

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Acquittal Appeal No.S- 96 of 2013

For hearing of main case.

02.03.2020.

Mr. Mian Taj Muhammad Keerio, Advocate for appellant.
Ms. Rameshan Oad, Assistant Prosecutor General Sindh.
None present for the respondents.

J U D G M E N T

Abdul Maalik Gaddi, J: - This criminal acquittal appeal has been filed by appellant / complainant Muhammad Sulleman, challenging the judgment dated 23.09.2013, whereby the learned trial court after full dressed trial and after hearing the learned counsel for the parties, acquitted the respondents u/s 265-H(i) Cr.P.C. from the charge by extending benefit of doubt to them.

2. Precisely, relevant facts of the case as disclosed in FIR are that on 16.09.2008 at about 0330 hours, the present accused / respondents alongwith co-accused (declared as proclaimed offenders) duly armed with lethal weapons being members of an unlawful assembly and in prosecution of common object of such assembly, they committed lurking house trespass into the house of complainant, attempted to kidnap him for extorting the property / ransom as well as issued threats of dire consequences to him.

3. After framing the charge against accused, the trial court in as much as recorded the evidence of Nine (09) 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.

4. Thereafter, as stated above, after hearing the learned counsel for the parties, the learned trial court acquitted the respondents / accused

including the proclaimed offenders through impugned judgment dated 23.09.2013 hence this criminal acquittal appeal.

5. Learned counsel for the appellant mainly contended that the judgment passed by learned trial court is perverse and the reasons are artificial viz-a-viz the evidence on record; that the grounds on which the trial court proceeded to acquit the accused persons are not supported from the documents and evidence on record. He further submitted that accused have directly been charged and the discrepancies in the statements of witnesses are not so material on the basis of which accused could be acquitted. He further contended that learned trial court has based the findings of acquittal mainly on the basis of minor contradictions on non-vital points of the statements of prosecution witnesses and that the prosecution evidence has not been properly appreciated therefore, under these circumstances, he was of the view that this appeal may be allowed and the accused involved in this case may be given exemplary punishment.

6. On the other hand, learned A.P.G. appearing for the State has supported the impugned judgment by arguing that the impugned judgment passed by the learned trial court is perfect in law and on facts; that no direct evidence is available against the respondents to connect them in the commission of offence and even their names have not been mentioned in the FIR; that whole case of the prosecution is based upon surmises and conjunctures, therefore, no reliance could be safely placed for conviction of the respondents.

7. Arguments heard. Record perused.

8. 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 alleged incident took place on 16.09.2018 whereas FIR was lodged on 05.10.2018 after the delay of about 19 days for which no plausibly explanation has been furnished by the prosecution. Names of the accused / respondents do not appear in the FIR. This is a case of allegedly making attempt to commit abduction

but practically no abduction has been committed. No independent or disinterested witness has been examined before the trial court. It is alleged that the identification parade of accused Khuda Bux was conducted on 09.02.2009 i.e. after the delay of about 04 months of registration of the FIR and other respondents were not put into identification parade which makes the case of prosecution doubtful. Furthermore, no recovery whatsoever has been made from any of the respondents though they were allegedly shown as armed with lethal weapons at the time of alleged incident. I.O. stated in his evidence that memo of place of incident was prepared by PW-2 ASI Lal Bux prior to lodging of the FIR without keeping any entry as well as not bearing any official seal of the police station. It has also come on record that the learned Civil Judge & Judicial Magistrate-I, Sanghar who conducted the identification parade of accused Khuda Bux has also not been examined before the trial court. 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 of the locality has been examined by prosecution. All these aspects have been highlighted by the learned Presiding Officer of the trial court in its judgment.

9. 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.

10. 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.

JUDGE

Tufail

