

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

Cr. Acq. Appeal No. S- 44 of 2019

Appellant / Complainant : Sajjan S/o Muhammad Ramzan

Versus

Respondents : Mehboob Ali and others

Date of Hearing & Decision: 23.09.2019

Mr. Manzoor Ali Jessar, Advocate for appellant

J U D G M E N T

ZULFIQAR ALI SANGI, J.- Through the captioned appeal, the appellant being complainant of FIR No. 05 of 2018 registered at police station Kotri, under Section 324, 504 & 34 PPC approached this court to set-aside the impugned judgment delivered on 18.02.2019 by learned Sessions Judge, Jamshoro, whereby the accused/ respondents Nos. 1 &2 were acquitted.

2. The facts of the prosecution case are that on 9.1.2018 at 1930 hours complainant Sajjan Ali Jessar lodged FIR at police station Kotri stating therein that on 8.1.2018 at 12:15 night when he along with his paternal nephew Muhammad Ramzan son of Malook Khan and maternal nephew Sajjan Khan son of Muhammad Soomar Jessar reached in front of his house on return from Eid-Mailadun Nabi Jashan in their neighbour, two persons on 125 Motorcycle came with open faces, took out pistols from their folds and asked “whether they are Jessars--?; they replied them ‘yes’. Both accused while abusing started straight fires with pistols upon them with intention to kill, one fire hit him on back side of neck and both accused ran away on same motorcycle. Thereafter his relatives brought him to hospital for treatment after obtaining letter from police station and thereafter he lodged FIR that two unknown persons, who will be identified if seen again, with intention to

commit Qatl-i-Amd issued straight fires upon them, such investigation be carried out.

3. After necessary compliance, charge was framed to which accused pleaded not guilty and claimed trial. The prosecution to establish its case examined all material witnesses; thereafter, the trial court recorded statement of accused under Section 342 Cr.P.C. and after hearing the parties recorded the impugned judgment of acquittal of accused persons with detailed reasons, by thrashing the depositions of prosecution witnesses.

4. I have heard learned counsel for the appellant and also carefully perused the impugned judgment and material available on record.

5. Counsel for the appellant at the outset submits that there was sufficient evidence brought by the prosecution on record but the trial court has acquitted the respondents without giving any cogent reasons although all prosecution witnesses had supported the case of the prosecution.

6. I have considered the submissions and perused the impugned judgment delivered by the trial court.

7. Admittedly respondent were neither nominated in the FIR nor any descriptions were given by the complainant. After arrest of respondent no any identification parade was held before any Magistrate. The Honourable Supreme Court of Pakistan has held that the identification parade in court even after considerable delay after the incident, of a person produced in court cannot satisfy the requirement of law for proving identity of a culprit. See *Asghar Ali's* case **(1992 SCMR 2088)** and *Sohail Abbas's* case **(PLD 2001 SC. 546)**, but in the instant case as has been mentioned above no identification parade was even held.

8. The impugned judgment in my view is an elaborate, speaking one and does not suffer from misreading, non-reading or non-appraisal of evidence, hence it does not warrant interference of this court.

9. It is well settled principle of law that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from appeal against acquittal, because presumption of double innocence is attached in the latter case. An order of acquittal can only be interfered with when it is found on the face of it as capricious, perverse, arbitrary or foolish in

nature, which are lacking in this case. Reliance is placed on *Inayat Ullah Butt v. Muhammad Javed etc.* **(PLD 2003 SC 563)**.

10. Whatever stated above, I reached at the conclusion that the acquittal of respondents do not suffer from any illegality so as to call for my interference with the impugned judgment. According to golden principle of benefit of doubt, one substantial doubt is enough to acquit the accused. The learned trial Judge has advanced valid and cogent reasons for passing a finding of acquittal in favour of respondents and I see no legal justification to disturb the same. Resultantly, the appeal having no merits for consideration is hereby dismissed in limine.

JUDGE

Karar_hussain/PS*-