

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT AT LARKANA
Cr. Acq. Appeal No. D-51 of 2019

Date	Order with signature of Judge
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1. For order on office objection.
2. For hearing of main case.

19-02-2020

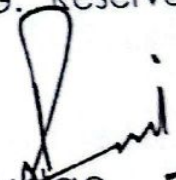
The appellant in person.

Mr. Muhammad Noonari, D.P.G.

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Heard appellant in person and learned D.P.G. Reserved for
judgment.


Judge


Judge

Abdul Salam/P.A

THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Acquittal Appeal No. D-51 of 2019

Present:

Mr. Justice Zafar Ahmed Rajput

Mr. Justice Shamsuddin Abbasi

Muhammad Saleem Mirani, the appellant, in person

ORDER

ZAFAR AHMED RAJPUT, J- Through instant Criminal Acquittal Appeal, the appellant/complainant has assailed the judgment, dated 29-11-2019, passed by the learned VIth Addl. Sessions Judge, Larkana in Sessions Case No.263 of 2019, arisen out of F.I.R. No.57/2018, registered under sections 302, 114, 148,149, P.P.C. at P.S. Badeh, whereby the respondents Nos. 1 to 6 were acquitted of the charge by extending them the benefit of doubt.

2. Briefly stated, facts of the case are that on 22-10-2018 appellant/complainant Muhammad Saleem Mirani lodged the F.I.R alleging therein that the accused persons were annoyed with them on selling fish on cheap price. On 22-10-2018 at 9:00 a.m. on the instigation of accused Manzoor and Rafique, accused Rasheed caused kick blows to his father, Shaman Ali at his stomach who fell down and then accused Rafique caused fists blows to his father while sitting on him and accused Irfan caused kicks and fists blows to his uncle Ghulam Mustafa and accused Rafique also caused bludgeon blow to the him (complainant) at his head and other parts of his body, resultantly his father died at the spot.

3. After usual investigation, police submitted the report for cancellation of F.I.R. under "C" Class of Police Rules but the Juridical Magistrate

declining the report took the cognizance and set-up the case to Sessions Court for trial against the accused under section 302, 114, 148, 149, P.P.C., vide order dated 16.04.2019. Thereafter, the accused persons were charged formally, to which they pleaded not guilty and claimed to be tried.

4. At the trial, prosecution in order to substantiate the charge against the respondents/accused examined as many as eleven witnesses, who produced relevant documents in their depositions. Thereafter, the statements of accused were recorded, wherein they denied the allegations leveled against them. They neither examined themselves on oath nor produced any witness in their defense. On the assessment of the evidence on record, the learned trial Court acquitted the accused persons under section 265-H(i), Cr. P.C., vide impugned judgment. Aggrieved by the same, the complainant has preferred this Criminal Acquittal Appeal.

5. Heard the appellant/complainant and perused the material available on record.

6. The appellant has contended that the learned trial Court has not appreciated the evidence of the P.Ws. who have fully implicated the respondents with the commission of alleged offence. He has also contended that the learned trial Court has unnecessarily relied on the medico-legal report while deciding the case which is sheer injustice with him.

7. Learned trial Court while deciding point No.1 viz. "*whether deceased Shaman Ali died an unnatural death after sustaining injuries at the hands of accused*" as not proved, has observed as under:

"(13) PW-03 Dr. Abdul Ghaffar, M.L.O. (Ex.06) who conducted the autopsy on the dead body of Shaman Ali found no injury visible at all

over the body. PW-04 Complainant Muhammad Saleem (Ex.07) who was not satisfied with the behavior of Medical Officer and the police in the matter of non-issuing the cause of death of the deceased Shaman Ali on his own accord. He waited till the constitution of J.I.T for conducting further investigation in this case. During the course of J.I.T. whereby the dead body of the deceased was exhumed after its burial and the Medical Board consisting upon a team managing the affairs of exhumation opined that the death of the deceased could not be determined as per exhumation report. At the trial, Dr. Abdul Ghaffar M.L.O. (PW-03) deposed in clear term that no injury was visible over the body external and after receiving the chemical and pathological examination reports. The Medico-legal Officer opined that the cause of death of deceased Shaman Ali Mirani remained un-determined. It is clear that none of the hurts by means of kicks and fists could be cause of death of deceased in the manner alleged by the prosecution. The possibility the deceased Shaman Ali died natural death cannot be ruled out in the circumstances of present case."

8. The material on record approves the assessment of learned trial Court; hence, the prosecution has failed to bring home guilt of 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, benefit of the same has to be extended in favour of the accused.

9. I do not find any merit in arguments of 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.

10. 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



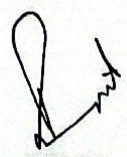
acquittal. Thus, on the examination of the order of acquittal as whole, credence is accorded to the findings of the subordinate Court whereby the accused had been exonerated from the charge of commission of the offence. Therefore, to reverse an order of acquittal, it must be shown that the acquittal 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** 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."

11. In view of above reasons, the impugned acquittal order does not suffer from any illegally 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.

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


JUDGE


JUDGE