

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

Cr. Acquittal Appeal No.D-38 of 2019

Cr. Rev. Appln. No.D-18 of 2019

Cr. Appeal No.S-111 of 2019

Before:

Mr. Justice Salahuddin Panhwar

Mr. Justice Zulfiqar Ahmad Khan.

Mr. Afzal Karim Virk, Advocate for appellant in Criminal Acquittal Appeal No.D-38 of 2019 and for applicant in Cr. Rev. Appln. No.D-18 of 2019.

Mr. Mian Taj Muhammad Keerio, Advocate for appellant in Criminal Appeal No.S-111 of 2019.

Mr. Shawak Rathore, Deputy Prosecutor General.

Date of hearing 31.05.2022

Date of judgment 31.05.2022

J U D G M E N T

Salahuddin Panhwar, J.- Through captioned Criminal Acquittal Appeal No.D-38 of 2019, appellant / complainant has called in question the judgment dated 10.05.2019 passed by learned Additional Sessions Judge-I / MCTC Mirpurkhas in Sessions Case No.159 of 2012 (*Re: the State v. Abdul Latif & others*) emanated from Crime No.26 of 2012 of P.S Mirpurkhas, whereby respondents / accused namely Abdul Latif, Aijaz and Kashif Ahmed have been acquitted of the charge. Besides, applicant / complainant has filed Criminal Revision Application No.D-18 of 2019 seeking enhancement of sentence against appellant / accused Shaharyar @ Nomi, who has been sentenced to imprisonment for life by the trial Court.

2. Concisely, the facts as per F.I.R lodged by complainant Syed Zakir Ali on 21-3-2012 at 2015 hours at P.S Satellite Town, Mirpurkhas are that his nephew namely Syed Farrukh Ali came to him at Mirpurkhas from Karachi on 25-02-2012 for the purpose of attending marriage ceremony. On 16-3-2012 a quarrel took place over children affairs, therefore, he alongwith his son Basit Ali and his nephew Farrukh Ali went towards Abdul Latif on Motorcycle for compromise, When they reached infront of Karyana shop of

Abdul Latif at about 2200 hours, where Nomi S/o Muhammad Rafique, Kashif S/o Qamro Abbasi, Aijaz S/o Nooruddin Abbasi, armed with T.T Pistol and two other un-known persons duly armed were standing there and Abdul Latif Abbasi was also available there. The complainant said to Abdul Latif as to why you were quarrelling on children matter, on which Abdul Latif abused the complainant party and instigated others to murder them, upon which Nomi Abbasi made straight fire with T.T pistol on nephew of complainant namely Farrukh Ali with intention to kill, which hit on left side of his chest, who fell down and the blood was oozing, while others also caused kicks and fists blows to them, on which complainant party raised cries, which attracted Abdul Ghaffar, Sadique Ali and others and on seeing them the accused persons went away while abusing. Thereafter, the complainant party took the injured to civil hospital Mirpurkhas, where police also reached and issued letter for medical treatment, but injured was referred to Hyderabad, from where the injured was also referred to Jinnah Hospital Karachi. Thereafter, the complainant appeared at P.S and lodged present F.I.R.

3. At the outset, learned Counsel for appellant / complainant while referring to the impugned judgment has contended that learned trial Judge has failed to assign reasons with regard to acquittal of accused Abdul Latif, Aijaz and Kashif Ahmed. He further contended that impugned judgment is perverse, illegal and shocking and besides the learned trial Judge has awarded life imprisonment to main accused Shaharyar @ Nomi which though is not sufficient punishment as per criminal law and therefore the same may be enhanced.

4. Learned D.P.G contends that impugned judgment passed by learned trial Judge is based on sound reasons regarding life imprisonment awarded to main accused Shaharyar @ Nomi as well acquittal of rest of the accused, therefore, both revision and acquittal appeal being meritless are liable to be dismissed.

5. Heard learned Counsel for appellant / complainant as well learned D.P.G and perused the record. The prosecution story is that on the instigation of Abdul Latif, appellant / accused Shaharyar @ Nomi caused direct fire shot injury to nephew of complainant namely Farrukh Ali (deceased) on his left side of chest and he was shifted to the Hospital, remained there under treatment around twenty months where he died.

The Doctor's report is that due to bed sores and due to continuous admission and treatment in hospital the death of deceased has occurred. According to learned Counsel that deceased Farrukh Ali died due to fire arm injury caused by accused Shaharyar @ Nomi. Admittedly, he has been awarded life imprisonment and role of rest of the accused was different, who have been acquitted by the trial Court. Besides, it has also come on record that complainant side approached to the shop of accused for compromise where incident took place and in such circumstances the impugned judgment cannot be considered as shocking, perverse and illegal. Moreover, the 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. 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 suffering from serious and material factual infirmities. Said accused have acquired now a triple presumption of innocence which could not be dispelled by the prosecution. Reliance is placed on the case of **The State v. Abdul Khaliq (PLD 2011 SC 554)**.

6. In view of above stated circumstances, Criminal Acquittal Appeal No.D-38 of 2019 is hereby dismissed. So far the Criminal Revision Application No.D-18 of 2019 for enhancement of sentence is concerned, the same is also dismissed on the grounds as stated above. Accordingly, Criminal Appeal No.S-111 of 2019 filed by appellant Shaharyar @ Nomi against sentence of life imprisonment shall be listed before Single Bench for regular hearing.

JUDGE

JUDGE

Shahid

