

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Acquittal Appeal No.D-21 of 2019

Before;

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Irshad Ali Shah

26.11.2020.

Mr. Shoukat Ali Pathan, Advocate for appellant.

Mr. Nihal Khan Lashari, advocate for private respondents.

Ms. Rameshan Oad, A.P.G for the State.

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ORDER

IRSHAD ALI SHAH, J: The appellant by way of instant acquittal appeal has impugned judgment dated 28.02.2019 rendered by learned Additional Sessions Judge, Tando Allahyar, whereby the private respondents have been acquitted of the offence for which they were charged.

2. It is alleged that private respondents in furtherance of their common intention committed Qatl-e-Amd of Danish by strangulating his throat and then caused disappearance of evidence by throwing his dead body in *Nasirwah* in order to save themselves from legal consequences, for that they were booked and reported upon by the police.

3. At trial, the private respondents did not plead guilty to the charge and prosecution to prove it examined appellant and his witnesses and then closed the side.

4. The private respondents in their statements recorded u/s 342 Cr.P.C denied the prosecution allegation by pleading

innocence, they did not examine themselves on oath or anyone in their defence to disprove the prosecution allegation against them.

5. On evaluation of evidence so produced by the prosecution learned trial Court acquitted the private respondents by extending them benefit of doubt by way of impugned judgment.

6. It is contended by the learned counsel for the appellant that learned trial Court has recorded acquittal of the private respondents on the basis of improper evaluation of evidence by ignoring the CDR reports which is connecting the private respondents with commission of incident. By contending so, he sought for adequate punishment for the private respondents or alternatively remand of the case to learned trial Court for reappraisal of evidence.

7. Learned A.P.G for the State and learned counsel for the private respondents by supporting the impugned judgment have sought for dismissal of the instant Acquittal Appeal by contending that it was unseen incident.

8. We have considered the above arguments and perused the record.

9. The F.I.R of the incident has been lodged with delay of more than ten months and such delay having not been explained plausibly could not be overlooked. It is reflecting consultation and deliberation on the part of appellant. The 161 Cr.P.C statements of the witnesses have been recorded with

considerable delay even to FIR; such delay having not been explained plausibly could not be ignored. None has actually seen the private respondents committing the alleged incident. The identity of the dead body of the deceased through wrist watch and cloth too is appearing to be doubtful. There is no DNA report on the dead body of the alleged deceased. No cell number is disclosed in FIR whereby the deceased allegedly was called by Mst. Samina before the alleged incident. In these circumstances, learned trial Court was right to record acquittal of the private respondents by extending them benefit, such acquittal is not found to be cursory or arbitrary to be interfered with by this Court.

10. In case of *State and others vs. Abdul Khaliq and others (PLD 2011 SC-554)*, it has been held by the Hon'ble Apex Court that;

"The scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of 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 innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of

innocence which the accused has earned and attained on account of his acquittal. Interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Judgment of acquittal should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous. The Court of appeal should not interfere simply for the reason that on the reappraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities”.

11. In view of above, the instant acquittal appeal is dismissed.

JUDGE

JUDGE