



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

**Crl. Acquittal Appeal No.D-51 of 2013**

**Present:**

**Mr. Justice Zafar Ahmed Rajput**

**Mr. Justice Shamsuddin Abbasi**

**Appellant :** Ghulam Muhammad s/o Mehmood, though  
Mr. Ghayoor Abbas Shahani, Advocate

**Respondents :** (1) Piyaro s/o Rab Nawaz  
(2) Ali Khan s/o Rab Nawaz  
(3) Mumtaz s/o Rahzan  
(4) Shahnawaz s/o Rahzan  
(5) Arz Muhammad s/o Ghulam Rasool  
(6) Ajid Hussain @ Abid Hussain s/o Qaiser,  
through Mr. Nisar Ahmed G. Abro, Advocate  
(7) The State,  
through Mr. Ali Anwar Kandhro, Addl. P.G.

**Date of Hearing:** 11.03.2020

**Date of Order :** 11.03.2020

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

**ZAFAR AHMED RAJPUT, J.-** Through instant Criminal Acquittal Appeal, appellant/complainant Ghulam Muhammad son of Mehmood Soomro has assailed the judgment dated 29.11.2013, passed by the learned Additional Sessions Judge, Kandhkot, in Sessions Case No.33/2010, arisen out of Crime/FIR No.357/2009, registered at Police Station A-Section, Kandhkot under sections 302, 148, 149, P.P.C., whereby the respondents No.1 to 6 were acquitted of the charge by extending them benefit of doubt.

2. Briefly stated facts of the case are that, on 20.12.2009, the appellant lodged the aforesaid FIR, alleging therein that he resided at Ghouspur along his sons Bangul, Maqsood Ahmed and grandson Imran. On 19.12.2009, he came to Kandhkot along with above named sons, grandson and ailing daughter-in-law Mst. Shamshad and stayed at the house of his relative/accused Piyaro Soomro after getting her treatment



from a doctor; that they went to sleep after taking dinner on separate cots. At about 11:00 p.m. they woke up on commotion and saw on the light of bulb that accused (1) Piyaro (2) Ali Khan, armed with guns (3) Mumtaz (4) Shah Nawaz with T.T Pistols (5) Arz Muhammad (6) Ajid Hussain @ Abid Hussain with lathies talking loudly. On enquiry, they declared Maqsood Ahmed as Karo with Mst. Rani, meanwhile Maqsood tried to run away due to fear but he slipped down; that accused Piyaro and Ali Khan fired from their guns at Maqsood and Mst. Rani, respectively and then all the accused fled away; that they saw Maqsood Ahmed and Mst. Rani as dead after having received injuries.

3. After usual investigation, police submitted the report under section 173, Cr. P.C by placing the names of all accused, except Ali Khan and Piyaro, in column No.2 however, they were joined by the Judicial Magistrate concerned after accepting the report. The learned trial Court framed the charge against the accused persons, to which they pleaded 'not guilty' and claimed to be tried.

4. At the trial, prosecution in order to substantiate the charge examined nine witnesses. PW-1 MLO/Dr. Asia examined at Ex.7, who produced postmortem report of deceased Mst. Rani as Ex.7/A. PW-2 Ghulam Muhammad, the complainant, examined at Ex.8, who produced FIR as Ex.8/A. PW-3 Bangul examined at Ex.9. PW-4 Imran examined at Ex.10. PW-5 MLO/Dr. Abdul Subhan examined at Ex.11, who produced postmortem report of deceased Maqsood Ahmed at Ex.11/A. PW-6 ASI Chakar Dahani examined at Ex.12. PW-7 Aftab Ahmed Malik, Tapedar, examined at Ex.13, who produced sketch as Ex.13/A, PW-8 Ayaz Ali Soomro, the mashir, examined at Ex.14, who produced memo of dead bodies, danisht namas, memo of place of incident, memo of arrest and recovery as Ex.14/A to 14/G, respectively. PW-9 ASI Mir Hassan Golo, investigating officer, examined at Ex.16, who produced memo of last worn clothes and chemical report at Ex.16/A & B.



5. The respondents/accused in their statements recorded under section 342, Cr. P.C claimed themselves to be innocent. None of them however examined himself under section 340(2), Cr. P.C. All the accused except Ali Khan and Piyaro also declined to examine any defense witness, however, accused Piyaro and Ali Khan gave the names of Tahir Khan, Bhooro Khan and Shahban as defense witnesses by showing their willingness to examine them; however, they failed to produce them despite availing certain opportunities hence, the trial Court constrained to close their side in the light of the direction of Honourable Supreme Court of Pakistan given under National Judicial Policy regarding disposal of all those cases up to 30.11.2013, which were instituted prior to 28.02.2011.

6. We have heard learned counsel for the appellant, respondents, Addl. P. G, and perused the material available on record with their assistance.

7. The learned counsel for the appellant has mainly contended that the learned trial Court has failed to appreciate the evidence of the prosecution witnesses while recording acquittal of the respondents; that the evidence adduced by the prosecution witnesses is sufficient to warrant conviction of the respondents No.1 to 6; that the FIR was recorded promptly and both the parties being relative *inter-se* knew each other hence question of false implication does not arise at all; that the ocular testimony in the case is worthy of credit being duly corroborative; that the occurrence took place in the house of respondents/accused who were identified by the prosecution witnesses along with their weapons and the prosecution version having been substantiated on material particulars, minor discrepancies contradictions were to be ignored; that ocular evidence was corroborated by the medical evidence as well as circumstantial evidence has fully supported the prosecution version hence there was no room for extending of benefit of doubt to respondents/accused and hence the impugned judgment is liable to be set aside by this



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Court under its appellate jurisdiction by convicting the respondents and awarding sentence to them.

8. On the other hand, learned counsel for the respondents/accused as well as learned Addl. P. G have fully supported the impugned judgment. They have maintained that the place of occurrence stated in the FIR and deposition of complainant and the eye-witnesses is different from that which has been inspected by the investigating officer and in respect thereof the P.W-7, Aftab Ahmed, the Tapedar, prepared sketch plan which shows that neither the complainant nor the alleged eye-witnesses were present at the spot; hence ocular account does not inspire confidence.

9. It has brought on record through the evidence of PW-2, complainant Ghulam Muhammad, that on 19.12.2009, he along with his sons Bangul and Maqsood, his grandson Imran and daughter-in-law Mst. Shamshad, came to Kandhkot town from Ghouspur for treatment of the later and since it was night time, they went to the house of their relative accused Piyaro to stay for night, where having been taking meals, they all went to sleep. At about 11:00 p.m., they woke up on some harsh voice and saw that accused Piyaro and Ali Khan, both armed with guns, Mumtaz and Shahnawaz armed with T.T pistols, Arz and Ajid armed with lathies were speaking in a loud and harsh manner. On enquiry accused Piyaro and Ali Khan told the complainant that his son Maqsood was 'Karo' with Mst. Rani, the daughter of accused Piyaro, and saying so at once accused Piyaro made a fire upon his son Maqsood, which hit him on his left side chest while, accused Ali Khan made fire from his gun at Mst. Rani which hit her on her right side back and thereafter all the accused left the house and went away outside of their house. Both the deceased succumbed to their injuries. PW-3 Bangul, the eye-witness and son of complainant and PW-4 Imran, the eye-witness and the grandson of complainant while corroborating the evidence of PW-1 have deposed that they stayed in the house of accused Piyaro due to late night hours. Said P.Ws have denied



the suggestions of defense counsel that deceased Maqsood was having illicit relations with Mst. Rani and on the night of incident Maqsood and Mst. Rani were seen in compromising condition near the house of accused Piyaro and hence they were murdered by Rahzan, the uncle of Mst. Rani under "Ghairat".

10. learned trial Court while assessing the evidence on record has found that the evidence of said P.Ws does not inspire confidence and they do not appear to be true, reliable and trustworthy witnesses. So far the contradictions in the statements of the said P.Ws are concerned, the same have been recorded by the learned trial Court in the impugned judgment and hence we do not deem it appropriate to reproduce the same. The key point before us is to ascertain the fact whether the said P.Ws/eye-witnesses on the relevant day and time were present on the "occurrence" in order to consider their evidence as ocular account. For that, it is notable that all the above mentioned three P.Ws have deposed in one voice that the alleged incident took place in the house of accused Piyaro where they were sleeping being guests. In cross examination, P.W-1, complainant Ghulam Muhammad has further stated that all the male guests were sleeping on the cots in a *Chaper* (Katcha Shad) built in front of the rooms in the house of accused Piyaro while Mst. Shamshad was sleeping in one room of the house and it was dark night but electric bulbs were flashing. PW-2 Bangul has deposed in cross-examination that they were sleeping in the *Wirandah* of the house of accused Piyaro. He has further deposed that the house of accused Piyaro had two rooms and one *Wirandah* in front of those rooms and about 7/8 cots were lying in the *Wirandah* of the house in a row while the women were sleeping in room. PW-4 Imran has also deposed in cross examination that they were sleeping in the *Wirandah* of the house of accused Piyaro, he, however, shown his inability to identify the room in which Mst. Shamshad went to sleep along with females of the house of accused Piyaro, hence the evidence of the said P.Ws more or less



is built up on the point that they were sleeping in the *Wirandah* of the house of accused Piyaro where the alleged incident took place. PW-7, Tapedar Aftab Ahmed, who prepared the sketch plan (Exh.13/A) has deposed that the house of accused Piyaro was facing towards northern side, the place where the dead bodies were lying was open place which was surrounded by wall wherein no '*Chaper*' was built and no electricity was installed. PW-8 mashir Ayaz Ali has produced memo of site inspection (Ex-14/E) which reflects that the place of incident was vacant plot adjacent to the house of accused Piyaro where they saw enough blood on ground which was said to be of deceased Maqsood Ahmed and at the distance of about three paces there was also lying enough blood which was said to be of Mst. Rani. PW-9 ASI Mir Hassan, the investigating officer, has also deposed in cross examination that the place of incident was situated on eastern side of the house of accused Piyaro which was an open plot. It has thus sufficiently been proved through oral evidence of said Tapedar, Mashir and investigating officer as well as circumstantial evidence that the place of incident was not the *Wirandah* of/in the house of accused Piyaro but an open plot in front of his house, the very version of the complainant and his two alleged eye-witnesses proved to be incorrect leading to inference that in fact neither the complainant nor any of the eye-witnesses was present at the crime scene and hence material on record approves the assessment of the learned trial Court. Hence, prosecution has failed to bring home guilt of the accused beyond 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, befit of the same has to be extended in favour of the accused.

11. 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 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. Therefore, to reverse an order of acquittal, it must be shown that the acquittal order is unreasonable, perverse and manifestly wrong. 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* (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 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."

12. 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 (2) Cr. P.C.

13. By our short order dated 11.03.2020, the criminal acquittal appeal was dismissed and above is the reasons for the said order.

  
JUDGE

  
JUDGE  
18/03/2022