

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Salahuddin Panhwar

Mr. Justice Jan Ali Junejo

Cr. Acquittal Appeal No. 606 of 2019

[Obaid Muhammad Khan Niazi *versus* Muhammad Iqbal and others]

Appellant : Obaid Muhammad Khan Niazi through
Mr. Mehmood A. Qureshi, Advocate

Respondent Nos.1 to 4 : Muhammad Iqbal and others through
Mr. Muhammad Zareef Lakho, Advocate
holding brief for Mr. Muhammad Aslam
Bhutta, Advocate

Respondent No.5/State : Through Mr. Abrar Ali Khichi,
Additional Prosecutor General

Date of Hearing : 31.01.2025

Date of Decision : 31.01.2025

J U D G M E N T

JAN ALI JUNEJO, J:- The appellant has challenged the judgment dated 04-09-2019 (hereinafter referred to as the *Impugned Judgment*) passed by the learned 1st Additional District and Sessions Judge, Malir, Karachi (Model Criminal Trial Court) in Sessions Case No. 245/2017. The case arose from FIR No. 306/2015, registered at Police Station Quaidabad, Karachi, for offenses under Sections 302, 337-J, 506-B, and 34 of the Pakistan Penal Code (PPC). By the *Impugned Judgment*, the respondents were acquitted of the charges.

2. According to the FIR, on 18-10-2016, between 11:00 AM and 2:00 PM, inside House No. 163/64, Labour Colony, Sector F2, Landhi, Karachi, the accused allegedly assaulted the deceased and issued threats to her, as well as to Mst. Shazia and Mst. Shahnaz.

With the assistance of a male co-accused, they purportedly administered poison by mixing it with food, acting with common intention and full knowledge, thereby committing *Qatl-e-Amd* (intentional murder) of the deceased, Mst. Amna Bibi, daughter of Ubaid Muhammad Khan Niazi, aged 22 years. Consequently, the instant FIR was registered.

3. After completing the investigation, the Investigating Officer submitted the *challan*. Upon completion of all legal formalities, a formal charge was framed against two accused persons, who appeared for trial at Exhibit-02. Both pleaded not guilty and opted to contest the case, as recorded in their respective pleas at Exhibits 2/A and 2/B. The prosecution examined the following witnesses:

- **PW-01 SIP Allah Nawazio** (Exhibit-03), who produced the receipt of the dead body (Exhibit-3/A), application to the SHO (Exhibit-3/B), and a copy of the FIR (Exhibit-3/C).
- **PW-02 Amir Nawaz** (Exhibit-04), who produced the *Mushir Nama* (Exhibit-4/A).
- **PW-03 Safdar Nawaz Khan** (Exhibit-05).

Subsequently, the prosecution gave up witnesses **PC Mubarak Shah** and **ASI Qayum**, as recorded in Exhibit-06. Thereafter, two female accused joined the trial, and police papers were supplied to them at Exhibit-07. An amended charge was framed at Exhibit-08, to which they also pleaded not guilty, as recorded in their respective statements at Exhibits 8/A to 8/D. Further witnesses examined by the prosecution included:

- **PW-01 Ubaid Muhammad** (Exhibit-09), who produced a *memo* (Exhibit-9/A).
- **PW-02 Amir Nawaz** (Exhibit-10), who produced the memo of site inspection (Exhibit-11) and the memo of arrest and recovery (Exhibit-11/A).
- **PW-03 Allah Nawazio** (Exhibit-12), who presented an entry (Exhibit-13), a letter to the civil hospital (Exhibit-14), a memo of site inspection (Exhibit-15), an inquest report (Exhibit-16), an arrival entry (Exhibit-17), and the FIR registration entry (Exhibit-18).

- PW-04 Kaleemullah Khan Niazi (Exhibit-19).
- PW-05 Sameeullah Khan (Exhibit-20).
- PW-06 Tasneem Akhtar (Exhibit-21), who produced medical certificate (Exhibit-22), the medical cause of death (Exhibit-23), chemical report (Exhibit-24), and the final medical report (Exhibit-25).

The prosecution later gave up witnesses Inayatullah, ASI Abdul Qayum, and PC Mubarak, as recorded in Exhibit-26.

- PW-07 Safdar Nawaz Khan Niazi (Exhibit-27).
- PW-08 Ali Murad (Exhibit-28), who presented an investigation letter (Exhibit-29) and entries (Exhibits 30-32), along with a letter to the chemical examiner (Exhibit-33).

After examining all relevant evidence, the prosecution concluded its case and closed its side of the evidence, as recorded in Exhibit-34. The trial court then recorded the statements of the accused persons under **Section 342 CrPC**, wherein they denied the prosecution's allegations, claiming false implication in the case.

4. The learned counsel for the appellant forcefully argued that the trial Court failed to properly appreciate the prosecution's evidence, despite all witnesses fully supporting the case. He contended that:

- **Eyewitness Testimonies:** The prosecution witnesses unequivocally corroborated the allegations against the accused, yet their testimonies were disregarded without lawful justification.
- **Medical and Forensic Evidence:** The medical evidence conclusively established that the deceased died an unnatural death due to poisoning, reinforcing the prosecution's case.
- **Motive for the Crime:** The accused had a clear motive to administer poison to the deceased, as she was allegedly unable to conceive a child, which led to the commission of the crime.
- **Dying Declaration:** The deceased made a dying declaration in the presence of witnesses, explicitly naming the accused as the perpetrators. Since a dying declaration holds significant evidentiary value and can serve as the sole basis for conviction, this case warranted a guilty verdict.

- **Failure of the Trial Court:** The trial court erroneously acquitted the accused by failing to correctly interpret the evidence on record. The impugned judgment suffers from serious legal and factual infirmities, justifying its reversal.

On these grounds, the learned counsel prayed that the *Impugned Judgment* be *set aside* and the accused be convicted as per law. The learned Additional Prosecutor General (APG) supported the appellant's contentions, agreeing that the impugned judgment warranted interference. In view of these arguments, the learned APG contended that the *Impugned Judgment* was legally flawed and should be *set aside*.

5. The brief facts necessary for the disposal of this acquittal appeal are that on **18.10.2016**, the mother of the deceased, Amna Khan, attempted to contact her daughter through mobile phone, but the device was continuously powered off. At **11:00 AM**, she called again, and although the phone rang, the deceased did not answer. This raised suspicion, prompting the complainant, along with his wife (the mother of the deceased) and three sons—**Kaleemullah, Samiullah, and Inayatullah**—to visit her residence, which was located on the first floor of **House No. 163/164, Labour Colony, Sector F2, Landhi**. Upon arrival, they found that the door to her portion of the house was bolted from the outside. After unbolting it, they discovered Amna Khan in a critical condition. Upon inquiry, she disclosed that the accused had mixed poison into her food and administered it to her. She was immediately rushed to **Jinnah Postgraduate Medical Centre (JPMC)**; however, she succumbed to the poisoning during the journey. Upon arrival at **JPMC**, she was pronounced dead.

6. The learned trial court considered the arguments presented by the defense counsel during the trial, which included the following contentions:

- **Voluntary Ingestion of Poison:** The defense argued that a fatal quantity of insecticide could only be consumed voluntarily, as its strong odor would naturally deter a person from ingesting it. Therefore, it was improbable that the deceased was forcibly poisoned.

- **Alleged Suicide:** It was asserted that the deceased had taken her own life due to her alleged involvement in relationships with multiple individuals through her Facebook account, which was operated under the name *Faiza Baloch*.
- **False Implication:** The defense contended that the accused had been falsely implicated in the case due to personal enmity and a grudge harbored by the complainant.

7. It is a well-established principle of law that the scope for interference in an appeal against an acquittal is extremely narrow and limited. This is because, in the case of an acquittal, the presumption of innocence is further reinforced, aligning with the fundamental tenet of criminal jurisprudence that an accused is presumed innocent until proven guilty. In other words, the presumption of innocence is effectively doubled. Courts are generally reluctant to overturn an acquittal unless it is demonstrated to be perverse, rendered in gross violation of the law, or vitiated by serious errors arising from a grave misreading or complete omission of evidence. Reference may be made to the legal precedent set by the Hon'ble Supreme Court in *Sardaran Bibi v. The State and Others (2024 SCMR 1116)*.

8. In case of *(The State and other vs. Abdul Khaliq and others "PLD 2011 SC-554")*, it is held by the Honorable Apex Court that: *"the scope of interference in appeal against acquittal is most narrow and limited because in 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 proved guilty, in other words, the presumption of innocence is double. The courts shall be very slow in interfering with such an acquittal judgment, unless it shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence, such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. Interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and facts committed by the courts in arriving at the decision, which would result into grave*

miscarriage of justice, the acquittal judgment is perfunctory are wholly artificial or a shocking conclusion has been drawn. Judgment of acquittal should not be interjected until the findings are perverse arbitrary, foolish, artificial, speculative and ridiculous. 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 conclusion should not be upset, except when palpably perverse, suffering from serious and material factual infirmities". In the case of (Maqsood Alam and another v. state, 2024 SCMR 156), held "scope for the accused to be afforded the right of benefit of doubt, it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the accused".

9. In light of the settled legal principles and guidelines, we have carefully examined the material available on record. According to WMLO Dr. Tasneem Akhter (PW-6), in her testimony, she stated that she conducted the post-mortem examination of the deceased, Amna Khan. She concluded that the cause of death was due to the ingestion of insecticide (from the phosphate group), which resulted in cardio-respiratory arrest. During cross-examination, Dr. Tasneem Akhter testified that there were no signs of violence on the deceased's body. She further explained that, for death to occur due to insecticide poisoning, a certain quantity of poison must be administered. If a lethal dose of poison is mixed with food, the person consuming it would likely detect an unusual odor or taste, potentially causing them to refuse the food. The same principle applies if the poison is mixed with a liquid, as such substances would not be ingested voluntarily without coercion. Moreover, the prosecution failed to secure any food or material evidence to establish that the deceased was poisoned through ingestion. Ultimately, Dr. Tasneem Akhter could not definitively determine whether the cause of death was homicidal or suicidal, thereby creating serious doubt. As a result, the benefit of the doubt must be given to the accused.

10. Upon careful examination of the record, it is evident that the incident occurred on **18.10.2016** at approximately **2:00 PM**, while the **FIR was lodged on 21-10-2016 at around 6:30 PM**, resulting in an unexplained delay of more than three days. Furthermore, a crucial aspect to consider is that if a **dying declaration** had indeed been made by the deceased, there is no reasonable explanation as to why the complainant did not lodge the **FIR on the same day**. Given that the complainant was an educated individual, the failure to report the matter promptly raises serious doubts about the prosecution's case. The delay in lodging the **FIR** has not been satisfactorily explained, which significantly affects the credibility of the prosecution's version. In this context, the **Hon'ble Supreme Court** has previously drawn an adverse inference regarding **unexplained delays in FIR registration**.

11. As per the record of the learned Trial Court, the prosecution examined eight witnesses, including five private witnesses. However, none of them testified that they had seen any accused person actually administering poison to the deceased or heard the accused conspiring to commit the crime. According to the Investigating Officer (IO), SIP Allah Nawazio, he deposed before the Trial Court that he had offered the complainant the opportunity to record his statement under Section 154 of the CrPC on the day of the incident. However, the complainant stated that he would appear at the police station to record his statement after the *Soyem* (third-day ritual). PW Samiullah, the brother of the deceased, testified before the Trial Court that the deceased, Amna Khatoon, was happy with her in-laws, which clearly indicates that there was no dispute between her and her husband.

12. Furthermore, the complainant party alleged that the deceased made a dying declaration on 18-02-2016. However, the question arises as to why they remained silent until 21-02-2016, a period of three days. There is also strong evidence suggesting that no such dying declaration was made by the deceased, based on the

documents produced by the prosecution. Firstly, the prosecution presented DD Entry No. 26, marked as Exhibit 13, before the learned Trial Court. This was the departure entry of ASI Allah Nawazio after receiving information about the incident. The entry, recorded at 1700 hours, states that Samiullah, the deceased's brother, reported that Amna, wife of Javaid Iqbal, had been taken to Jinnah Hospital due to the ingestion of poisonous medicine. The wording of this entry clearly reflects the true facts, and a plain reading of it does not indicate that the deceased was deliberately poisoned. Regarding the claim that the deceased's mother called her on her mobile phone and found it switched off, we are of the view that the prosecution failed to produce any evidence to substantiate this claim. In such a scenario, the best available evidence would have been the Call Detail Record (CDR) data, which could have prima facie established whether the call was made. However, the IO did not obtain this data from the relevant franchise or service provider to verify whether the deceased's mother had indeed called her or not. The prosecution was duty-bound to obtain the CDR data of both mobile numbers, yet no visible effort was made in this regard.

13. The entire prosecution case is riddled with inconsistencies and creates serious doubts. The policy of law is clear: The benefit of the doubt must go to the accused, as consistently held by the Honourable Apex Court. It is a well-settled principle of law that if even the slightest doubt is created regarding the prosecution's case, that doubt must be resolved in favour of the accused, not the prosecution. Furthermore, it is an established legal principle that no one should be convicted under a cloud of doubt or uncertainty.

14. A careful examination of the evidence on record reveals that the prosecution has failed to establish its case against the accused (Respondents) beyond a reasonable doubt. The Trial Court rightly granted the benefit of the doubt to the accused, resulting in their acquittal. The impugned judgment is free from arbitrariness or misinterpretation of evidence, and no strong or compelling grounds exist to warrant interference with the acquittal. Hence, the instant Criminal Acquittal Appeal was

dismissed vide our short order dated 31.01.2025 and these are the reasons thereof.

JUDGE

JUDGE

Dated: 09.02.2025
B-K Soomro