

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

Cr. Acquittal Appeal No.D-120 of 2019

Cr. Appeal No.D-106 of 2020

DATE ORDER WITH SIGNATURE OF JUDGE(s)

11.01.2023

Mr. Mian Taj Muhammad Keerio, Advocate for appellant in Cr. Acquittal Appeal No.D-120 of 2019.

Mr. Ahsan Gul Dahri, Advocate for appellant in Cr. Appeal No.D-106 of 2020.

Mr. Nazar Muhammad Memon, Addl. P.G Sindh.

**MOHAMMAD KARIM KHAN AGHA, J:-** The respondents in Criminal Acquittal Appeal No.D-120 of 2019 were tried in the Court of 5<sup>th</sup> Additional Sessions Judge/MCTC, Shaheed Benazirabad in Sessions Case No.674 of 2017 arising from Crime No.35 of 2017 of PS Bandhi for the offence under sections 302, 311, 148, 149 PPC and after full-fledged trial vide impugned judgment dated 18.09.2019 the respondents were acquitted in respect of the offences for which they have been charged.

Brief facts of the prosecution case are that the complainant Ayaz Ali had lodged the instant FIR on 04.06.2017 stating therein that they are 10 brothers and Muhammad Bux aged about 35/36 years was their elder brother and they were having medical store and house besides Bandhi van stop which store was running by his brother Muhammad Bux and he was residing in that house. It is alleged by complainant that yesterday evening time he and his relative Ali Mardan s/o Ali Nawaz Jamali and Ghulam Murtaza s/o Bakhshal Khan Jamali both residents of village Ali Nawaz Jamali had come at their house and after closing the store his brother Muhammad Bux had also come at the house at night time, where they after chitchatting and taking meal went to sleep. It is alleged by the complainant that on 03.06.2017 at about 0315 hours, the accused Muhammad Khan s/o Sirajuddin Mughal, Fakir Muhammad s/o Shafi Muhammad Rajput, Ghulam Muhammad s/o Zafar Ali Rajput, Irshad s/o Allah Banda Rajput, Mubarak s/o Joudeen Rajput, Sabir s/o Aslam Rajput, Tarif s/o Saweria Rajput, Niaz s/o Zafar Ali Rajput had come at their house and awakened them and said to his brother Muhammad Bux that wife of Ghulam Muhammad is not feeling well and requested for checking of her

blood pressure and his brother had gone with them and they were slept at their house. At about 4-00 am. they heard the fire arm reports from the house of Ghulam Muhammad Rajput and on such fire arm reports they came outside the house and came to know that accused Muhammad Khan Mughal and other named accused persons had committed the murder of his brother Muhammad Bux in the house of Ghulam Muhammad on the allegation of "Karo". He informed such incident at PS Bandhi and he along with PWs had come at the house of accused Ghulam Muhammad and saw that the police was already present there and his brother was having sustained three fire shots on his chest and two fires on his forehead and blood was oozing and besides him the dead body of Mst. Parveen was lying and she had sustained two fire shots on her abdomen and one on her chest and blood was oozing. After completing necessary formalities, police took the dead bodies to RHC Bandhi for postmortem examination and after postmortem the dead body of his deceased brother Muhammad Bux was handed over to them for buried purpose. The complainant brought the dead body of his brother at their village and after burying had come at PS Bandhi and lodged the instant F.I.R against the above named accused persons.

Being dissatisfied with the acquittal of the respondents, the appellant has moved this Criminal Acquittal Appeal No.D-120 of 2019 against the said acquittal.

Learned counsel for the appellant has mainly contended that the learned trial Court erred in its judgment as eye witnesses have shown the full involvement of the respondents in the commission of murder of deceased. He took us to PW-1 Ayaz Ali and PW-2 Ali Mardan, who are eye witnesses of the murder who simply stated that they **came to know** that the above respondents were involved in the murder. This is clearly hearsay evidence and is of no legal value. The case of the acquitted respondents is also on different footing to that of the convicted accused against whom there was more evidence. In the impugned judgment at point No.2 the learned trial Court has set out reasons for acquitting the respondents which are reproduced as under:

*"While the case of other accused persons namely Muhammad Khan & Faqir Muhammad is different from the above named present accused persons as the accused Muhammad Khan and Fakir Muhammad were neither seen at the place of incident by the eyewitnesses/police officials nor they are nominated in Crime No.33 of 2017 which has been registered by the police on the day of incident regarding the alleged incident and during investigation I.O/police had found that the name of*

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*accused Khan Muhammad and Fakir Muhammad had exaggerated which tend to show that the evidence of prosecution witnesses regarding involvement of accused Muhammad Khan & Fakir Muhammad in commission of instant offence is not enough to burden them with liability of committing the offence. Accordingly the prosecution has failed to bring home the guilt of accused persons Muhammad Khan & Faqir Muhammad beyond reasonable shadow of doubt, hence, no cogent/satisfactory evidences are available on record against these accused persons Muhammad Khan & Faqir Muhammad, therefore, the case against them is not free from doubt".*

As a matter of law appeal against acquittal has a very narrow scope and it is well settled by now that the acquitted persons acquire a double presumption of innocence.

We have gone through the evidence on record and have found that learned counsel for the appellant has not been able to point out any legal infirmity in the impugned judgment in so far as it relates to the respondents so as to override the double presumption of innocence in appeal against acquittal. In particular there are no eye witnesses of the respondents' involvement in the murder and no other supportive evidence is available against the respondents and even the report under Section 173 Cr.P.C in respect of the respondents was initially filed in "C" class. As such, we dismiss the Criminal Acquittal Appeal No.D-120 of 2019.

The appeal against conviction being Cr. Appeal No.D-106 of 2020 shall be put-up before the Single Bench of this Court after assigning a new number on it with notice to all concerned within four (04) weeks from the date of this order.

*\*Hafiz Fahad\**