

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Crl. Acquittal Appeal No.D-13 of 2020.

DATE
OF
HEARING

ORDER WITH SIGNATURE OF HON'BLE JUDGE

1. For orders on M.A. No.1049/2020. (U/A)
2. For orders on office objection 'A'
3. For orders on M.A.No.1050/2020 (E/A).
4. For hearing of main case.

10.03.2020

Mr. Ghulam Muhammad Barejo, advocate for the appellant.

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Through instant Criminal Acquittal Appeal, the appellant/complainant has assailed the judgment dated 06.02.2020, passed by the learned First Additional Sessions Judge/MCTC, Kamber, in Sessions Case No.262/2018, arisen out of Crime No.19/2018 registered at Police Station Gaji Khuhawar under sections 452, 302, 148, 149, 337H(ii), PPC, whereby the respondents No.1 to 5 were acquitted of the charge by extending them benefit of doubt.

2. Briefly stated facts of the case are that on 23.06.2018 at 2300 hours, complainant Karim Bux Panhwar lodged the afore-stated FIR, stating therein that on said day at 02:30 p.m, accused Habibullah son of Muhammad Bachal Panhwar, duly armed with pistol along with Ghulam Shabir, Hakim Ali, Mumtaz, Gada Hussain and Nazir, all by caste Panhwar, duly armed with weapons, having formed an unlawful assembly trespassed in the house of his father-in-law, namely, Ghulam Nabi situated in village Muhammad Ibrahim and in prosecution of common object thereof accused Habibullah Panhwar shot-dead his son Muhammad Bux aged about 33 years due to controversy arising from dispute of public street and rest of the accused having made aerial firing escaped from the crime scene in presence of complainant and eyewitnesses, namely, Sajjad and Mian

3. After usual investigation, police submitted the challan against the accused persons. They were charged formally by the trial Court to which they pleaded 'not guilty' and claimed to be tried.

4. At the trial, prosecution in support of its case examined following five P.Ws :

i) Complainant Karim Bux Panhwar (PW-1 Ex.08 dated.06.02.2020).

ii) Eyewitness Sajjad Panhwar (PW-2 Ex.09 dated.06.02.2020).

iii) Mashir Ayaz Panhwar (PW-3 Ex.10 dated 06.02.2020), who tendered in evidence original memo of inspection of dead body of deceased Muhammad Bux, original Danistnama of the deceased, original memo of site inspection and collection of blood & crime empties and original memo of arrest of accused Mumtaz, Hakim & Ghulam Shabir at Ex.10/A to 10/D.

iv) Author cum I.O SIP Abdul Hameed Brohi (PW-4 Ex.11 dated 06.02.2020), who saw & confirmed correctness of documents already tendered in evidence by mashir at Ex.10/A to 10/D.

v) Tapedar Naveed Ahmed Zangejo (PW-5 Ex.12 dated 06.02.2020, who tendered in evidence original site sketch at Ex.12/A.

5. The statements of the accused were recorded at Ex.14 to 19 in terms of Section 342, Cr.P.C, wherein they denied the prosecution case/evidence with submission that the prosecution evidence was false and they were innocent. They, however, neither appeared on oath as their own witnesses in terms of Section 340(2), Cr.P.C nor opted to produce any witness in their defence.

6. We have heard learned counsel for the appellant/ complainant and perused the material available on record.

7. The learned counsel for the appellant has mainly contended that the prosecution successfully proved the charge against the respondents with reference to time and manner of occurrence arrest of accused, recovery of weapons, secured empties, positive FSL report, postmortem and blood stained reports leaving no chance for

the learned trial Court to acquit the private respondents of the charge. He further contends that the learned trial Court on the same set of evidence while finding the version of the prosecution proved against co-accused Habibullah beyond any reasonable doubt has convicted him and awarded death sentence, but acquitted the private respondents of the charge entirely in identical evidence against them by misreading and non-reading of the same.

8. It reflects from the perusal of the record that the learned trial Court framed following four points for its determination :

- i) Whether Muhammad Bux S/O Karim Bux Panhwar, aged about 33 years (now deceased) expired un-naturally on 23.06.2018 as set-forth by prosecution?
- ii) Whether on 23.06.2018 at 2;30 pm accused Ghulam Shabir, Hakim Ali, Mumtaz, Gada Hussain & Nazir, all by caste Panhwar being duly armed formed an unlawful assembly and participated in the offence with accused Habibullah Panhwar as alleged by prosecution?
- iii) Whether on 23.06.2018 accused Habibullah Panhwar, duly armed with a Pistol trespassed in the house of Ghulam Nabi Panhwar situated at village Muhammad Ibrahim Panhwar, Taluka Warrah and shot-dead complainant's son Muhammad Bux Panhwar due to motive as alleged by prosecution?
- iv) What should JUDGMENT be?

9. The learned trial Court while answering point No.(ii) as "not proved" recorded following observation in para No.14 of its judgment :

"It is evident from evidence of complainant & eyewitness (Exh-8 & 9) that they neither deposed even a single word against accused Ghulam Shabir, Hakim Ali, Mumtaz, Gada Hussain & Nazir, all by caste Panhwar nor identified them as accused in this case and they deposed against and identified only one accused namely Habibullah Panhwar. As such, no substantive or valid piece of evidence has been brought on record to establish their alleged guilt, hence prosecution failed to prove this point."

10. The material on record approves the assessment of the learned trial Court. PW-1, complainant Karim Bux has deposed as under :

"I am complainant in this case. A dispute between Habibullah Panhwar and us was going-on in respect of a public street for which he was annoyed and used to extend murderous threats. On 23.06.2018 at about 02:00 pm I along with my son Muhammad Bux (now deceased aged about 33 years) and relatives namely Sajjad and Miandad as well as other family members was present in the house of my father-in-law namely Ghulam Nabi Panhwar situated in village Muhammad Ibrahim Panhwar Taluka Warrah where 06 persons came. Out of them, I could identify only one accused namely Habibullah S/o Muhammad Bachal Panhwar armed with pistol. Rest accused were unknown and they were also armed with deadly weapons."

11. PW-02 eyewitness Sajjad Hussain has deposed in similar manner as under :

"I am eye witness in this case. A dispute between Habibullah Panhwar and us was going-on in respect of a public street for which he was annoyed and used to extend murderous threats. On 23.06.2018 at about 02:00 pm I along with my relative Muhammad Bux (now deceased aged about 33 years) and relatives namely Karim Bux and Miandad as well as other family members was present in the house of Ghulam Nabi Panhwar situated in village Muhammad Ibrahim Panhwar Taluka Warrah where 06 persons came. Out of them, I could identify only one accused namely Habibullah S/o Muhammad Bachal Panhwar armed with pistol. Rest accused were unknown and they were also armed with deadly weapons."

12. It may be observed that the complainant, alleged eyewitness and the private respondents are resident of the same village even then complainant and the eyewitness did not identify the private respondents and failed to take their names in their evidence and hence, the learned trial Court rightly came to the conclusion.

13. It is well settled principle of law that for basing conviction against the 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. 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.

14. 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 of Pakistan 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 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."

15. 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.

16. This criminal acquittal appeal, therefore, stands dismissed accordingly in *limine* along with listed applications.

Signature

Signature
Judge