

THE HIGH COURT OF SINDH, AT KARACHI

Criminal Acquittal Appeal No. 7 of 2019

Present:

Justice Zafar Ahmed Rajput

Justice Tasneem Sultana.

Appellant	:	Mirza Saqib Pasha s/o Mirza Mumtaz Ahmed, through Mr. Syed Ali Ahmed Tariq, Advocate
Respondents No.1 to 5	:	1. Abbas Haider s/o Abdul Latif 2. Abdul Latif s/o Muhammad Akbar 3. Mujtaba Haider Zaidi s/o Syed Ilyas Haider 4. Zahid Ali Awan s/o Sher Muhammad Awan 5. Mst. Faiza Ambreen Awan d/o Abdul Latif (Nemo)
Respondent No.6	:	The State, through Mr. Mumtaz Ali Shah, APG, Sindh
Date of hearing	:	21.05.2025
Date of order	:	<u>21.05.2025</u>

ORDER

ZAFAR AHMED RAJPUT, J:- This Criminal Acquittal Appeal under section 417(2A), Cr. P.C. is directed against the judgment, dated 01.12.2018, passed in Session Case No. 772 of 2015, arisen out of Crime/FIR No. 79 of 2015, registered at P.S. Gadap City, Karachi under sections 320/203/34, PPC, whereby the learned Addl. Sessions Judge-IV, Malir, Karachi ("**Trial Court**") acquitted the respondents No.1 to 5-accused of the charge by extending them benefit of doubt.

2. Learned counsel for the appellant-complainant has contended that the findings of acquittal recorded by the Trial Court is beyond the evidence on record produced by the appellant and PWs.; that the respondent No. 1 intentionally gave a false statement to the authorities of Baqai Hospital, Karachi that the deceased was her sister and avoided to get her post-mortem to conceal the actual offence of murder by giving it color of a road incident; that according to the Provisional Post-Mortem Examination Report (Ex. 6/B), there were several surface wounds and injuries on the person of the deceased; that P.W-4 Dr. Nadia, WMO (Ex. 6) initially reserved the cause of death of the deceased for want of

laboratory reports; later, on receiving the same, she issued Final Post-Mortem Examination Report (*Ex. 6/C*) on 01.08.2015, wherein she opined the assault on her (deceased) nose, as the cause of her death, which medical evidence on record has not been considered by the Trial Court in its true perspective while recording acquittal of the respondents-accused vide impugned Judgment, which is not sustainable in law.

3. Conversely, learned APG has fully supported the impugned judgment.
4. Heard and record perused.
5. It reflects from record that the appellant-complainant resided in Nawabshah and his daughter, Iqra, was doing her house-job at Civil Hospital, Hyderabad where she used to reside. On 04.07.2015, he was available at his house when Abdul Latif and Zahid Awan (*respondents No. 2 & 4, respectively*) informed him that Abbas Haider (*respondents No. 1*) was bringing dead body of Iqra. He received her dead body lying in an ambulance, but Abbas Haider was not available. He then came to know that Abbas Haider alongwith Iqra was going from Hyderabad to Karachi via Super Highway in his car and when, at 1550 hours, they reached Mirza Jalali Baba Mazar, Wadi-e-Hussain, Abbas Haider committed accident due to rash and negligent driving and Iqra succumbed to injuries; her dead body was taken to Baqai University Hospital, Karachi where police also reached but Abbas Haider gave a false statement that he was her real brother and took the dead body from hospital without performing post-mortem. The appellant, through Nawab Shah police, got the post-mortem of the body of the deceased performed at Civil Hospital, Nawab Shah, thereafter on 10.07.2015, he lodged the aforesaid F.I.R. After completion of investigation, police submitted the charge-sheet by adding section 376/109, PPC. The Trial Court on receiving R&P of the case, framed the charge against the respondents, to which they pleaded not guilty and claimed to be tried vide their pleas. Thereafter, the Trial Court recorded the evidence of prosecution witnesses,

statement of respondents-accused under section 342, Cr. P.C., and after assessing the evidence on record, acquitted the respondents-accused under section 265-H (1), Cr. P.C., vide impugned judgment.

6. It further reflects that the entire case of the prosecution that the appellant's daughter died not in car fatality but on account of assault on her, rests on the medical evidence produced by P.W-4 Dr. Nadia, Women Medical Officer, (Ex. 6). She has opined in her Final Post-Mortem Examination Report (Ex. 6/C) the cause of death of the deceased as assault on her nose, resulting in the internal bleeding causing asphyxia due to airway obstruction, which further resulted in respiratory and cardio arrest. However, in her cross-examination, she clarified that the question of rape did not arise as the chemical reports came in "Negative". She has admitted that it was her first autopsy which she performed and that prior to this, she did not perform any post-mortem. It is also an admitted position that Ex. 6/C was challenged before the Special Medical Board, Services Hospital, Karachi ("**SMB-Karachi**"), which concluded its opinion (Ex. 11/A), as under:

"On going through the autopsy report, there are many technical shortcomings. On External Examination she has mentioned bruises resembling teeth marks, but has not mentioned colour of bruises so as to have idea about age of injury. Same is case in injury No.2 i.e. bruises on left breast. Injury No.3 Bruises on abdomen 10 cm X 5 cm brownish in colour which indicate about 2-3 days old. Injury No.4 thigh scratches 3 X 3 cm, injury No.5 swelling right wrist and injury No.6 scratches on back side vertical in direction, but injury No.4 and 6 she has not mentioned about age of scratches whether fresh or reddish-brown scab informed. In her final supplementary report, she has mentioned about attempted rape, but in external findings she has not mentioned about struggle marks such as bruises on wrists and forearm except swelling on right wrist. No bruises over shoulder, neck, bruises and abrasions around mouth, no impression of teeth on inner sides of lips, broken nail, no tearing or stains on the clothes and above all nothing has been mentioned about genitalia. Dr. Nadia Ali admitted that she sought help from a senior doctor of Gynae Department

P.M.C but the lady doctor asked her not to disclose her identity. Dr. Nadia besides not mentioning name of that doctor did not mention any findings about state of genitalia i.e. vagina hymen and other adjacent parts. During internal Examination although she must have gone through police papers where Doctor at Baqai Hospital had mentioned internal hemorrhage, Dr. Nadia has not mentioned about any collection of blood in thoracic or abdominal cavity and has mentioned all internal organs as normal, which indicate bleeding from nose was not due to injury to thoracic or abdominal organs, so she should have opened skull to rule out bleeding due to head injury.

So, there are so many loop holes to arrive at a conclusion. The only possibility left is that specimens sent to Chemical Examiner's Lab, Sukkur at Rohri which have been declared negative for poisons blood and semen, bottle No.9 which contained hair, nail and a rib, if some material from it is saved, the nail may be sent for DNA analysis. Article 1,2,3 i.e. vaginal swabs for DNA and parcel 4 containing clothes be also sent for DNA after ultra violet fluoroscopy to make stains visible if any being present, for D.N.A.

The Members of the Special Board are of unanimous Opinion that this case may be referred to Special Medical Board at P.M.C Nawabshah due to easy availability of concerned doctor and witnesses and more over the Special Medical Board at P.M.C Nawabshah can include co-opted member, the senior doctor from Gynae. Department P.M.C Nawabshah, who guide Dr. Nadia Ali so as to get vital information about examination & findings of genitalia of deceased Dr. Iqra. Moreover, shifting of Board will hasten the proceedings and provide justice at the earliest possible time."

7. Pursuant to above directions of SMB-Karachi, the Secretary to Government of Sindh, Health Department, Karachi constituted Special Medical Board at P.M.C., Nawabshah ("**SMB-Nawabshah**") before whom PW-4 Dr. Nadia appeared and clarified her position. The SMB-Nawabshah, after going through relevant record, vide its findings/opinion Ex.11/B, unanimously agreed with all the deficiencies and technical short comings as pointed out by the SMB-Karachi and opined the Provisional and Final Post-Mortem Reports as substandard and no sexual act with the deceased just before her death.

8. Record reveals that just after registration of the F.I.R., the IO/Inspector Choudhry Nazar Hussain (Ex.8) inspected the place of incident and seized the accidental car under Vehicle's Seizer Memo (Ex.7/K), prepared by him in presence of the appellant-complainant and mashir SIP Anwar Ahmed (PW-7), which showed that the tyre-rod of the car was broken. The accidental car was examined by Motor Vehicle Inspector, Sindh Police, Karachi who, vide Motor Vehicle Accident Report (Ex.8/G), noted the damages of car viz. front bumper damage, wind screen broken, body completely scratched and dented.

9. The aforementioned medical evidence being full of deficiencies and technical short comings cannot be relied upon for recording conviction of the respondents-accused. On the contrary, the Vehicle's Seizer Memo (Ex.7/K) and Motor Vehicle Accident Report (Ex.8/G) lead to inference that the appellant's daughter died in car fatality. Hence, the Trial Court has rightly extended benefit of doubt to respondents-accused while recording their acquittal.

10. It would be relevant to mention here that the extraordinary remedy of an appeal against an acquittal is different from that of an appeal against the conviction and sentence because a presumption of double innocence of the accused is attached to the order of acquittal. Thus, on the examination of an order of acquittal as a whole, credence is accorded to the findings of the Trial Court whereby the accused has 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 Apex 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* (2008 SCMR 329) that "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."

11. For the foregoing facts and reasons, we are of the view that 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 (2A), Cr. P.C. Hence, this Appeal is dismissed, accordingly.

12. Above are the reasons of our short order dated 21.05.2025

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