

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Crl. Acquittal Appeal No.D- 15 of 2009.

For Hearing of Main Case.

05-06-2018

Mr. Zulfiqar Ali Jatoi, Additional P.G for the appellant.
Mr. Shahzado Dreho Advocate alongwith respondents No.1&2/accused.

Heard learned counsel for the respective parties Instant Crl. Acquittal Appeal is against the judgment dated 17.09.2008, whereby respondents/accused were tried in sessions case No.24 of 2003, arising out of FIR No.64 of 2002 registered at P.S, Padidan for offences under sections 302, 324 & 34, PPC and were acquitted.

2. At this juncture, it would be conducive to refer relevant operative portion of impugned judgment, which is reproduced as under:

“Admittedly the incident of this case took place during the wedding ceremony of Sher Muhammad. The defence plea of the accused person is that the death of deceased Muhammad Ameen and injuries on the person of injured Sher Muhammad received due to firing in jubilation made by one Abdul Hakeem after talking local made liquor. Complainant Muhammad Khan while in his cross examination has admitted that P.W Abdul Hakeem was also called as "MAWALI" in the village. He also admitted that one Mohrram Marri is his brother-in-law and he owned a licensed double barrelled gun. The second marriage of deceased Muhammad Ameen has been shown as motive behind this incident. Complainant Muhammad Khan in his cross examined has admitted that prior to the incident dispute with accused Khan Muhammad had been

resolved and the hostilities had waived off and he further admitted that one the day of incident both the wives of deceased Muhammad Ameen were available in the house. P.W Sher Muhammad who is also injured in this case has also admitted this fact that on the day of incident both the wives of deceased Muhammad Ameen were available in the house. When the dispute between the parties was over the second marriage contracted by deceased Muhammad Ameen, which had also admittedly been resolved and both the wives of deceased on the day of incident were available in the house, therefore, the motive shown behind this incident cannot be accepted by a prudent mind. The F.I.R of the incident is belated more 13 hours and no explanation has been furnished for such an inordinate delay though the complainant has returned back after dispatching injured to Nawabshah hospital and admittedly was present in his village.

Admittedly one Abdul Hakeem is also known as Mawali was also available at the time of incident and has witnessed the incident, but inspite of that prosecution chose to give up him, though he was very much essential witness for the prosecution. In a case Re. Nasir Mehmood and another Vs. The State reported in PLD 2006 Lahore 2007 it has been held that if a witnesses cited in the calendar of witness is not produced by the prosecution, then the Court is to presume that if he had entered the witness box, he would not have supported the prosecution case, therefore, his no-examination also casts doubt regarding the genuineness of the prosecution case particularly when it was also the defence plea that the deceased as well as injured Sher Muhammad received injuries due to firing made by said witness Abdul Hakeem in jubilation of marriage ceremony.

Complainant Muhammad Khan in his cross examination deposed that the Motorcycle on which Sher Muhammad was taken to the Hospital belonged to Abdul Majeed Marri and he was driving it while they were seated behind. He further deposed that said Abdul Majeed Marri also resided in their village, while P.W Nazar Muhammad in his cross examination deposed that Sher Muhammad was taken to Hospital in a Rickshaw. The complainant states in his deposition that the deceased had just started taking meal while PW injured Sher Muhammad had deposed that the deceased Muhammad Amin was chit-chatting with them.

Prosecution has also examined both the mashirs namely Muhammad Haroon and Zahid Hussain. They both have not supported the case of prosecution to the extent of arrest of accused and recovery of crime weapon at his pointation. They both were declared hostile by the learned DDA for the State and cross examined at length but no fruitful result came out. Furthermore the empties secured from the wardhat were also sent by the Investigation Officer to Ballistic Expert, such report has also been exhibited on record at Ex. 18/B, which shows that the empties were not fired from the DBBL gun recovered from the possession of accused Khan Muhammad, under these circumstances the prosecution has miserably failed to establish recovery of crime weapon from the possession of accused.

Complainant Muhammad Khan, P.W Sher Muhammad and P/W Nazar Muhammad are real brothers and no other independent person has been examined by the prosecution, though admittedly this incident took place in a marriage ceremony and so many guests were also

available there, the circumstances recorded above are also casting serious doubt upon their testimony as they being brothers of deceased are very much interested persons. In the case of R. Samiullah alias Kachu Vs. The State reported in 2006 MLD 723 Honourable Peshawar High Court held that testimony of relative witness, through could not be thrown out of consideration on the sole ground of relationship and solitary statement of witness could not be made basis of conviction, but in such situation there should be corroboration. In the present case there is no any corroboration to the evidence of complainant and both the eyewitnesses, therefore, their evidence is highly doubtful. In the case of Re. Ghulam Qadir Dayo Vs. the State reported in 2005 P.Cr.L.J 578 Honourable Sindh high Court has held that single circumstance creating a doubt in a prudent mind is sufficient to entitle accused to have benefit of doubt as a matter of right”.

3. While considering the contentions raised by learned APG for the appellant in juxtaposition with evidence brought ton record and impugned judgment, this is not a case wherein it can be termed that impugned judgment is shocking, perverse or illegal. Hence, instant CrI. Acquittal Appeal is dismissed.

JUDGE

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