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IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Acquittal Appeal No.D-04 of 2005.

PRESENT:

Mr. Justice Zafar Ahmed Rajput,  
Mr. Justice Irshad Ali Shah,

Appellant Ghulam Sarwar Jyo through Mr. Ghulam Dastagir A. Shahani, Advocate.

Respondents Rab Nawaz Panhwar & others, through Mr. Azizullah Buriro, Advocate.

Mr. Khadim Hussain Khooharo, Additional Prosecutor General.

Date of Hearing: 11.9.2018.  
Date of Decision: 11.9.2018.

ORDER

Zafar Ahmed Rajput -J. The instant criminal acquittal appeal is directed against the judgment dated 14.01.2005, passed by the Additional Sessions Judge, Mehar, in Sessions Case No.261 of 2002 (Re: State v/s Rab Nawaz Panhwar & others) emanated from Crime/FIR No.116 of 2002, registered at Police Station K.N. Shah, District Dadu, for offence under Section 302, PPC, whereby respondents Rab Nawaz, Shahid, both sons of Mohammad Sulleman and Intekhab son of Arz Mohammad, all by caste Panhwar were acquitted of the charge of committing murder of deceased Munir Ahmed Jyo.

2. Briefly the facts of the case are that complainant Ghulam Sarwar Jyo lodged aforementioned FIR on 28.07.2002 at Police Station K.N. Shah, stating therein that on 27.7.2002, at 6.00 p.m. his brother Munir Ahmed had gone out of the house and did not return till late hours. On 28.7.2002, at about 8.00 a.m. his cousin Shamsuddin came to him and disclosed that the dead body of Munir Ahmed was lying at open plot behind the Rice Mill of Bashir Ahmed Shaikh. On such information, he complainant along with his brother Ali Mohammad and cousin Shamsuddin went to the indicated place and found the dead body of his brother Munir Ahmed having firearm injury on left side of his

chest at nipple. The feet, legs and neck of Munir Ahmed were also found tied with blue colour rope. They also found a pistol lying by the side of deceased.

3. After completion of formalities, a formal charge was framed by the learned trial Court against the above-named respondents/accused for offence punishable under section 302 PPC at Exh.2, to which they pleaded 'not guilty' and claimed to be tried, vide their respective pleas at Exhs.3 to 5.

4. The prosecution in support of its case examined PW-1 Dr.Qurban Ali at Exh.6, who produced postmortem report at Exh.6-A; PW-2 complainant Ghulam Sarwar at Exh.8, who produced FIR at Exh.8-A; PW-3 Shoukat Ali at Exh.9; PW-4 Jalaluddin (mashir) at Exh.10, who produced mashirnama of place of wardhat at Exh.10-A, inquest report of deceased Munir Ahmed at Exh.10-B, mashirnama of arrest of accused at Exh.10-C and list of property at Exh.10-D; PW-5 Tapedar Mushtaque Ahmed at Exh.11, who produced sketch at Exh.11-A and PW-6 Ameer Bux at Exh.13.

5. The statements of accused under section 342, Cr.P.C were recorded at Exh.17 to 19, wherein they denied the prosecution allegations and stated that all the PWs were related inter se, interested and hostile to them, hence they have falsely deposed against them. They also stated that they were innocent and prayed for justice. However, they neither examined themselves on oath nor led any evidence in their defence in terms of Section 340(2), Cr.P.C.

6. On conclusion of trial and after hearing the parties, the learned trial Court acquitted the respondents/accused of the charge extending them benefit of doubt vide impugned judgment dated 14.01.2005. Aggrieved by the same, the appellant/complainant has maintained this Criminal Acquittal Appeal.

7. Heard the learned Counsel for the parties and perused the material available on record.



8. Mr. Ghulam Dastagir A. Shahani, learned Counsel for the appellant, contended that the learned trial Court while deciding the case has not recorded cogent reasons for acquitting the respondents No.1 to 3; that all the prosecution witnesses had in fact fully supported the prosecution case and their version is also corroborated by the medical evidence, as such, the learned trial Court while passing the impugned judgment has not acted justly and equitably and thus passed the impugned judgment without applying judicious mind to the facts of the case; that sufficient evidence is available on record to believe that the respondents No.1 to 3 have committed the alleged offence, therefore, they are liable to be convicted for the same.

9. On the other hand, learned Counsel for the respondents No.1 to 3 and learned APG, while controverting the learned Counsel for the appellant, have fully supported the impugned judgment. The gist of their contentions is that the impugned judgment is well-reasoned and speaking one, passed by the learned trial Court considering the *pros and cons* of the evidence, which does not require any interference by this Court.

10. We have given anxious consideration to the contentions of learned Counsel for the parties and scanned the material available on record with their assistance.

11. It appears that the learned trial Court while assessing the evidence on record has found that the prosecution case hinged on circumstantial and medical evidence of PW Shoukat and medical officer Dr.Qurban Ali and in this regard the evidence of PW Shoukat is that he and PW Aslam had seen near plot of Haji Bashir Shaikh on torchlight five persons, who were taking away one person by holding his legs and hands, out of whom they identified three persons as Rab Nawaz, Shahid and Intekhab (the respondents No.1 to 3). From such piece of evidence, it is clear that it has not been specifically stated by the said PW that he had in fact seen the accused/respondents taking away the said deceased and/or causing his

murder. In cross-examination the said witness has admitted that at the time of incident they had not identified the dead body because they were at some distance. It may be relevant to mention here that above-said Aslam, who was allegedly accompanying PW Shoukat at the relevant time, has not been examined by the prosecution. Hence, prosecution has failed to bring home guilt of respondents / accused beyond a reasonable doubt. It is well-settled principle of law that for basing conviction against an accused there should be strong evidence before the trial Court and if the doubt, even slightest, arises in the prudent mind as to the guilt of the accused, benefit of the same has to be extended in favour of the accused.

12. We do not find any merit in the arguments of learned Counsel for the appellant. The learned trial Court has recorded the reasons for its order of acquittal, which are based on evidence on record and the conclusion drawn by the learned trial Court as to the innocence of accused is appropriate. It is well-settled principle of law that the extraordinary remedy of an appeal against an acquittal is different from an appeal against the judgment of conviction and sentence, because presumption of double innocence of the accused is attached to the order of acquittal. Thus, on the examination of the order of acquittal as a whole, credence is accorded to the findings of the subordinate Court whereby the accused had been exonerated from the charge of commission of the offence. To reverse an order of acquittal, it must be shown that the acquittal order is unreasonable, perverse and manifestly wrong; therefore, the order of acquittal passed by the trial Court, which is based on correct appreciation of evidence, will not warrant interference in appeal. The Honourable Supreme Court while dealing with the appeal against acquittal has been pleased to lay down the principle in the case of **Muhammad Shafi Vs Muhammad Raza & another** reported in **2008 SCMR 329**, as under:-

*"An accused is presumed to be innocent in law and if after regular trial he is acquitted, he earns a double presumption of innocence and there is a heavy onus on the prosecution to rebut the said presumption. In view of the discrepant and inconsistent evidence led, the guilt of accused is not free from doubt, we are*

*Rt.*

*therefore, of the view that the prosecution has failed to discharge the onus and the finding of acquittal is neither arbitrary nor capricious to warrant interference."*

13. In view of above reasons, the impugned acquittal order does not suffer from any illegality or infirmity and misreading or non-reading of evidence leading to miscarriage of justice; therefore, the same is not open for interference by the High Court under Section 417, Cr.P.C. Hence, the instant Criminal Acquittal Appeal is dismissed accordingly.

Qazi Tahir PA"