IN THE HIGH COURT OF SINDH
CIRCUIT COURT HYDERABAD

Cr. Acquittal Appeal No.D-27 of 2017

P R E S E N T:
Mr. Justice Naimatullah Phulpoto
Mr. Justice Shamsuddin Abbasi

Date of Hearing:	*10.04.2018*
Date of Judgment:	*10.04.2018*
Appellant/Complainant:	*Rasool Bux S/o Haji Bux Ali, through Mr. Muhammad Akram Rajput, Advocate.*
Respondents No.1 to 3:	*None present*
The State:	*Through Syed Meeral Shah Bukhari, Additional Prosecutor General, Sindh.*

J U D G M E N T

***NAIMATULLAH PHULPOTO, J*:-** Respondents / accused Mushtaque Hussain, Abid Hussain and Arbab Ali were tried by learned Additional Sessions, Matiari in Sessions Case No.130 of 2014 arising out of Crime No.79 of 2014 of P.S Hala. On the conclusion of the trial, vide judgment dated 12.08.2017, the respondents / accused were acquitted of the charge.

2. Brief facts of the prosecution case are that on 12.08.2014 at 2200 hours the above named respondents / accused, armed with sticks, committed Qatl-e-Amad of the cousin of the complainant namely

Tahseem Bughio. FIR of the incident was lodged at P.S Hala vide Crime No.79 of 2014 under Sections 302, 34 PPC.

3. After usual investigation, challan was submitted against the respondents / accused.

4. Learned trial Court framed the charge against the respondents / accused under Sections 302, 34 PPC at Ex-2. Respondents / accused pleaded not guilty and claimed to be tried.

5. Prosecution in order to prove its case, examined nine witnesses, thereafter, the prosecution side was closed.

6. Statements of the accused were recorded under Section 342 Cr.P.C, in which the accused denied the prosecution allegations and claimed false implication in this case.

7. Learned trial Court after hearing the learned Counsel for the parties and assessment of the evidence by judgment dated 12.08.2017 acquitted the respondents / accused from the charge.

8. Learned Advocate for the appellant / complainant mainly contended that there was huge evidence against the respondents / accused for connecting them in the commission of the offence but the trial court failed to appreciate the evidence according to the settled principles of the law. It is further argued that deceased had made dying declaration before the P.Ws but the same was ignored by the trial Court. Lastly it is contended that the judgment of the trial Court is based upon speculations and the same is not sustainable under the law.

9. Syed Meeral Shah Bukhari, learned Additional P.G has supported the judgment of the trial Court and argued that the trial Court

has rightly appreciated the evidence. P.Ws were chance witnesses. They could not explain their presence at Liaquat Medical Institute at Karachi on the relevant date.

10. In order to properly appreciate the contentions of the learned Counsel for the parties, we have perused the impugned judgment. Learned trial Court has recorded acquittal in favour of the respondents / accused mainly for the following reasons: -

> "26. The evidence of PW-1/complainant is unreliable again about other further particulars, as cross examination of PW-1 and PW-2 and also other witnesses reveals that village Sandhan was situated on the very same route between Hala and village of complainant at the distance of one k.m. from Hala, and if complainant and deceased were accompanying for personal work at Hala and they came together there was no reason to leave the deceased on the way only to get outstanding amount. If complainant was accompanying with the deceased, then he should have accompanied him which might have taken a little time, and both of them could have come back to village. As per dying declaration incident was taken place at 10.00 p.m. and evidence of complainant/PW-1 reveals that deceased had left him at evening time, and evening time is normally time before sunset. If duration between time of incident and time of departure of deceased from complainant is gathered by treating the evening time to be as sunset time, the sun in the month of August sets about 070 p.m. even so question arises as to what was deceased doing three hours in village Sandhan. The said fact indicates that deceased had gone to village Sandhan not for collecting outstanding amount but for something else. PW-1 and PW-2 in his evidence say that when deceased did not come till odd hours of night they alongwith PW Amiruddin left the village on two motorcycles for searching the deceased, and in cross examination they admitted that they directly came at Hala. When complainant was knowing that deceased had gone to Mushtaque for collecting outstanding amount in village Sandhan, then as to why he did not choose to search the deceased at first at village Sandhan as there was no reason for him to search the deceased at Hala. The said aspects of prosecution case reveal that case against the accused was cooked up after the death of deceased Tehseen.
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> 27. Now the defense plea is that deceased had entered into the house of accused Mushtaque with intention to commit theft, but inmates of house woke up, and on commotion relatives also came out and bet the accused hence he received injuries, such F.I.R. bearing Crime No.78/14 (Ex-7/E) was lodged by father of

accused Mushtaque named Rasool Bux Dahri against him. Evidence of PW-4 ASI Zaheer reveals that said crime was investigated by him, and in cross examination he admitted that he recorded statements of eye witnesses including present accused, but due to death of accused he disposed of the said crime in "C" cancel class. He further admitted that witnesses in said crime supported the version of F.I.R. (Ex-7/E). When accused in said F.I.R., named Tehseem, was died there was no other course but to dispose of the case under "C" class as in said crime charge sheet could not have been submitted against the dead person. Learned Counsel for complainant has mainly relied upon the F.I.R. (Ex.7/E) by arguing that presence of accused and deceased at the time of incident at the spot has been admitted by the accused, and said admission corroborates the version of prosecution. I am not agree with the said argument for the reason that as per defense plea incident was taken place inside the house of one of the accused Mushtaque, and mere admission to that effect is not sufficient to prove the charge against the accused. It is settled law that prosecution has to stand on its own legs. In present case prosecution case is based upon circumstantial evidence of dying declaration and motive which could not be proved beyond the shadow of reasonable doubt, hence conviction to present accused cannot be awarded on said admission in which they have disclosed that deceased entered into house of one accused with intention to commit and offence, and received injuries at the hands of villagers and inmates of house by exercising right of self-defense of their property. If deceased had been alive he would have certainly faced the charge of alleged offence shown in F.I.R. bearing crime No.78/14 (Ex.7/E). The evidence of police witnesses in this case on the record is also contradictory and inconsistent on material particulars which reveals that it was made in mechanical manner and it appears that documents including memos prepared by the I.O. and other police officials were not prepared at the relevant spots but appears to have been prepared at PS, and investigating officer appears to have committed the investigation with partiality for making out the case against present accused.

28. In view of above discussed reasons I have come to conclusion that evidence of PWs is not reliable, and the circumstantial evidence on the record is not sufficient to connect the accused with the commission of offence of murder of deceased. In the case of Wazir Muhammad Vs. The State (2005 SCMR 277) Full Bench of Honourable Supreme Court has held that "the fundamental principle of universal application in cases dependent on circumstantial evidence, is that in order to justify the inference of guilt, the incriminating facts must be incompatible with the innocence of the accused or the guilt of any other person, and incapable of explanation upon any other reasonable hypothesis than that of his guilt". It is well settled law that in the absence of direct evidence the circumstantial evidence must be in the shape of chain and each circumstance must be

linked with the other for reaching at the proper conclusion about the guilt of accused. In the case of Saeed Ahmed Hamdani V/s Muhammad Irfan and others (PLD 1986 SC 690) larger bench of Supreme Court has held as under:-

> "Case of prosecution being one of circumstantial evidence a very high quality of evidence was required and the chain of events had to be completed with a view to establish the guilt of a respondent beyond reasonable doubt and to make the plea of their being innocent incomputable with the weight and quality of persecution evidence."

In this case prosecution has miserably failed to establish the chain of circumstances and events for proving the guilt of accused beyond reasonable doubt, and defense plea regarding innocence of accused, on the contrary, is compatible with the prosecution evidence rather creating serious doubt regarding truthfulness of prosecution evidence, hence I have answered the points No.2 and 3 as not proved.

30. The upshot of above discussion reasons is that prosecution has failed to prove charge against the accused beyond the shadow of reasonable doubt. In the case of Muhammad Ilyas Vs. The State (1997 SCMR 25) full bench of Honourable Supreme Court of Pakistan has held that "It is well settled principle of law that where evidence creates doubt about truthfulness of prosecution story, the benefit of said doubt had to be given to accused without any reservation".. In the case of Tariq Pervaiz Vs. The State (1995 SCMR 1345) Honourable Supreme Court has held that "A concept of benefit of doubt to an accused person is deep rooted in our country. For giving a benefit of doubt it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in prudent mind about guilt of accused, then accused will be entitled to benefit, not as a matter of grace and concession but as a matter of right", hence in the light of above discussed reasons and principles, I acquit the present accused u/s 265-H(i) Cr.P.C. of the charge u/s 302, 34 PPC by extending benefit of doubt to them. The accused are present on bail. Their bail bonds stand cancelled and surety stands discharged."

11. After hearing the learned Counsel for the parties, we have scanned the entire evidence. Close scrutiny of the evidence reflects that actual incident was un-witnessed. P.W Abdul Jabbar has deposed that on 12.08.2014, he was present at his village Rano Bughio. On the same date Rasool Bux and Tehseem left the village for Hala on motorcycle. After finishing the work, Rasool Bux returned back to the village and

disclosed that Tehseem (now deceased) had left for village Sandhan for collecting outstanding amount from one Mushtaq Dahri (respondent / accused). Complainant Abdul Jabbar and Rasool Bux waited for Tehseem for longtime but he did not return back. Thereafter, he alongwith Amiruddin and Rasool Bux went for search of Tehseem and they came to know at Hala that one unknown person has been admitted in injured condition to Taluka Hospital Hala. Complainant party went to the hospital and found Tehseem lying injured, having injuries on his head and was unconscious. Injured was shifted to the Liaquat National Hospital, Karachi for better treatment, where according to P.W Abdul Jabbar, he regained his senses and disclosed that respondent / accused Mushtaq Dahri on his demand of amount caused injuries alongwith co-accused, then he went unconscious again and succumbed the injuries in the hospital. P.W Rasool Bux has also deposed more or less the same story.

12. We have no hesitation to agree with the findings of the trial Court mainly for the reasons that dying declaration was not recorded in the hospital. Admittedly, according to postmortem report and notes of the doctor available on the record, deceased had sustained eight injuries and he went unconscious. T-Shape Tube was passed to his mouth to the lungs in the hospital. It is unbelievable that deceased regained senses for some time and disclosed the names of respondents / accused and again went unconscious. Condition of the injured was critical, having T-Shape Tube, without fitness certificate of the doctors, no reliance could be placed upon the evidence of the above witnesses that deceased implicated the respondents / accused in the commission of offence.

13. It is settled principle of the law that appreciation of evidence in the case of appeal against conviction and appeal against acquittal is entirely different as held in the case of Ghous Bux v. Saleem and 03 others (2017 P.Cr.L.J 836).

14. The scope of interference in appeal against acquittal is also narrow and limited because in an acquittal the presumption of the innocence is significantly added to the cardinal rule of criminal jurisprudence that an accused shall be presumed to be innocent until proved guilty. In other words, the presumption of the innocence is doubled. This Court is always slow in interfering with the acquittal judgment. Counsel for the appellant / complainant has failed to satisfy us that the judgment has been passed by the trial Court in violation of the law or it suffer from error of grave misreading or non-reading of the evidence. Acquittal judgment passed by this Court is neither artificial nor shocking. While relying upon the case of The State v. Abdul Khalique and others (PLD 2011 Supreme Court 554), we hold that this appeal against acquittal is without merit and the judgment of the learned trial Court is based upon sound reasons, which requires no interference. Consequently, the present acquittal appeal is dismissed.

15. These are the reasons for our short order dated 10.04.2018.

JUDGE

JUDGE

Shahid