

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Present:

Mr. Justice Abdul Maalik Gaddi

Mr. Justice Khadim Hussain Tunio

Cr. Acquittal Appeal No. D-01 of 2013

Date of hearing 18.03.2020.

Date of judgment: 18.03.2020.

Appellant

Mashooque Ali: through Mr. Imtiaz Ali Chahnio, Advocate.

Nemo for respondents.

State: Through Ms. Rameshan Oad, Assistant
Prosecutor General

JUDGMENT

ABDUL MAALIK GADDI, J.- The captioned appeal is directed against the judgment dated 13.12.2012 passed by learned III Additional Sessions Judge, Shaheed Benazirabad in Sessions Case No.12 of 2005 arisen out of Crime No.44 of 2004 registered U/S 302, 337-H(ii), 147, 148, 149 PPC at PS Daulatpur, whereby the learned trial Court after full dressed trial and after hearing the parties acquitted the accused/respondents U/S 265-H(i) Cr.P.C by extending benefit of doubt in their favour.

2. Brief facts of FIR are that on 04.12.2004 complainant along with his brother Sadique Ali, his maternal cousins each namely, Abdul Razak, Raza Muhammad @ Razan, Mehar Ali, Piyas Ali and others went to attend Valima ceremony of brother of Syed Hassan Jhania namely Asadullah Jehania and at 11:30 PM when they coming towards link road near Bungalow of Syed Maqsood Shah, they saw one car which came from bungalow of Syed Maqsood Shah in which Maqsood Shah, Maqbool Shah and Sikandar Shah duly armed with Kalashnikovs and rifle were sitting. Thereafter, they got down from said car. Meanwhile, complainant party saw 7/8 persons emerged from southern side of sugar cane crop. Complainant party identified them as

Mir Muhammad @ Meeru Larik, Nimazuddin @ Nimazo Bugo, Nadeem Punjabi. Accused Mir Muhammad and Nadeem were having rifles in their hands, Nimazuddin armed with Kalashnikov. However, they did not identify remaining accused. Thereafter, accused Maqsood Shah at Raza Muhammad which hit him and he fell down; accused Maqsood Shah also fired at his brother Sadique Ali which hit him and he also fell down; accused Sikandar Shah fired at his maternal cousin Abdul Razak, which hit him and he also fell down. Thereafter, accused persons who were standing near sugar cane crop also fired upon complainant party however, they took shelter hence, the fires were missed. Thereafter, accused Maqsood Shah, Maqbook Shah and Sikandar Shah fled away in their said car. The accused who were standing near sugar cane crop also decamped. Later on, complainant party saw Raza Muhammad, Abdul Razaque and Sadique Ali had sustained fire arm injures on different parts of their respective bodies due to which they expired at spot.

3. It appears from the record that after usual investigation, challan of the case has been submitted before the competent Court of jurisdiction by showing accused Maqsood Shah, Maqbool Shah and Sikandar Shah as absconders.

4. Charge against accused was framed at Ex.03 to which accused pleaded not guilty and claimed for trial.

5. At trial, the prosecution to prove its case examined the following witnesses:

- i. P.W-1 Mashoque Ali examined at Ex.20.
- ii. P.W-2 Mouj Ali examined at Ex.21.
- iii. P.W-3 Dr. Sain Bux examined at Ex.22.
- iv. P.W-4 Muhammad Khan examined at Ex.23.
- v. P.W-5 Piyas Ali examined at Ex.24.
- vi. P.W-6 Manzoor Ali examined at Ex.25.
- vii. P.W-7 Inspector Azizullah examined at Ex.26.
- viii. P.W-8 SHO Inam Ilahi Awan examined at Ex.27.
- ix. P.W-9 HC Ubedullah examined at Ex.29.

All above prosecution witnesses have been cross examined by learned defence counsel.

6. After closure of prosecution side, statements of accused were recorded u/s 342 Cr.P.C at Ex.31 to 36. However, accused Nizamuddin, Mir Muhammad, Intezar Ali, Moula Bux and Ali Gul,

examined themselves on oath at Ex.37 to 42, respectively. Accused Mir Muhammad in his defence also examined two witnesses namely DW Mohabat Ali at Ex.43 and DW Qabool @ Amar Ali at Ex.44; accused Nadeem also examined two defence witnesses namely DW Ghulam Mustafa at Ex.45 and DW Jamshed at Ex.46.

7. Mr. Imtiaz Ali Chahnio, learned counsel for appellant 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.

8. On the other hand, Ms. Rameshan Oad, Asst. Prosecutor General present in court in some other cases, waives notice and 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 and the complainant of the case is not eye witness of the incident and whole case of the prosecution is based upon surmises and conjunctures, therefore, no reliance could be safely placed for conviction of the respondents.

9. We have heard the learned counsel for the parties and have gone through the evidence and documents available on record as well as the impugned judgment.

10. As per prosecution case the allegations against the present respondents Mir Muhammad, Intezar @ Imtiaz, Nimazuddin, Nadeem Akhtar, Moula Bux and Ali Nawaz are that on 04.12.2004 at about 2330 hours they all duly armed with deadly weapons came at the place of incident and fired at complainant party but all fires were missed

whereas the allegation for causing murder of deceased persons is against co-accused Maqsood Shah, Maqbool Shah and Sikandar Shah, who are still absconders.

11. It is noted that complainant in the F.I.R has stated that they identified each of the accused mentioned supra on the light of electric bulb which was installed on the electric pole available there. However, I.O Inspector Azizullah Morio in his evidence has stated that he visited the place of incident on the pointation of the complainant and found that there were no electricity poles, wire or bulbs at the place of vardat. P.W Pyas Ali in his evidence has also stated that it was dark night and he has not given the source of identification. It is also not mentioned in the FIR that which respondent was armed with which specific weapon. In the FIR complainant has stated that respondents namely Mir Muhammad, Nimazuddin and Nadeem alongwith unidentified persons duly armed with deadly weapons emerged from the sugarcane crop and they made firing at them; however, he did not identify remaining accused (respondents), but later on he got recorded his further statement on 20.12.2004 after an inordinate and unexplained delay of 15 days, wherein he given the names of remaining respondents; therefore, on this aspect of the case, false implication of present respondents in the commission of alleged offence with due deliberation and consultation could not be ruled out. Further, complainant and P.W Pyas Ali have contradicted as to the date and time of occurrence. Complainant has stated that the incident took place on 04.12.2004, whereas P.W Pyas Ali has stated that the incident took place on 05.12.2004. As per prosecution case present respondents were not present at the place of incident but they emerged from the sugarcane crop and made firing at the considerable distance and facilitated the principal accused while committing the offence. But there is no iota of evidence to connect the accused persons in the commission of offence. At first place, absconding accused Syed Maqbool Shah, Syed Maqsood Shah and Syed Sikandar Shah have been mentioned as principal accused who have been assigned specific roles in the commission of offence and allegedly have played specific parts in causing fire arm injuries to all three deceased persons individually and intentionally; whereas present accused (respondents) namely Mir Muhammad, Nimazuddin and Nadeem Akhtar are alleged to have emerged from the sugarcane crop duly armed with deadly weapons

and were identified by the complainant and P.Ws but no overt act has been assigned to them, as no firearm injury has been sustained by the deceased persons has been attributed to any of them. This aspect of the case has been elaborately discussed by the trial Court while passing the acquittal judgment in favour of the present respondents. During the course of arguments while confronting with said aspects of the case we have specifically asked the question from learned counsel for the appellant to point out any illegality or irregularity in the judgment of acquittal in favour of the respondents, he has no satisfactory answer with him.

12. We have also perused the impugned judgment along with relevant record so placed before us 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 now before us the learned counsel for the appellant is unable to demonstrate that the impugned judgment by any means suffers from any illegality or miscomprehension or non-appreciation of evidence by way of documents and evidence 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. This matter pertains to year 2004 and instant appeal against acquittal is pending since 2013. About 16 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 / is 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 / can not be disturbed by the appellate Court lightly.

13. In view of the above, this Cr. Acquittal Appeal being bereft of merit is dismissed along with pending application[s], if any.

14. Before parting with this judgment, it is made clear that the observations made hereinabove are only to the extent of present private respondents, hence it will not affect the merits of the case of absconding accused namely Maqsood Shah, Maqbool Shah and

Sikandar Shah in any manner as and when they are arrested and tried by the trial Court in accordance with law.

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