited after three days. He deposed that rented house was arranged by his mother and uncle Wajid, while P.W Shakil deposed that he and his brother obtained rented premises from one Magsi on monthly rent of Rs.9000/=. Today, complainant also made improvements in his version when he deposed that body was buried on next morning and tada (condolence mate) was held at the house of her aunt, while in earlier round he deposed burial of dead body on same night and tada at the house of his sister. Previously he deposed appearance of several neighbours but today he changed version and deposed none appeared from neighbour at the time of incident. Today he deposed that he opened that door, while in his earlier version he stated that it may be his brother or sister who had opened it. Previously, he deposed that house inmates were available at different places but today he changed their location and deposed for courtyard. Previously, he admitted lodgment of FIR by one Zahid Chandio, but today he changed his version and denied such FIR. Previously, time of offence was introduced as 5pm but today he also changed time of offence and deposed for 4pm of 4.30pm.

15. Likewise, P.Ws Shakeel has also made improvements by changing his version and he also deposed with exaggerations. Today he deposed different date of offence as 1.7.2007, earlier he deposed role of firing of two accused, but today he deposed for only present accused; in earlier

✓46

statement he deposed that one year after expiry of his father accused started demanding amount, but today he deposed for 7/8 months period. He deposed that they shifted at Shahdadkot in year 2007, while in earlier round of trial he deposed for six months prior to this incident. Earlier he deposed that they rented out shop to one Soomro, but today he deposed for selling out of house to one Soomro. He further deposed that accused Sabit never appeared at their house of Shahdadkot, but today he deposed that accused Sabit used to appear there. Earlier he deposed for arrival of 6/7 neighbors but today he exaggerated the number to 10/15 neighbours. Previously he deposed that complainant did not sustain any injury, but today he improved his version and deposed for injury of complainant. Previously, he deposed shifting of body at khuda Abad Tank Chowk, but today deposed for Aunt house situated in front of Jail. Previously he deposed time of burial at 1 or 1.30pm but today he made improvements and deposed for 11am. Previously, he admitted that after lodgment of FIR by Chandio, they absconded away to Karachi, but today he changed his version. As per FIR his father was expired one year prior to this incident, but today he deposed that his father has been expired in year 2006."

6. It is settled law that after getting acquittal the accused always earns presumption of double innocence in his favour and the superior Courts have avoided in interfering in the findings of the acquittal recorded by the Courts below. The basic ingredients for maintaining appeal against acquittal, as enshrined by the Hon'ble Supreme Court of Pakistan in the case of *Ghulam Sikandar v. Mamraiz Khan & others (PLD 1985 SC 11)* are lacking in this case and no case for interference is made out. Consequently, instant appeal against acquittal merits no consideration, which is hereby dismissed along with listed application in *limine*.


21/11/2023
Judge

M.Y.Panhwar/**