

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Acquittal Appeal No.D-185 of 2006

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.

Mr. Justice Zulfiqar Ali Sangi.

Date of hearing: 19.09.2019

Date of decision: 19.09.2019

Appellant: Alam Ali

Respondent No.1: Muhammad Imran.

Respondent No.2: The State.

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None present for the appellant.

Mr. Noorul Haq Qureshi, Advocate for respondent No.1.

Ms. Sana Memon, Assistant P.G for the State.

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J U D G M E N T

This acquittal appeal has been filed by the appellant namely Alam Ali, who is complainant in Sessions Case No.266 of 2003 emanating from Crime No.45/2003 of P.S Tando Jam u/s 302 PPC, impugning the judgment dated 30.08.2006, whereby respondent Muhammad Imran has been acquitted.

2. Late Syed Jawaid I. Bukhari, advocate, had filed power on behalf of appellant / complainant. Subsequently he passed away and a direct notice was ordered to be issued to the appellant. However, the case diaries reflect that for the last several dates the appellant has not been appearing and this acquittal appeal is pending since 2006.

3. In view of such peculiar facts, we have gone through the record and proceedings of the case with the assistance of Mr. Noorul Haq Qureshi, Advocate, who is appearing for the respondent and Ms. Sana Memon, Assistant P.G, who is appearing for the State. As per brief facts of the case, son of the complainant namely Ehsan (deceased) went missing on 11.06.2003 at 05:00 p.m and subsequently his dead body was found from sugarcane crop of Khan Muhammad Jamali lying in a watercourse. The complainant reported such matter to the police on 12.06.2003 at 2000 hours stating that his son had been killed by unknown persons, which was duly incorporated in the book kept u/s 154, Cr.P.C. However, on next day viz. 13.06.2003 the complainant recorded his further statement and implicated the respondent stating that he had come to know that

the respondent is involved in this case. On the basis of such further statement as well as statements u/s 164, Cr.P.C of the P.Ws which too were in the line of the complainant's statement, the respondent was challaned and the case was tried against him. At the trial the prosecution examination as many as 08 witnesses, who have produced all the relevant documents. However, at the culmination of trial the respondent was acquitted by the trial court vide impugned judgment as stated above.

4. Ms. Sana Memon learned Assistant Prosecutor General Sindh has submitted that against the respondent only last seen evidence has been alleged by the complainant and witnesses which too is shaky as all the witnesses are close relatives of the complainant and the facts alleged by them in their evidence tend to establish that they were aware of such information even before the registration of F.I.R. but surprisingly did not disclose it to the complainant or to the police. She has further submitted that the statements u/s 161 and 164, Cr.P.C of such witnesses were recorded after a considerable delay which is an additional factor creating doubt over veracity of the case. In such backdrop she has supported the impugned judgment.

5. Mr. Noorul Haq Qureshi learned Counsel for respondent has gone through the entire evidence and has submitted that no direct evidence is available against respondent and even the medico legal officer in his evidence has not ruled out a possibility of death of deceased due to falling on the ground facewards. He has further stated that no ligature mark was found around the neck of the deceased which rules out any possibility of human hand in the death of deceased.

6. After hearing the parties and perusing available material, we have not found any evidence directly connecting the respondent in this case. The complainant and P.Ws have alleged in their evidence that the deceased was last seen going with the respondent. The complainant in his evidence has stated those facts and has further disclosed that he was so informed but has not disclosed the names of those persons in his evidence who conveyed him such information. The learned trial court after evaluating the entire evidence has given cogent reasons in support of its findings of acquittal recorded in favour of respondent. Not only the evidence of witnesses but the evidence of medico legal officer has also been considered in proper perspective by the trial court. It is settled that a double presumption of innocence runs in favour of an acquitted accused and that presumption can only be reversed on cogent material available on record which rules out any other possibility except conviction of the accused. In this case we have seen no such material is available. On the contrary it is apparent that the

prosecution has not been able to produce any incriminating evidence directly connecting the respondent with the commission of the offence.

7. In the facts and circumstances, we do not find any material to reverse the findings of acquittal recoded in favour of respondent and agree with the opinion of learned Assistant Prosecutor General Sindh that the findings of the trial court are based on proper appreciation of evidence. This being the position, we dismiss this acquittal appeal.

JUDGE

JUDGE

Ali Haider