

JUDGMENT SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Acquittal Appeal No.S- 106 of 1998

1. For orders on M.A-512 of 2007 (Special Permission)
2. For hearing of main case.

28.02.2020

None present on behalf of the appellant.

Ms. Rehana Nazeer Gujjar, Advocate for Respondents No.1 and 2.

Mr. Shahid Ahmed Shaikh, D.P.G.

JUDGMENT

Abdul Maalik Gaddi, J.- This criminal acquittal appeal has been filed by appellant / complainant Muhammad Yousif, challenging the judgment dated 15.08.1998, whereby the learned trial court after full dressed trial and hearing the learned counsel for the parties, acquitted the respondents u/s 265-H(i) Cr.P.C. of the charge by extending benefit of doubt to them.

2. Precisely, relevant facts of the case as disclosed in the FIR are that on 08.06.1997 at 0015 hours, the respondents / accused duly armed with pistol and lathi came at the place of incident, and Respondent / accused Muhammad Juman with intention to commit murder of the complainant fired at him which hit him on his cheek and tongue and also caused scratches on the tractor which was being driven by the complainant at that time, thereafter the Respondents / accused left the scene.

3. After framing the charge against accused, the trial court in as much as recorded the evidence of six (06) witnesses including complainant and thereafter, statements of accused as required u/s 342 Cr.P.C. were recorded, wherein they denied the prosecution allegations and pleaded their innocence. However, neither they examined themselves on Oath nor produced any witness in their defence.

4. Thereafter, as stated above, after hearing the learned counsel for the parties, the learned trial court acquitted the respondents / accused through impugned judgment dated 15.08.1998, hence this acquittal appeal.

5. Today, instant appeal against acquittal is called for hearing; however, neither appellant nor his counsel is in attendance. No intimation received. It appears from the record that instant appeal against acquittal was filed on 09.09.1998. Almost 22 years have been passed. The conduct of the appellant and his counsel shows that the matter is being adjourned for one reason or the other. Since none is in attendance on behalf of the appellant, therefore, I myself have gone through the entire evidence as well as record made available before me with the able assistance of learned D.P.G as well as learned counsel for Respondents.

6. After scanning the evidence of prosecution witnesses, I have come to the conclusion that prosecution has miserably failed to establish its case beyond any reasonable shadow of doubt. From perusal of the impugned judgment, it reveals that the trial court has recorded the findings of acquittal in favour of the respondents with sound and significant reasoning. Admittedly, the incident took place on 08.06.1997 at 0015 hours whereas the F.I.R. was lodged with police at 1800 hours after an unexplained delay of about 18 hours. As per version of complainant P.S Golarchi was situated at the distance of about 15/16 kilometers and soon after the incident he went to police station and lodged F.I.R; whereas ASI Munawar (Ex.20) in his cross-examination has stated that complainant came at police station at 1800 hours to lodge his F.I.R. and there is nothing on record to explain this inordinate delay. It is a settled principle of law that in criminal cases delay in lodging prompt F.I.R, always fatal to the prosecution case. Further as per admission of the complainant, there is a dispute between the parties, therefore, possibility of deliberation, consultation and false implication of the Respondents in this case cannot be ruled out. It is also noted that as per complainant at the time of incident headlights as well as rear lights of the tractor were on, therefore the Respondents were identified by him on tractor's headlights; whereas P.W Wali Muhammad (Ex.7) and P.W Abdul Majeed (Ex.8) in their respective evidence have deposed that they saw the respondents from a distance of one Jirab (half acre) on tractor light and nothing has come on record that whether it was a moonlight and since at that time the tractor was working therefore, presumably the atmosphere at the scene was dusty and in such a situation identification of the Respondents from such distance by these witnesses is doubtful. Besides, there are other material contradictions, infirmities and inconsistencies in the evidence of prosecution witnesses who seems to be interested witnesses hence their evidence is not

confidence inspiring. No independent witness of the village has been examined by prosecution. All these aspects have been highlighted by the learned Presiding Officer of the trial court in its judgment (impugned herein).

7. I have also perused the impugned judgment and come to the conclusion that the learned trial Court has dealt with all aspect of the matter quite comprehensively in the light of all relevant laws dealing with the matter and the appellant in his appeal is unable to point out that the impugned judgment by any means suffers from any illegality or miscomprehension or non-appreciation of evidence by way of documents and evidence available on record. I am also not satisfied with any of the grounds agitated by appellant in the memo of appeal for indulgence of this Court in the matter. Therefore, I find that the impugned judgment passed by trial Court is perfect in law and facts and needs no interference by this Court. This matter pertains to year 1997 and instant appeal against acquittal is pending since 1998. About 23 years have been passed and the respondents have faced agony of protracted trial as well as pendency of instant appeal. As observed above, the private respondents have been acquitted by the competent Court of law, therefore, under the law once an accused was acquitted by the competent Court of law after facing the agonies of the protracted trial then he/they would earn the presumption of double innocence which could not be disturbed by the appellate Court lightly. Consequently, this criminal acquittal appeal being devoid of merits is hereby dismissed alongwith listed application.

JUDGE

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