IN THE HIGH COURT OF SINDH, KARACHI

Criminal Acq. Appeal No.431 of 2019

Present:
Justice Zafar Ahmed Rajput.
Justice Syed Fiaz ul Hasan Shah.

Appellant	:	Gul Hasan s/o Muhammad Juman, through Mr. Muhammad Ashraf Qazi, Advocate.
Respondent No. 1	:	The State, through Mr. Ali Hyder Saleem, Addl. Prosecutor General **(Addl. PG)**, Sindh
Respondents No. 2 & 3	:	Manthar Ali s/o Haji Khan & Muhammad Soomar @ Ramzan s/o Noor Muhammad *(Nemo)*

Date of hearing	:	10.06.2025
Date of order	:	10.06.2025

O R D E R

ZAFAR AHMED RAJPUT, J: - The respondent No. 2 and 3, Manthar Ali s/o Haji Khan and Muhammad Soomar @ Ramzan s/o Noor Muhammad, respectively, were tried by the Court of Addl. Sessions Judge-I/Model Criminal Trial Court, Thatta **(Trial Court)** in Session Case No.167 of 2015, arisen out of F.I.R. No.28 of 2015, registered at P.S. Jherruck, Thatta under section 302, 201, P.P.C., and after a full-fledged trial, they were acquitted of the charge by the Trial Court vide judgment, dated 27.06.2019, which has been impugned by the appellant/ complainant, Gul Hasan, through this Criminal Acquittal Appeal.

2. Learned counsel for the appellant contends that the entire prosecution case rests on "last seen evidence" of Khadim Hussain (PW-3) and Mehboob (PW-4), who have fully implicated the respondents/ accused in their depositions but the Trial Court ignoring the same has recorded acquittal of the said respondents. He further contends that it is a

fit case wherein Trial Court should have recorded conviction of the said respondents and awarded them sentence in accordance with law; hence, impugned judgment is not sustainable in law being outcome of misreading and non-reading of the evidence on record.

3. Conversely, learned Addl. P.G fully supports the impugned judgment.

4. Heard and record perused.

5. Briefly stated facts of the case are that, on 20.04.2015 at 1515 hrs., the appellant/complainant lodged the aforesaid F.I.R. for murder of his brother, Abdullah, 30/31, alleging therein that the respondent No.2, who was a soldier in army and residing in his village, complained him about illicit relations of Abdullah with his wife and threated to kill him; that on 19.04.2015 at about 2100 hours, after having dinner Abdullah went out of the house; that after some time, his neighbors Mahboob and Khadim Hussain came to his house and informed him that the respondent No.2 was taking to Abdullah towards eastern side while beating and dragging him. Upon receiving such information, he along with his son Abdul Qadir, Mehboob and Khadim Hussain made search for Abdullah throughout night and on next day i.e. 20.04.2015 at about 1300 hours, they found the dead body of Abdullah in Karachi Wah, near water supply, riddled with three bullets on the nape and marks of pistol's butt blows; that on their information, police came there and after completing legal formalities brought the dead body to RHC Jherruck, from there to Civil Hospital, Makli and after post-mortem, handed over the same to him.

6. It may be relevant to observe here that "last seen evidence" is a type of circumstantial evidence that suggests that two persons were lastly seen together alive, and then one of them was found dead. It is based on the idea that the living person was responsible for the death of the other.

7. It is an admitted position that there is no eye-witness of the incident. Khadim Hussain (PW-3) and Mehboob (PW-4) claim to be the witnesses of last seen. They have deposed that, on 19.04.2015 at about 09:00 or 09:30 p.m., they saw the respondent No.2 beating deceased Abdullah with *lathi* and dragging him away towards Karachi Wah; that they came to appellant and disclosed entire facts to him. In cross-examination, PW-3, Khadim Hussain has stated that the alleged place was at the distance of 50 to 60 paces from the appellant's house and they did not try to rescue deceased Abdullah from the clutches of respondent No.2 and that they did not inform the police at that moment.

8. It is noticeable that despite seeing the respondent No.2 beating and dragging the deceased, none of the alleged eye-witnesses intervened to rescue him, which was not a natural response which could be expected from a man at the spot in such situation. The house of the appellant was situated at the distance of 50 to 60 paces from the place of alleged beating, but they failed to reach immediately at the place of occurrence. Despite so-called criminal intimidation to cause death, allegedly issued by the respondent No.2, the appellant failed to lodge the report promptly at police station. As regard motive, there is nothing on record to establish that the appellant had ever informed to any one of his relatives or friends regarding alleged criminal intimidation. Having illicit relations with

someone's wife is considered a matter of shame in our society. In such cases, it is hardly expected that a person before committing shame killing would reveal to any person his intention to do so.

9. In view of above, entire narrations of the facts in F.I.R. by the appellant; witnessing of the alleged P.Ws. beating and dragging the deceased by the respondent No.2 do not instill and evoke a feeling of confidence. Hence, the prosecution has failed to bring on record any confidence inspiring evidence to connect the respondents No.2 and 3 with the alleged offence.

10. It may be observed 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 subordinate 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)**, 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. For the foregoing facts and reasons, we are of the view that 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. Hence, this Appeal is dismissed, accordingly.

JUDGE

JUDGE

Abrar