

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Crl. Acq. Appeal No.52 of 2012

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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***Before: Mr. Justice Nazar Akbar  
Mr. Justice Zulfiqar Ahmad Khan***

Appellant : Muhammad Ramzan  
through Ali Afsar Jan, advocate.

Versus

Respondent No1 : Jaro s/o Loung

Respondent No2 : The State  
through Syed Meeral Shah Bukhari,  
Addl. Prosecutor General Sindh.

Date of hearing : **17.11.2020**

Date of Decision : **30.12.2020**

**JUDGEMENT**

**NAZAR AKBAR, J:-** The Appellant Muhammad Ramzan being aggrieved and dissatisfied with the impugned order dated **12.12.2011** passed by the learned Ist Additional Sessions Judge Thatta, in Sessions Case No.65 of 2009, whereby Respondent No.1 is acquitted in Crime No.24 of 2011 under Section 302 & 504 PPC registered at P.S Mirpur Sakro has filed the instant Criminal Acquittal Appeal.

2. Brief facts of prosecution case are that appellant/Complainant Muhammad Ramzan lodged FIR on **18.3.2009** stating therein that he and his son-in-law namely Raza Muhammad @ Razoo are the harries of one Yar Muhammad Hadiyo and are resident of village Haji Ahmed Sathio, his son-in-law namely Raza Muhammad @ Razoo was on disputed terms with

accused Jaro Sathio, hence 8/10 days prior to the incident the complainant shifted him at his village Haji Ahmed Sathio. On fateful day at morning complainant, his son-in-law namely Raza Muhamamd @ Razoo, his son namely Mehrab and brother-in-law namely Qadri were going towards the land and when at about 7:30 am they reached at the land of Darya Khan Hadiyo, accused Jaro armed with Gun appeared from the bushes and after abusing made straight fire upon Raza Muhammad @ Razoo who fell down, whereas complainant and his son ran away to save themselves. The accused also made second fire upon Raza Muhammad @ Razoo and then fled away. Thereafter, complainant party found Raza Muhammad @ Raza dead, hence leaving the PWs at the dead body complainant appeared at Police Station lodged the instant FIR.

3. After usual investigation, charge was framed against accused/respondent to which he pleaded not guilty and claimed to be tried. After examination of witnesses and hearing learned counsel for the parties, learned trial Court by judgment dated **12.12.2011** acquitted accused/Respondent No.1 by extending him benefit of doubt. Therefore, the appellant/Complainant has filed instant Criminal Acquittal Appeal against the said judgment.

4. Learned counsel for the Appellant has contended that the learned trial Court without examining the record passed the impugned order whereby Respondent No.1 was acquitted, therefore, the impugned order may be set aside. Learned counsel for the Appellant has further contended the trial Court has overlooked the suggestion made by the leaned counsel of Respondent No.1 where the complainant has categorically denied the suggestion but the learned trial Court used the same in favour of

Respondent No.1. It is further averred that learned trial Court has not considered the mushirnama Exh.10/C where two red colored empty were recovered from the place of incident. The trial Court has also not considered the recovery of said empty, which has not been denied. Learned counsel contended that it is an admitted fact that respondent was found with the 12 bore double barrel gun from his house. According to Exh.11/C fires have been made from the gun which the Respondent has produced before the police, moreover the learned counsel has failed to shaken the evidence of the complainant who has fully impleaded Respondent No.1. It is further averred that eye witnesses have fully implicated Respondent No.1 and motive has been given by the complainant. The trial Court has not given reasons to discard the ocular evidence of the eyewitness.

5. On the other hand, learned counsel for State has supported the impugned judgment and says that a comprehensive order has been announced by the learned Judge while acquitting Respondent No.1. He further contended that there are material contradiction in ocular version and medical evidence, in such situation this Hon'ble Court may not require to interfere in an acquittal appeal, because principles of appreciation of evidence in an appeal against acquittal is altogether from that of appeal against conviction. It is further averred that there is marked difference between an appeal of conviction and in appeal against acquittal, the same rigid method of appraisal is to be applied, as there is already findings of acquittal given by the trial Court after proper analysis of evidence. The order of acquittal only be interfered with if, on the fact of it, the same is found to be preserved, capricious, arbitrarily or foolish in nature, which are missing in the impugned judgment.

6. I have heard learned counsel for the appellant and so also State counsel and also perused the record and written arguments filed by the learned counsel for the appellant and State counsel.

7. The perusal of impugned judgment shows that this was the case of no evidence against respondent No.1/accused, therefore, in the impugned order, learned trial Court has observed as follows: -

“33. I have given due consideration to the arguments advanced by defence counsel and have perused the evidence of complainant who is also eye witness of the incident so also two prosecution eye-witnesses of the incident. The complainant and pws namely Qadri and Mehrab have categorically deposed that as soon as the accused conducted firing sustained injuries of two fire arms shots to deceased Raza Muhammad alias Razo, the accused fled away from the spot. They never stated before this court while adducing their evidence that the accused stopped, ejected the empties or reloaded his gun. Moreover, investigation officer ASI Younis Tanoli in his cross examination has admitted that the secured gun of accused Jaro Sathio remained with him since from the date of its recovery upto 28.3.2009. According to mashirnama of recovery the investigation officer recovered the gun from the house of accused on 19.3.2009 and it remained with the investigation officer up to 28.3.2009, the investigation officer did not deposit the recovered gun and empties in the Malkhana of police station. The seal always remain with the investigation officer, and procurement of mashirs is also not impossible for the investigation officer, therefore, the recovery of empties from place of wardat fired from the gun of accused is highly doubtful, specifically in view of the evidence adduced by Karim Dad who is first mashir of all the mashirnamas prepared by investigation officer, this mashir Karim Dad in his cross examination has also admitted that he is brother of eye witness pw Qadri and he in his examination-in-chief deposed as follows:-

*“on 18.3.2009 it was 7:00 a.m. or 7:30 a.m. time I was present in my house and heard from co-villagers that Raza Muhammad has been murdered. I alongwith Mehrab, Qadri, Jan Muhammad and some other co-villagers*

*went in the lands of Dariya Khan Hadio where the dead body of deceased Raza Muhammad was lying. After about one hour of our arrival at the dead body, complainant Ramzan brought the police.”*

34. The above mentioned piece of evidence by mashir Karimdad makes the case of prosecution highly doubtful when he deposed that on 18.3.2009 he alongwith eye-witnesses of the incident namely Qadri and Mehrab went on place of incident from their house in the lands of Darya Khan Hadio where they found body of deceased Raza Muhammad. This piece of evidence adduced by the mashir Karimdad has not been challenged by the prosecution/complainant party. Thus, it is crystal clear that when a piece of evidence is not challenged by the other side said piece of evidence remains admitted. Moreover, the complainant and pws in their evidence deposed that the accused Jaro Sathio conducted two fires from his DBBL gun, the first gunshot caused to deceased fire arm injury at his left side face and neck and second gunshot fire sustained to deceased fire arm injury at his left side of chest. The medical evidence is not in conformity of the above piece of evidence adduced by the eye-witnesses of the incident including complainant, the medical officer Doctor Abdul Haleem examined at Exh.9, in his cross examination has stated that there was only one gun fire arm injury at the person of deceased and that time between death and post mortem could be of 8 hours that clearly shows that the deceased Raza Muhammad died due to gunshot fire arm injury much prior to time mentioned by the complainant and pws as 7 or 7.30 a.m. time as the post mortem started on 12:45 by the medical officer and completed at 1:45 pm and if the period of death is 8 hours then the time of death would be 5.15 pm time. The PW Qadri examined at Exh.7, in his cross examination has stated that they left their houses for work after taking morning meal including Raza Muhammad and their houses are same but the medical evidence belies this version of the pw as the medical officer doctor Abdul Haleem has stated in his cross examination that deceased took his last meal 4/5 hours before his death. The post mortem report Exh.9/E shows the time between death and its post mortem as about 6 to 12 hours, therefore, in view of above facts and circumstances I am of the opinion that the evidence of complainant and two eye-witnesses of the incident cannot be believe that they left their house with the deceased for work at the lands of Dariya Khan Hadiyo in the morning and deceased was murdered by the present accused in the way at 7:00 a.m. or 7:30 a.m. time by causing two fire arm shots from

DBBL gun. It has come on record that deceased sustained only one fire arm injury on his face, neck, chest. The stomach and its contents were found healthy and empty as per post mortem report Exh.9/E such fact shows that complainant and pws Qadri and Mehrab are not the eye-witnesses of the incident. So far as match of empties, secured from place of wardat is concerned I have already discussed above that according to the complainant and pw accused fled away from the spot without ejecting the empties, therefore, the story of securing empties from place of wardat is also highly doubtful and ballistic report is also highly doubtful as the gun and cartridges remained with investigation officer all the period throughout the investigation the seal and mashirs were easily assessable to the investigation officer, therefore, I am of the view that case of the prosecution is highly doubtful. Accordingly, this point answered as doubtful.”

The above observations of the learned trial Court were justified for acquittal of Respondent No.1.

8. In view of the above, no case is made out for interfering in the impugned acquittal order. Therefore, this Criminal Acquittal Appeal is dismissed.

JUDGE

JUDGE

Karachi

Dated: \_\_\_\_\_

SM