

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

Cr. Acquittal Appeal No.D-142 of 2019

**PRESENT**

*Mr. Justice Naimatullah Phulpoto  
Mrs. Justice Rashida Asad.*

*Date of Hearing: 18.08.2020  
Date of Judgment: 18.08.2020*

*Appellant: Niaz Hussain S/o Shah Muhammad  
Leghari, through Mr. Raja Hans Raj  
Naurang, Advocate.*

*The STATE: Through Mr. Shahzado Saleem  
Nahiyoon, D.P.G Sindh.*

**J U D G M E N T**

**NAIMATULLAH PHULPOTO, J.-** Through this Criminal Acquittal Appeal, appellant / complainant has impugned the judgment dated 23.08.2019 passed by learned Ist Additional Sessions / Model Criminal Trial Court (MCTC) Tando Allahyar in Sessions Case No.09 of 2015 for offence under Sections 302, 364-A, 201 PPC. On the conclusion of the trial, vide judgment dated 23.08.2019, respondent No.1 / accused namely Ameer Ali was acquitted.

2. Brief facts of the prosecution case, as reflected in the impugned judgment, are as under:-

“That on 02.12.2014 at 2200 hours complainant namely Niaz Hussain S/o Shah Muhammad Leghari lodged FIR at Chambar stating therein that he had four brothers. Tarique was his younger

brother who was aged about 7/8 years, 5<sup>th</sup> in number and was student of 1<sup>st</sup> Class. On dated 01.12.2014 in the afternoon Tarique took the lunch, thereafter he left the house for playing with other children of mohallah but he did not return back to house till maghreb prayer. Thereafter, complainant party started searching of Tarique their whole village but he could not be found and then complainant on the next night at 8:15 P.M went to P.S Chambar and informed the police about missing of Tarique and returned back to his house and then the complainant party, their close relatives and villagers again started searching of Tarique till night time but could not succeed and on the next morning they also started searching of Tarique from the other villages but could not succeed. On 02.12.2014 at about 12:00 noon Fayyaz S/o Usman Leghari and Suleman S/o Muhammad Hashim Leghari met the complainant and informed him that they saw on 01.12.2014 at about 5:00 P.M. Ameer Ali S/o Haji Abdul Razzak @ Dodo Leghari took his brother namely Tarique Hussain from his arms towards the sugarcane crop of Abdul Ghani Bozdar. After receiving of such information, complainant, Fayyaz Ahmed and Muhammad Suleman Leghari and other villagers together proceeded towards the sugarcane crop of the land of Abdul Ghani Bozdar and at about 12:45 P.M. they found the dead body of his brother Tarique lying under the sugarcane crop and they saw one colorful cloth around the neck of Tarique and the colorful cloth was tightly tied on the neck of Tarique. Thereafter, they informed their relatives and police of P.S Chambar and after some time police officials reached on the spot and thereafter police completed all the

formalities on the spot and thereafter dead body was shifted to RHC Chamber for postmortem. The doctors of RHC Chamber conducted the postmortem of the deceased, thereafter dead body was handed over to the complainant party which was shifted by them to their village where the funeral ceremony was held. After funeral ceremony, the complainant went to PS Chamber and lodged F.I.R against the present respondent / accused.”

3. On the conclusion of the investigation, challan was submitted against the accused under Sections 302, 364-A, 201 PPC.

4. Learned Trial Court framed the charge against the accused. Accused pleaded not guilty and claimed to be tried.

5. At the trial, prosecution examined PW-1 complainant Niaz Hussain at Ex-03, PW-2 Fayyaz at Ex-04, PW-3 Sulleman at Ex-05, PW-4 Gulsher at Ex-06, PW-5 SIP / I.O Khuda Bux Pulkaro at Ex-08, PW-6 Tapedar Muhammad Irfan Dal at Ex-09, PW-7 Dr. Harkho at Ex-10. Thereafter, prosecution side was closed.

6. Statement of accused Ameer Ali was recorded under Section 342 Cr.P.C at Ex-15, in which accused claimed false implication in this case and denied the prosecution's allegation.

7. Learned trial Court after hearing learned counsel for the parties and assessment of the evidence vide judgment dated 23.08.2019 acquitted the accused / respondent mainly for the following reasons:-

“26. There are so many omissions and contradictions in the evidence of the prosecution witnesses affecting the entire fabric of the prosecution case. The motive set up by the prosecution in the FIR and during evidence has been found to have remained un-proved. The motive, as alleged, was an afterthought and has not been proved by any credible evidence. The complainant has knitted the entire story which is bereft of any reason and is hard to believe being of no legal worth and reliance. In view of the combined study of the entire evidence and careful reappraisal of the same, it leads to an inescapable conclusion that the prosecution case is full of improbabilities, legal and factual infirmities of fatal nature and is pregnant with bristling doubts of grave nature. Thus, the prosecution has miserably failed to connect the next of the accused with the crime in any manner whatsoever.

32. The facts that no independent witness or co-villager although available were not examined and not even an explanation was brought to be given for not examining such witness is a serious infirmity of the prosecution case having regard to the indisputable fact of the case. Non-examination of independent witnesses by itself may not give rise to adverse inference against the prosecution. However, when the evidence of alleged eye-witness raised serious doubt on the point of his presence at the time of actual occurrence, the unexplained omission to examine the independent witnesses would assume significance. Therefore, presumption under Article 129 of the Qanun-e-Shahadat Order, 1984 could fairly be drawn in the circumstances of the case in favour of the accused as the prosecution withheld most important witness and even said witness was not produced during investigation.”

8. The appellant / complainant being dissatisfied with acquittal of the accused / respondent has filed this appeal.

9. Learned Counsel for the appellant / complainant has mainly contended that the impugned judgment of the trial Court is based on misreading and non-reading of the evidence. It is also argued that the trial Court has disbelieved strong evidence without assigning sound reasons, and prayed for converting the acquittal of the accused to the conviction.

10. Learned D.P.G supported the impugned judgment.

11. It is settled law that ordinary scope of acquittal appeal is considerably narrow and limited and obvious approach for dealing with the appeal against the conviction would be different and should be distinguished from the appeal against acquittal because presumption of double innocence of accused is attached to the order of acquittal. In the case of **Zaheer Din v. The State (1993 SCMR 1628)**, following guiding principles have been laid down for deciding an acquittal appeal in a criminal case:-

*“However, notwithstanding the diversity of facts and circumstances of each case, amongst others, some of the important and consistently followed principles can be clearly visualized from the cited and other cases-law on, the question of setting aside an acquittal by this Court. They are as follows:--*

*(2) The acquittal will not carry the second presumption and will also thus lose the first one if on pints having conclusive effect on the end result the*

*Court below: (a) disregarded material evidence; (b) misread such evidence; (c) received such evidence illegally.*

*(3) In either case the well-known principles of reappraisal of evidence will have to be kept in view while examining the strength of the views expressed by the Court below. They will not be brushed aside lightly on mere assumptions keeping always in view that a departure from the normal principle must be necessitated by obligatory observations of some higher principle as noted above and for no other reason.*

*(4) The Court would not interfere with acquittal merely because on reappraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If however, the conclusion reached by that Court was such that no reasonable person would conceivably reach the same and was impossible then this Court would interfere in exceptional cases on overwhelming proof resulting in conclusion and irresistible conclusion; and that too with a view only to avoid grave miscarriage of justice and for no other purpose. The important test visualized in these cases, in this behalf was that the finding sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous. ”*

12. The prosecution case is based upon last seen evidence, which is weakest piece of evidence and it is uncorroborated by some other pieces of evidence. Co-villagers were present at the time of incident but they were not examined by the prosecution at the trial.

The material discrepancies and lacunas in the prosecution case have also been highlighted by the trial Court in impugned judgment. The prosecution has failed to prove its case against the respondent / accused as it was the primary duty of the prosecution to establish the case independently instead of depending upon the weaknesses of the defence. We have also examined the overall evidence of the prosecution witnesses and have come to the conclusion that prosecution had miserably failed to prove its case against the respondent / accused. The acquittal recorded in favour of the accused by the trial Court is well-reasoned and cannot be interfered unless some cogent and confidence inspiring material is brought on record by the prosecution which is absent in this case.

13. In an appeal against acquittal this Court would not on principle ordinarily interfere and instead would give due weight and consideration to the findings of Court acquitting the accused. This approach is slightly different than that in an appeal against conviction when appeal is admitted for reappraisal of evidence so as to see that benefit of every reasonable doubt should be extended to the accused. This difference of approach is mainly conditioned by the fact that the acquittal carries with it the two well accepted presumptions: One initial, that, till found guilty, the accused is innocent; and two that again after the trial a Court below confirmed the assumption of innocence.

14. Learned Counsel for the appellant / complainant has not been able to point out any serious flaw or infirmity in the impugned judgment. The view taken by the learned trial Court is a possible view, structured in evidence available on the record and as such is not open to any legitimate exception. It is by now well settled that acquittal once granted to an accused cannot be recalled merely on the possibility of a contra view. Unless, impugned view is found on fringes of impossibility, resulting into miscarriage of justice, freedom cannot be recalled.

15. For the above stated reasons, this Criminal Acquittal Appeal is without merit and the same is dismissed.

JUDGE

JUDGE

Shahid