

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT, LARKANA
Ct. Acquittal Appeal No. 10 of 2020

Date	Order with signature of Hon'ble Judge
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- 1 For orders on M A No 967 of 2020
- 2 For orders on office objection as flag A
- 3 For orders on M A No 968 of 2020
- 4 For hearing of main case

10.3.2020

Mr. Faiz Muhammad Lark, advocate for the appellant

SHAMSUDDIN ABBASI-J - Through this criminal acquittal appeal, appellant/complainant has challenged the judgment dated 11.02.2020 passed by learned Sessions Judge/MCTC II, Jacobabad whereby the respondents/accused namely Hazaro alias Hazar Khan, Khuda Bux, Dhani Bux and Yaseen involved in case FIR No 09 of 2017 of P S Saddar Jacobabad Distt. Jacobabad registered for an offence under Sections 302, 148, 149 PPC, were acquitted from the charges levelled against them

2 The allegation against the present accused/respondents is that on 06.02.2017 complainant alongwith his uncle Muhammad Yousif, brother Ghulam Rasool and sister Mst.Hawa were available at house when at 09.00 a.m accused Muharam Ali and Khuda Bux armed with knife, Dhani Bux, Hazaro alias Hazar and Yaseen armed with T.T pistols entered into the house of complainant out of whom respondents/accused Hazaro alias Hazar Khan, Dhani Bux and Yaseen pointed their weapons upon complainant party, accused Khuda Bux caught held the arms of Mst.Hawa and accused Muharam Ali caused knife blows to his wife Mst.Hawa who fell down raising screams and died. Consequently, a case vide FIR mentioned above was registered against the accused/respondents

3 During investigation accused Hazaro @Hazar Khan, Khuda Bux and Dhani Bux were arrested and sent up to stand trial while showing co-accused Muharam Ali and Ghulam Yaseen as absconders and formal charge against them was framed to which they pleaded not guilty. The prosecution in order to prove its case against respondents examined P.Ws Dr Farheen at Ex 8 and Tapedar Kamil Khan at Ex 9

and then accused Ghulam Yaseen was arrested and amended charge against accused/respondents was framed to which they pleaded not guilty and claimed trial. Then prosecution examined in all nine prosecution witnesses and after recording statement of accused u/s 342 Cr.PC, hearing arguments of learned counsel for the parties and State counsel, the learned trial Court acquitted the accused/respondents from the charges levelled against them vide impugned judgment while keep case on dormant file against absconding accused Muharam Ali, hence the instant criminal acquittal appeal has been preferred.

4. It is mainly argued by learned counsel for the appellant/complainant that accused/respondents have been named in the FIR with specific role played by them in the commission of offence out of whom accused Hazaro @Hazar Khan, Dhani Bux and Ghulam Yaseen duly armed with T.T pistol overpowered upon complainant party by aiming their weapons upon them while Khuda Bux caught held Mst.Hawa by her arms thereby they facilitated main accused Muharam Ali who killed his wife Mst.Hawa by causing her knife blows, thus they having actively participated in the crime are equally responsible in the commission of murder of innocent lady, therefore, impugned judgment of acquittal is not sustainable under the law and liable to be set aside.

5. Heard learned counsel for the appellant/complainant and perused the record.

6. Although respondents/accused were nominated by the complainant in the FIR but only role of aiming T.T pistols is alleged against accused/respondents Hazaro, Dhani Bux and Ghulam Yaseen while accused/respondent Khuda Bux allegedly caught held Mst.Hawa and it was only Muharam Ali who allegedly caused knife blows to his wife Mst.Hawa which resulted into her death at the spot. It is apparent from the contents of FIR that allegedly accused Khuda Bux was armed with knife and accused Hazaro @Hazar Khan, Dhani Bux and Ghulam Yaseen were armed with T.T pistols but admittedly none of them caused any hurt to deceased. Admittedly all eye witnesses of the occurrence are closely related to the complainant hence they are interested, partisan and inimical to the present accused/respondents whose testimony can not be taken as gospel truth unless it is corroborated by independent evidence. Admittedly there was standing matrimonial dispute between the parties hence false implication of



present accused/respondents can not be taken out of consideration more particularly when it is prevailing tendency of people of this area to involve maximum persons of the opponent party other than actual culprits and allegations against present accused/respondents of catching hold deceased or pointing weapons upon complainant party could easily be leveled in the background of enmity but it is hard to prove unless some cogent and convincing evidence is brought on record. Although recovery of knife is effected from accused Khuda Bux but since the postmortem report does not reflect any mark of violence on the arms of Mst.Hawa then allegation against accused Khuda Bux of holding or tying arms of Mst.Hawa has stood not proved and such recovery of knife from accused Khuda Bux would be of no use which could easily be foisted upon him more particularly when there is admitted family dispute between the parties and prosecution evidence suffer from major contradictions, discussed hereunder.

7 In order to verify the accusation of accused/respondents we have scanned the prosecution evidence brought on record which shows that P.Ws/complainant Abdul Nabi and PW/eye witness Ghulam Rasool deposed in their examination in chief that they were overpowered by accused and were standing outside the room and only heard accused Muharam asked accused Khuda Bux to tie hands of Mst.Hawa so that he could kill her and then they heard screams of Mst.Hawa and then they only saw accused Muharam Ali and Khuda Bux came out of the room whose hands were stained with blood and then accused ran away. In cross examination they further stated that Mst.Hawa was sitting with them in courtyard who on seeing accused persons ran inside room and accused also went into the room and consumed 10 minutes there when he and his witnesses were standing outside room at the distance of 15 feet and further admitted that they did not witness the actual part of killing of Mst.Hawa, which is totally contradictory to the statement of complainant given in his own FIR whereby allegedly within their sight accused Khuda Bux caught held hands of Mst.Hawa and accused Muharam Ali caused knife blows to Mst.Hawa and there is no mention in the FIR regarding running of Mst.Hawa into room, which has created serious doubt into the veracity of prosecution story. In such eventuality the possibility of false involvement of respondents/accused in the instant case by complainant with malafides and ulterior motives cannot be ruled out which creates doubt in a prudent mind regarding false involvement of respondents in

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the present case in the background of previous matrimonial dispute which is admitted by the complainant in the FIR itself.

8. It is settled principle of law that the prosecution is duty bound to prove its case beyond any shadow of reasonable doubt against an accused person and that multiple doubts in the prosecution case are not required to record judgment of acquittal but a single reasonable doubt is sufficient to extend benefit thereof to the accused as a matter of right. In this regard, reliance is placed on the cases reported as *Mst. Shamshad v. The State* (1998 SCMR 854), *Waqar Ahmed v. Shaikat Ali and others* (2006 SCMR 1139) and *Akhtar Ali and others v. The State* (2008 SCMR 6).

9. The scope of interference in appeal against acquittal is most narrow and limited as after acquittal of the accused by the Court of competent jurisdiction, presumption of double innocence is attached to the acquittal judgment, which normally does not call for interference unless the acquittal judgment or order is found arbitrary, capricious, fanciful and against the record which is lacking in the case in hand. It is settled proposition of law that the Court of appeal should not interfere into judgment of acquittal simply for the reason that on the re-appraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusion, should not be upset, except when patently perverse, suffering from serious and material factual infirmities which is not in the case in hand. Reliance can be placed in the case of *State and others v. Abdul Khaliq and others* (PLD 2011 SC 554).

10. In view of what has been discussed above, we are of the considered opinion that the prosecution has miserably failed to prove its case against accused/respondents beyond any shadow of reasonable doubt therefore, finding no illegality in the impugned judgment of acquittal which is based on proper appreciation of the evidence on record, the instant criminal acquittal appeal being devoid of merit is dismissed in limine.


JUDGE