

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA**

**Cr. Acquittal Appeal No. D-20 of 2021**

Syed Shafqat Shah Versus Khalid Hussain Mastoi and others

**Cr. Revision Application No.D-06 of 2021**

Syed Shafqat Shah Versus Gaibi Mastoi and others

1. For Orders on office Objection "A"
2. For orders on MA No 1716/2021 (E/A)
3. For hearing of main case

Before:

**Mr. Justice Muhammad Saleem Jessar**

**Mr. Justice Nisar Ahmed Bhanbhro**

Appellant / Applicant: Syed Shafqat Shah  
Through Mr. Habibullah G. Ghauri, Advocate.

Respondent: Khalid Hussain Mastoi  
Through Mr. Muhammad Ali Pirzada, Advocate.  
(In Cr. Acq: Appeal No.D-20/2021)

Respondent: Gaibi and Nazir  
Through Mr. Ahsan Ahmed Qureshi, Advocate  
(In Cr. Revision No.D-6/2021)

The State: Through Mr. Ali Anwar Kandhro  
Additional Prosecutor General, Sindh.

Date of hearing: 13-05-2025

Date of Decision: 13-05-2025

**J U D G M E N T**

**Nisar Ahmed Bhanbhro J.-** Through this common Judgment, we propose to decide the fate of the appeal against acquittal of accused Khalid Hussain Mastoi and Criminal Revision Application seeking enhancement of sentence of Convicts Gaibi and Nazir from life to Death, both filed by the complainant Syed Shafqat Shah against the judgment dated 26.03.2021 passed by the Court of Learned 1<sup>st</sup> Additional Sessions Judge Kamber (Trial Court) in Sessions case No.353 of year 2020 (Re- The State V/s Gaibi Mastoi and others).

2. Succinctly stated, the facts of the prosecution case are that on 23-07-2020 at about 07:15 PM the accused namely Nazir, Gaibi and Abdul Waheed being duly armed with pistols by sharing common intention with an unknown armed accused shot dead complainant's father Syed Akbar Shah on road beside his house located at village Chakyani, due to old murderous dispute in presence and within the sight of Syed Shafqat Shah and Syed Mashooq Shah and made their escape good. The Complainant set law into motion by recording FIR against three identified and one unknown accused person.

3. Investigation took its course, wherein the complainant recorded his further statement and disclosed the name of unknown accused as Khalid Hussain. Police arrested accused Gaibi and Khalid Hussain and on completion of investigation submitted report under section 173



CrPC before the concerned Magistrate showing co-accused Nazir and Abdul Waheed as absconders. The accused Nazir Hussain was also arrested and supplementary report under section 173 CrPC was filed before Learned Magistrate. The report was accepted and proceedings to nab absconding accused were initiated but police failed to trace him, thus accused Abdul Waheed was declared proclaimed offender.

4. The case being exclusively triable by the Court of Sessions, Learned Magistrate sent the case to the Court of Learned Sessions Judge for Trial. The case was assigned to the Trial Court for disposal in accordance with law. The copies of police papers in compliance of section 265 – C CrPC were supplied to accused, they were indicted for charge, to which they pleaded not guilty and claimed trial.

5. At trial, prosecution examined PW-1 Dr. Kishore Kumar at Ex:6, PW-2 Complainant Syed Shafqat Shah at Ex:7, PW-3 eye witness Mashooque Shah at Ex:8, PW-4 Mashir Raja Tajmal Hussain at Ex:9, PW-5 Author/I.O/ASI Abdul Sattar Brohi at Ex:10, PW-6 Tapedar Ghulam Yaseen Ratti at Ex:11 and PW-7 Corpse bearer PC Abid Hussain at Ex:12. Learned Prosecutor closed evidence on behalf of the State. The statement of accused under section 342 Cr.P.C was recorded in which they denied prosecution charge, professed innocence but did not opt to record statement on oath in terms of section 340(2) Cr.P.C and any witness in defense.

6. Learned Trial Court after hearing the parties through Learned Counsel, acquitted the accused Khalid Hussain Mastoi, convicted and sentenced the accused Gaibi and Nazeer Hussain both sons of Manzoor Ahmed Mastoi for committing offence of murder (qatl-i-amd) of complainant's father Syed Akbar Ali Shah and sentenced them to undergo Rigorous Imprisonment (RI) for Life as Tazir for offence u/s 302(b) PPC r/w section 34 PPC with direction to compensate the legal heirs of the deceased to the tune of Rs.10,00,000/- each in terms of section 544-A Cr.P.C and in case of default to undergo S.I for six months more, in addition to substantive sentence.

7. Mr Habibullah G. Ghauri Learned Counsel for the Appellant / Complainant contended that there was ample evidence against the accused / Respondent Khalid Hussain for sharing common intention in the commission of murder, though his name did not transpire in FIR but he was implicated in the case through supplementary statement and during trial he was identified by the witness as the accused involved in the commission of crime. He further contended that the prosecution proved its case beyond shadow of doubt and Learned Trial Court convicted the Respondents Ghaibi and Nazir and sentenced them to suffer RI for Life, without assigning any mitigating circumstances for awarding lesser punishment. He contended that once prosecution proves its case beyond shadow of doubt then accused should be convicted and sentences under section 302(a) PPC for death. He prayed for setting aside the impugned judgment to the extent of acquittal of accused Khalid Hussain and modification of the impugned judgment by enhancing the sentence of convicts Gaibi and Nazir from life to death.

8. Mr. Mohammed Ali Pirzada Learned Counsel for the Respondent Khalid Hussain in Criminal Acquittal Appeal No D 20 of 2021 contended that accused is innocent and he was falsely implicated in the case. Though the complainant and accused Khalid Hussain resided in same locality but his name did not transpire in FIR, neither features nor description of the unknown accused were detailed in FIR. Accused was illegally confined at Police Station and he was recovered in a raid conducted by Learned Magistrate, thereafter, he was implicated in



the present case. He contended that after his arrest no parade for identification of accused was held. The role assigned to unknown accused was that of mere presence, the case of the prosecution to the extent of Respondent Khalid Hussain was doubtful and he was rightly acquitted by the Trial Court. He prayed for dismissal of appeal against acquittal.

9. Mr. Ahsan Ahmed Qureshi, Learned Counsel for Respondents Gaibi and Nazir in Criminal Revision Application No.D-6 of 2021 contended that prosecution case was doubtful which warranted acquittal of accused but they were convicted and sentenced to RI for Life. The accused / Respondents were assigned role of causing fire shot injuries over elbow and forearm of deceased, as per medico legal report (autopsy report) the said injuries were not sufficient to cause death and cause of death was assigned for the injury caused over chest, which was attributed to absconding accused Waheed. He prayed for dismissal of Revision Application as no case for enhancement of sentence was made out.

10. Mr Ali Anwer Kandhro Learned Additional Prosecutor General supported the impugned judgment and contended that there was no misreading and nonreading of the evidence and Learned Trial Court on the basis of material on record rightly recorded the acquittal of Respondent Khalid Hussain and convicted the Respondents Gaibi and Nazir under section 302 PPC and sentenced them to RI for life.

11. Heard arguments, examined material on record with the able assistance of Learned Counsel for parties.

12. We have conducted in depth analysis of the evidence and re-examined the record and find that the Trial Court acquitted Respondent No.1 Khalid Hussain on the following points: Firstly, the PWs who are sons of deceased Akber Shah did not name the accused in FIR. Secondly, the prosecution failed to explain the non disclosure of name of the accused in FIR his face feature and descriptions; Thirdly, accused was implicated in the case on the basis of statements of witnesses under section 161 CrPC and he was not assigned any overt act in the occurrence. Fourthly, he was recovered in a raid conducted on police station pursuant to an application under section 491 CrPC, police filed report before Learned Sessions Court wherein Respondent Khalid Hussain was not shown as accused in the present case. Fifthly, motive against the accused was not proved by the prosecution, so also no incriminating recovery was effected. The above-stated discrepancies in the ocular account of the eye-witnesses cannot be discarded. These discrepancies diluted the entire prosecution story, whose case rested on the statement of eye-witnesses, who all are closely related to the Deceased. No one else was present at the place of occurrence. This creates doubt in their testimony, because both the accused and eye witness belong to same vicinity and the complainant party failed to offer any explanation of omission to name the Respondent Khalid Hussain and then his implication through 161 CrPC statement. The prosecution case to the extent of Respondent Khalid Hussain suffers from dishonest improvements, which created reasonable doubt in the prudent mind. According to settled principle of law, benefit of reasonable doubt has to be extended in favour of accused.

13. Moreover, it is well settled exposition of law, that acquittal of accused attaches double presumption of innocence, limiting and narrowing down the scope of interference in appeal against acquittal. The finding of acquittal adds to the presumption of innocence, the High Courts are very slow in interfering acquittal judgments, unless it is shown to be perverse, passed in gross violation of law, or suffering from the errors of grave misreading or non-reading of the evidence. On reappraisal of the evidence available on record, it is concluded



that the prosecution has failed to prove the charge against the Respondent Khalid Hussain beyond shadow of reasonable doubt, his acquittal is not suffering from any illegality or irregularity, thus we are in agreement with the findings record by Learned Trial Court accordingly dismiss the appeal against acquittal of accused Khalid Hussain.


14. Honorable Supreme Court of Pakistan in the case of Sardaran Bibi Versus The State reported in 2024 SCMR 1116 has been pleased to hold as under:

“It is a settled principle of law that for giving benefit of doubt there may not be many circumstances, as a single confidence inspiring doubt is enough to give benefit of the same to the accused. Moreover, it is well settled exposition of law that the scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The Courts are very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, or suffering from the errors of grave misreading or non-reading of the evidence.”

15. Adverting to the criminal revision application filed by the complainant seeking enhancement of sentence from life to death, we find that the appeals filed by the Convicts Gaibi and Nazir against their conviction are pending adjudication on merits before a single bench of this Court, any findings as to their guilt or otherwise may prejudice the case of either side, therefore we will not enter into in depth examination of the evidence on record. Perusal of prosecution case reveals that the convicts Gaibi and Nazir were assigned the role of causing injuries over the arms of deceased, which per medical evidence was not fatal to cause death of deceased and they have been convicted by trial Court for the charge of offence punishable under section 302 read with section 34 PPC for sharing common intention with the absconding accused Waheed. Learned Counsel for the Complainant failed to point out any illegality or infirmity in the impugned judgment that may warrant interference of this Court. Case for enhancement of sentence would not be made out, on the sole ground if trial court omits to mention the mitigating circumstances for awarding lesser punishment of life, which otherwise appeared to be within the settled expositions of law enunciated by the Honorable Apex Court in like nature cases.

16. Honorable Supreme Court of Pakistan in the case of Haji Muhammad Ilahi Versus Muhammad Altaf alias Tedi and others reported in 2011 SCMR 513 has been pleased to hold as under:

It is a settled law in the case of enhancement or reversal of sentence where it depends upon finding of fact, such fact would not be reversed. As in the case for enhancement to death unless amongst others there is either misreading or non reading of evidence or any substantial point and/ or has been a miscarriage of justice ordinarily there is no interference. One test to determine, whether, there has been miscarriage of justice would be to answer a further question whether, the view taken by the lower court on question of reduction of sentences is impossible? The reason given by the learned High Court in extending the benefit for modifying sentence are not irrelevant and extraneous to the record. We are of the opinion that the power to enhance sentences should be sparingly exercised by this Court and sentences should be enhanced only in cases where the failure to enhance the sentence would lead to a serious





miscarriage of justice. The mere fact that had this Court been trying the case, might have imposed the culprit sentence is not sufficient reason for enhancement or conviction. It is a settled law that this Court can look into the subsequent events.

17. Though Learned Trial Court did not assign any mitigating circumstances for awarding lesser punishment for life to the Respondents but suffice to say that both the convicts are brothers inter se and findings as to their guilt are to be reappraised during hearing of appeal, wherein the Learned Bench of this Court seized with the matter would be in a better position to reappraise the evidence on record. we do not find any illegality or infirmity, misreading or non-reading of evidence warranting enhancement of the sentence of the convicts/ Respondents, for what has been discussed herein above, we find no substance in the application for enhancement of sentence, which is accordingly dismissed.

  
JUDGE

  
JUDGE

Asghar/P.A