

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Cr. Acquittal Appeal D- 172 of 2019

Present:

Mr. Justice Abdul Maalik Gaddi.

Mr. Justice Khadim Hussain Tunio.

1. For orders on MA 11239/2020.
2. For hearing of main case.

04.03.2020.

ORDER

Abdul Maalik Gaddi, J: - This criminal acquittal appeal is called for hearing. None present on behalf of the appellant. No intimation is received. Same was position on the last date of hearing. Since none is present on behalf of the appellant therefore, we ourselves have gone through the case papers including the evidence and documents available on record.

2. It appears from the record that the respondents were acquitted by the trial court after full dressed trial by giving them benefit of doubt vide judgment dated 22.11.2019 which has been assailed through this criminal acquittal appeal.

3. Brief facts of the prosecution case as disclosed in the FIR are that present respondents / accused committed the murder of deceased Dodo and then threw his dead body into Baan Wah / Mithrao Cana at Siddique Bhatti water course Deh-Jamilani Taluka Sindhri.

4. After framing the charge against accused / respondents, the trial court in as much as recorded the evidence of Ten (10) 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 evidence in their defence. Accused Muhammad Ibrahim in his statement recorded u/s 342 Cr.P.C at Ex:18 has also stated that Inayat Zardari the then SHO P.S Kot Ghulam Muhammad and near relative of Ghulam Hussain Zardari of PPP demanded money from him to get

him released from this case, but he refused, therefore, the police has falsely challaned him in this case under political pressure and he has not committed the alleged offence. Accused Khalid in his statement recorded u/s 342 Cr.P.C at Ex:19 has also stated that one Ghulam Hussain Zardari Chairman of PPP Committee Hingorno demanded Rs.15,00,000/- from him, which he could not pay, therefore, he through police involved him in this false case and he is Mureed of Pir Paghara. Accused Hayat in his statement recorded u/s 342 Cr.P.C at Ex:20 has also stated that he was grazing goats at Talhi, from where he was arrested by the police and has been involved falsely in this case, while neither the deceased was known to him nor he know the relatives of the deceased. Accused Mst. Jameelan in her statement recorded u/s 342 Cr.P.C at Ex:21 has also stated that the relatives of the deceased wanted dissolution of her marriage with the deceased, therefore, they have falsely involved her in this case and her husband deceased Dodo was living with his sister P.W Mst. Khairi, who told her that the deceased was missing and enquired from her about him, but she replied that he had not come to her and thereafter when she went to P.S Kot Ghulam Muhammad while searching her husband, they arrested her falsely in this case.

5. Thereafter, as stated above, after hearing the learned counsel for the parties, the learned trial court acquitted the respondents / accused through impugned judgment dated 22.11.2019 hence this criminal acquittal appeal.

6. After scanning the evidence of prosecution witnesses, we 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 and on the grounds that that date of incident is not mentioned in column of FIR however, it was recorded on 28.09.2017; FIR has been lodged by ASI Chain Singh of P.S. Kot Ghulam Muhammad and he was not the eye witness of incident; there is no eye witness of the alleged incident who had seen any of the accused while committing the murder of deceased or throwing its body in the canal; FIR is also belated without any plausible explanation; dead body was also not identified by any of the legal heirs of deceased nor any legal heir had come forward; no advertisement was made with regard to dead body but the FIR has been lodged on behalf of State by the complainant ASI Chain Singh who as observed above was not eye witness of the incident; that case and claim of the complainant is based upon surmises and conjectures. All these

points have already been elaborated and comprehensively dealt with by learned trial court in its judgment. There are also material contradictions, infirmities and inconsistencies in the evidence of prosecution witnesses who seems to be interested witnesses and related to complainant hence their evidence is not confidence inspiring. No independent witness has been examined by prosecution. All these aspects have been highlighted by the learned Presiding Officer of the trial court in its judgment.

7. We have also perused the impugned judgment and come to the conclusion that the learned trial Court has dealt with all aspects 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. We are 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, we find that the impugned judgment passed by trial Court is perfect in law and facts and needs no interference by this Court.

8. 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 protracted trial, then he 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 in limine alongwith listed application.

JUDGE

JUDGE

Tufail