

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

**Criminal Acquittal Appeal No.D-77 of 2019**

Present:

**Mr. Justice Shamsuddin Abbasi  
Mr. Justice Amjad Ali Sahito**

Appellant : The State  
Through Mr. Shawak Rathore,  
Deputy Prosecutor General, Sindh.

Respondents : NEMO.

Date of hearing : **16.01.2024**

Date of decision : **31.01.2024**

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

**AMJAD ALI SAHITO, J;**- The appellant was tried by the learned II<sup>nd</sup> Additional Sessions Judge, Tando Muhammad Khan in Sessions Case No.10 of 2014 under FIR No.54 of 2014 U/s 302 P.P.C at PS Tando Muhammad Khan, whereby Respondent / accused was acquitted under Section 265-H(i) Cr.P.C. vide judgment dated 14.03.2019. Being aggrieved and dissatisfied the complainant filed the instant criminal acquittal appeal.

**2.** The relevant facts of the case are that father of complainant namely Muhammad Ismail @ Banoo was serving as Kamdar at the lands of Mir Waqar Talpur in Deh Vessarki so he used to reside there. Complainant Ali Raza used to provide meals to his father. It was the night of 9<sup>th</sup> April 2014 when after serving meals to his father they slept on separate cots inside room. He heard the voice of gunshot and noticed the time it was 09:30 p.m. on the bulb and saw accused Manoo fired from his gun upon his father hitting him right side and left side of neck of his father who died at the spot and accused Mano ran away from the place of occurrence. He informed the relatives namely Muhammad Iqbal and Zahid Hussain who further informed to co-villagers thereafter they shifted the dead body to Tando Muhammad Khan Hospital for post-mortem. Police after got conducting post-

mortem handed over dead body of deceased to complainant party and after observing funeral processions; complainant appeared at P.S and lodged the instant FIR.

**3.** After completion of a usual investigation, a formal amended charge under Section 302 P.P.C was framed against respondent / accused, to which he pleaded not guilty and claimed to be tried as per his plea.

**4.** In order to prove its case, the prosecution examined PW-01 Dr. Nizamuddin Soomro; PW-02 complainant Ali Raza Khaskheli; PW-3 witness Muhammad Iqbal; PW-4 Adil Qadir Bhatti Tapedar Tapo Additional Tando Saindad; PW-5 SIP Hassan Raza conducted further investigation in the case; PW-6 Inspector Mehmood Akhter Qureshi the first I.O of the case; PW-7 ASI Syed Ali Dino and PW-8 Muhammad Zuhaib Gumb who produced various documents in evidence whereafter prosecution's side was closed vide Exh.21.

**5.** The statement of the Respondent/accused under Section 342 Cr.P.C, was recorded at Exh.22 in which he denied the allegation leveled against him. However, he did not examine him on oath under Section 340(2) Cr.P.C but produced witness in his defence namely Naboo in his defence.

**6.** The learned trial Court on evaluation of the evidence and after hearing the parties, acquitted the Respondent/accused vide judgment dated 14.03.2019, which the State through Prosecutor/appellant impugned before this Court by preferring instant Criminal Acquittal Appeal.

**7.** Learned Deputy Prosecutor General/appellant has mainly contended that the impugned judgment passed by learned trial Court is perverse and the reasons recorded by the learned trial Court are artificial and without appreciating the evidence; that the grounds on which learned trial Court proceeded to acquit the respondent is not supportable from the evidence on record; that the evidence produced by the prosecution was not considered by the learned trial Court, therefore, under these circumstances, the

respondent is liable to be dealt with in accordance with the law. He lastly prayed for allowing the instant acquittal appeal.

**8.** We have heard the learned Deputy Prosecutor General, Sindh and have gone through the evidence, and material as well as impugned judgment with his able assistance. It is settled law that if a simple circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right. Reliance in this regard is placed on the cases of *TARIQ PERVEZ v. THE STATE* (1995 SCMR 1345), *MUHAMMAD SAEED v. THE STATE* (2008 P.Cr.L.J. 1752), *GHULAM MURTAZA v. THE STATE* (2010 P.Cr.L.J. 461), *MOHAMMAD MANSHA v. THE STATE* (2018 SCMR 772).

**9.** In the instant matter, while acquitting the respondent the learned trial Court has given cogent reasons in the operative part of the impugned judgment which are reproduced as under:-

*“Before I base my verdict after evaluation of oral as well as documentary evidence so brought on the record, I find it advantageous to appraise the contents of FIR first. It appears that the complainant Ali Raza Khaskheli woke up from sleep on the noise of Gunshot and noticed the time in the light of bulb that it was about 09:30 PM; then he saw that Manoo S/o Darshi Kolhi, who was armed with Gun, made another Gunshot on his father in front of him. Now it is surprising that the complainant Ali Raza despite he was awoken on the noise of Gunshot instead of raising hue and cry noticed time in the light of bulb which was already shining but surprisingly he has not disclosed the standing position of the accused that from which direction he found him standing in the light of bulb. It also noteworthy that when the accused fired first Gunshot the father of the complainant Ali Raza neither woke up on noise of shot nor did he woke up with scream if he received first gunshot. It is, thus, blurred if the first shot was fired by the accused upon the father of the complainant or not; and in case the first shot had not hit the deceased then why he did not wake up out of fear. However, the accused fired second gunshot straight on his father who was fast asleep even then the complainant did not raise hue and cry instead he examined the gunshot injuries of the deceased. It is natural phenomenon that in such a situation one suddenly gets up and loses ones senses in panic, but*

*Ali Raza did not raise hue and cry instead he let the accused go away fearlessly. After departure of the accused Mano, Ali Raza informed to his two cousins namely Muhammad Iqbal and Zahid Hussain, both sons of Ameer Bukhsh Khaskheli, and then they conjointly took the dead body to Civil Hospital, Tando Muhammad Khan instead of giving information to the police about the incident. It is much surprising that neither Ali Raza nor his two cousins informed the police about murder of father of Ali Raza, who is complainant of this case. Anyhow the police arrived in the hospital, and after postmortem they handed over the dead body of deceased Muhammad Ismail to the complainant. And after funeral of the dead body, Ali Raza went to the P.S and lodged FIR against the accused Mano.*

*During his examination-in-chief the complainant Ali Raza has deposed on the lines of FIR, however, during cross-examination he has negated his own assertions made by him in the FIR as well as in his examination-in-chief. In his examination-in-chief Ali Raza has stated that he woke up on the noise of first fire shot, and noticed time in the light of bulb as 09:30 PM but during cross-examination he has bluntly stated that he did not remember the exact time of first fire shot. And after second shot he put himself upon the body of his father without offering resistance or imploring the accused not to kill and spare his father before he (accused) made second shot. Even after the accused decamped, Ali Raza the complainant did not raise hue and cry to invite attention of Hindu community inhabiting nearby i.e. at some distance away from the place of occurrence, as admitted by him. According to Ali Raza, he contacted with the police on cell phone and informed them about the incident but they required him to bring himself the dead body of his father to District Head Quarter Hospital, Tando Muhammad Khan, where the police arrived at about 01:10 AM (night).*

*PW-Muhammad Iqbal Khaskheli, who is cousin of the complainant Ali Raza, was brought in the witness-box to give evidence on behalf of the prosecution. According to him, his maternal uncle Ali Raza informed him on phone that accused Mano Kolhi had committed murder of his father, thereafter, he alongwith his brother Zahid Hussain reached the place of incident where the complainant narrated almost the said facts of incident to him. He further narrated that he found blood marks in the room; however, during cross-examination PW-Muhammad Iqbal has stated that he had seen the bed of the deceased and found that one Rali and pillow were smeared with blood, but surprisingly both Rali and pillow stained with blood*

were not secured as piece of evidence as well as case property.

PW-Ali Dino Shah, who was the then ASI at P.S Tando Muhammad Khan City on 09.04.2014 during patrolling received wireless message about murder of Ismail @ Banoo S/o Muhammad Ramzan, Khaskheli. He received further message that the dead body of Ismail @ Banoo was taken to Civil Hospital, T.M.Khan by legal heirs, therefore, he reached DHQ Hospital, T.M.Khan at about 0110 hours, where he saw dead body was available in the mortuary and then he prepared mashirnama of dead body, inquest report in the presence of mashirs namely Safdar Ali and Muhammad Zohaib, and issued letter to the doctor for postmortem; he also received last wearing clothes of deceased and prepared such mashirnama of clothes of the deceased.

So far as the question of delay in lodging the FIR is concerned, the then ASI Ali Dino during evidence disclosed that he had advised the legal heirs of the deceased to get such FIR lodge but they told him that they would appear at the P.S after funeral of the deceased Ismail Khaskheli. As a matter of the fact it was incumbent upon the complainant Ali Raza, who is son of the deceased, that as soon as the incident had taken place he was under obligation to have rushed to the P.S after informing his cousins to promptly report the incident to the police for arrest of the accused Manoo. It is noteworthy that the incident had taken place on 09.04.2014 while the complainant Ali Raza lodged FIR on 15.04.2014 without any lawful and justifiable explanation. In this regard I have taken my guidance from the case law reported in 2018 YLR 1745 Quetta-High-Court-Balochistan which reads as under:-

Ss.302 & 34---Qatl-e-amd, common intention---  
Appreciation of evidence---First Information Report was lodged after the delay of two days---  
Effect---Record showed that the alleged occurrence took place on 17.02.2014 at about 1:00 PM, but the matter was reported at the police station on 19.02.2014 at about 04:00 PM with the delay about two days---prosecution had failed to explain satisfactorily the delay in lodging of FIR regarding the incident---Distance between the place of occurrence and the police station was about eight kilometers---Unexplained delay in lodging of FIR, would be presumed that the same was result of deliberation, negotiation, discussion and after thought with sole drive and ulterior motive to get the accused convicted---  
Such delay could not be ignored in circumstances.

*The prosecution in support of the case examined SIP Mehmood Akhter, who being first I.O of the case had only examined the place of occurrence recovering nothing incriminating therefrom. The SIP Mehmood Akhter was subjected to cross-examination, and during his cross-examination while responding to a suggestion has stated that there was one bed (palang) and one cot lying inside the room. According to him, the complainant Ali Raza had pointed out to him that on the fateful night his father the deceased Ismail was fallen asleep on the bed and at the time of incident he received firearm injuries on the said bed where he succumbed to death. The SIP Mehmood Akhter/PW-6 has disclosed during cross-examination that he did not find blood of the deceased either on the bed or on any place inside the room. However, he has not described the inside situation of the room with four directions even he has not described if there was mattress lying on the bed or if there was bed sheet spread on the mattress as a covering; and either the mattress or its covering sheet was smeared/stained with human blood. The first I.O SIP Mehmood Akhter during his evidence has produced mashirnama of place of occurrence as Exh.16/A. On scanning the contents of mashirnama of place of occurrence, it portrays that there was Iron door of the room, and there was one Iron bed was placed in the middle of the room. Here it may be pointed out with utter surprised that the first investigating officer SIP Mehmood Akhter during his cross-examination that unequivocally stated that there was one bed (palang) and one cot were lying inside the room/place of incident, whereas the mashirnama of place of incident (Exh.16/A) shows that only one Iron bed was placed in the middle of the room thus there appears gulf between the oral and the documentary evidence that cannot be bridged in any way.*

*PW-SIP Hassan Raza, who had conducted further investigation of the case, deposed that during interrogation the accused Manoo admitted his guilt to have committed murder of Ismail Khaskheli with DBBL Gun, and the said Gun was concealed by him in Devi jungle near his house. Subsequently, on his indication DBBL Gun was recovered. On checking the Gun two empty cartridges were recovered from each barrel, and one live cartridge was also recovered which was wrapped in polythene bag. According to the I.O Hassan Raza, the accused disclosed to him that the Gun was without license. Before dilating on still further I may advert that the investigating officer did not produce the accused before nearest Magistrate for recording of confessional statement of the accused U/S: 164 Cr.P.C as to commission of offence of murder of Muhammad Ismail (deceased) so as to strengthen the allegation*

against the accused and to prove that the weapon used in the commission of the offence was recovered from him.

Besides, the I.O Hassan Raza during his evidence produced FSL report (Exh.15/G) so as to fortify the charge against the accused. On scanning the contents of FSL report it appears that no doubt reflects that the two empty cartridges sent to the ballistic expert were fired from each barrel of the DBBL Gun yet it does not disclose if the same was used by the accused in the commission of offence since there is no mention in the FSL report as to whether there were finger prints of the accused available on the DBBL Gun bearing No.9368 or not, therefore, it cannot safely be believed that it was used by the accused Manoo Kolhi. Even there is no mention in the FSL report about duration of time as to when or how long ago the shots were fired from the said Gun.

In this regard I have taken my guidance from the case law reported in 2011 YLR 1369 Karachi-High-Court-Sindh which reads as under:-

*S.302(b)---Qatl-e-amd---Appreciation of evidence--  
-No eye witness was on record---Prosecution case was that no cartridges, spent or otherwise, were recovered from the place of incident, but accused after his arrest had voluntarily confessed to the murder and had taken the police to the place where he had hidden the weapon---Weapon recovered was a country made pistol with three live cartridges found alongwith it, a spent cartridge found inside it---Trial Court accepted the said evidence, connecting same to the fact that the deceased had been killed with a cartridge shot---Trial Court, in circumstances, had committed a material irregularity in that regard---Purported "confession" of accused to the police, was entirely inadmissible---Substantial delay was taken in sending the country made pistol for ballistics testing and no proper explanation was available for said delay---Entire prosecution case rested on evidence of two witnesses, who were inimical to accused and no independent corroboration of their evidence was available---Evidence of said witnesses was not satisfactory--  
-Evidence produced by prosecution therefore, was not of the required nature an quality---Prosecution, in circumstances, was not able to establish its case beyond reasonable doubt---Impugned judgment passed by the Trial Court was set aside, accused was acquitted and was set at liberty, in circumstances.*

*However, on scanning the contents of the FIR and evidence of PWs, it has been admitted fact that there was no eye-witness of alleged incident except the complainant, who is real son of the deceased, yet he has not deposed as to ostensible cause for commission of murder of his father. Likewise, none of PWs have deposed as to why the accused Manoo committed murder of deceased Ismail. Therefore, motive in the present case is not proved and the same is shrouded in the murk.*

*Dr. Nizamuddin Soomro, who conducted postmortem of the deceased Muhammad Ismail, has narrated that on 10.04.2014 the dead body was brought by complainant Ali Raza and Haji Abdul Hamid in the hospital, and after postmortem he opined with conclusion that death of deceased Ismail had occurred in the wake of receiving firearm injuries. It is thus apparent that the medical evidence is unable to disclose as to who had fired shots upon the deceased Ismail. It is well established that medical evidence only clarifies the nature of injury and how it was caused, therefore, the medical evidence is merely subsidiary in nature. In order to fortify my view, I have placed my reliance on the case law reported hereunder:*

2017 PCr.LJ 1113 (Balochistan):-

*Medical evidence----Scope----Medical evidence was a corroborative piece of evidence, which only indicated the number and seats of injuries and the kind of weapon used--In absence of trustworthy and reliable ocular evidence, the medical evidence could not support the prosecution case.*

*The accumulative conclusion of the above discussion is that the prosecution has failed to bring legitimate and concrete piece of evidence on the record to bring home the guilt of the accused.”*

**10.** We have also carefully perused the evidence and judgement brought on the record and have no hesitation to observe that the impugned judgment is speaking one and elaborated the reasons which do not suffer any illegality, gross irregularity and infirmity; however, from the perusal of the record, it reveals that the source of identification of accused was bulb light but from a perusal of memo of the place of incident nowhere it is written that bulb was available in the house situated in the land of Mir Waqar Talpur Deh Vessarki. Further, even the I.O. has not disclosed in the memo of place of incident that any electric pole was installed



there. The complainant party failed to produce any electric bill in support of the claim that light was available at the place of the incident. The villagers also reside near the place of the incident but not a single person after hearing the sound of fire came to the place of the incident to believe the version of the complainant. In the FIR the complainant disclosed the time of the incident was 09:30 p.m. but during his cross-examination, he stated that he had not remembered the time of the first fire. After the second fire, he put himself upon the dead body of his father but he did not resist or try to apprehend the accused when from the double barrel both the gun firing made by accused Manoo. The complainant had himself brought the dead body at District Headquarter Hospital Tando Muhammad Khan but the police had not seen the dead body at the place of the incident. In the instant case, there is no independent eyewitness of the incident except the complainant being the real son of the deceased even motive has not been proved that accused/appellant Manoo had murdered the deceased Muhammad Ismail.

**11.** It is also settled law that the prosecution has to prove the case on its own and the burden of proof is on the prosecution firstly to discharge the same by bringing cogent evidence regarding the culpability of the accused in the present case which it has failed and contrary to this, no evidence worth consideration has been led to prove that respondent/accused actually participated in the commission of the alleged offence. Further, witness Muhammad Iqbal in his cross-examination stated that ***“I had seen blood of deceased in the rali and pillow.... There was cemented floor in the room of Otaque where place of vardhat is situated.*** Whereas Muhammad Zuhaib in his cross-examination negated the version of PW Muhammad Iqbal by stated that ***“I did not see either bed or blood stains at place of vardat.”*** Witness Muhammad Iqbal stated that ***“There was only one room in the Otaque*** which is negated by Tapedar Adil Qadir who stated that the deceased was lying in the iron cot while complainant Ali Raza was sleeping in the cot. It seems that the above witnesses are not in line with

each hence their version does not corroborate with the prosecution's story on material points. Further, the incident is alleged to have taken place on 09.04.2014 while the complainant registered FIR on 15.04.2014 after a delay of six days for which no justifiable explanation is available.

**12.** The criterion of interference in the judgment against acquittal is not the same as against the cases involving a conviction. The scope of interference in an appeal against acquittal is narrow and limited for the reasons that 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 proven guilty. In other words, the presumption of innocence is doubled.

**13.** Learned DPG has failed to disclose any misreading and non-reading of evidence. In the case of **Muhammad Zafar and another v. Rustam and others (2017 SCMR 1639)**, the Hon'ble Supreme Court of Pakistan has held that:-

***“We have examined the record and the reasons recorded by the learned appellate court for acquittal of respondent No.2 and for not interfering with the acquittal of respondents No.3 to 5 are borne out from the record. No misreading of evidence could be pointed out by the learned counsel for the complainant /appellant and learned Additional Prosecutor General for the State, which would have resulted into grave miscarriage of justice. The learned courts below have given valid and convincing reasons for the acquittal of respondents Nos. 2 to 5 which reasons have not been found by us to be arbitrary, capricious or fanciful warranting interference by this Court. Even otherwise this Court is always slow in interfering in the acquittal of accused because it is well-settled law that in criminal trial every person is innocent unless proven guilty and upon acquittal by a court of competent jurisdiction such presumption doubles. As a sequel of the above discussion, this appeal is without any merit and the same is hereby dismissed”***

**14.** Suffice it to say that there is hardly any improbability or infirmity in the impugned judgment of acquittal recorded by the

learned trial Court, which is based on sound and cogent reasons that do not warrant any interference by this Court. Learned Deputy Prosecutor General, Sindh has miserably failed to establish extraordinary reasons and circumstances, whereby the acquittal judgment recorded by the trial Court may be interfered with by this court.

**15.** This is a Criminal Acquittal Appeal and we cannot lose sight of the doctrine of double innocence, which is attached to such proceedings. Consequently, the instant Criminal Acquittal Appeal is **dismissed**.

**JUDGE**

**JUDGE.**