

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Acquittal Appeal No.S- 41 of 2019

Appellant/Complainant : Pir Syed Khamis Ali Shah through
Mr. Shafique Ahmed Khan Leghari,
Advocate

Respondents : Pir Syed Attaullah Shah and Syed
Madni Muhammad Shah through
Mr. Ali Dad Narejo, Advocate

The State, through Mr. Aftab Ahmed Shar
Additional Prosecution General

Date of hearing : 20.12.2019

Date of decision : 20.12.2019

JUDGMENT

Aftab Ahmed Gorar, J- The appellant/complainant by way of instant Criminal Acquittal Appeal has impugned order dated 12.03.2019, passed by learned Additional Sessions Judge Gambat, whereby he has acquitted the private respondents of the charge for offence punishable under Sections 324, 337-F(iii) and 504 PPC , outcome of FIR Crime No.109/2018 of Police Station Gambat.

2. Precisely stated the facts of the prosecution case are that on 10.09.2018, the appellant / complainant lodged his FIR at police station Gambat in respect of the incident which took place on 02.09.2018, alleging therein that on the day of incident, he went to

meet his cousin Syed Ji Ali Shah at his house at Pir Muhalla Gambat, when all of a sudden, there came private respondents along with two unidentified persons, Attaullah Shah having 22 Rifle while private respondent Syed Madni Shah having pistol. Out of them private respondent Attaullah Shah fired directly upon him which fire hit on his right thigh, as such he raised cries, which attracted the people, as such the private respondents escaped away, hence he went to police station and obtained letter for treatment and then went lodged the FIR.

3. At trial, the private respondents filed an application u/s 265-K Cr.P.C for their acquittal before the learned trial Court, consequently the same was allowed and the private respondents were acquitted vide order dated 12.03.2019, hence the appellant / complainant has filed the instant acquittal appeal as stated above.

4. It is contended by learned counsel of the appellant / complainant that learned trial Court has acquitted the private respondents of the charge before commencement of the trial; that the version of the appellant / complainant was fully supported by the witnesses as well as medical certificate; that the incident has taken place in a day time, whereas, the private respondents were specifically nominated in the FIR by the appellant / complainant; that there was sufficient material available on record for trial of

the appellant / complainant but the learned trial Court in hasty manner has acquitted the private respondents. He lastly prayed for setting aside of impugned order with direction to learned trial Court to proceed with the case in accordance with law.

5. Learned DPG for the State as well as learned counsel appearing for the private respondents supported the impugned order by contending that the private respondents are innocent and they have nothing to do with the alleged offence; that there is dispute over the plot in between the appellant / complainant and private respondents; that there is delay of 08 days in lodging of the FIR, therefore, false implication of the private respondents cannot be ruled out; that the medical certificate which was issued was challenged by the private respondents before the Special Medical Board GMMMC Hospital Sukkur, where it was proved to have been managed one, hence the version of the complainant is not supported by the medical certificate; that in such circumstances, there was no probability of the private respondents being convicted of the offence, hence the trial Court has rightly acquitted them u/s 265-K Cr.P.C. They prayed for dismissal of the instant Criminal Acquittal Appeal.

6. I have considered the above arguments and perused the record.

7. There is delay of eight days in lodgment of the FIR without any plausible explanation such delay could not be overruled. In this regard, reliance is placed upon the case of **In case of Mehmood Ahmed & others vs. the State & another (1995 SCMR-127)**, it was observed by the Hon'ble Court that;

“Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.

8. As per the version of the appellant / complainant Pir Syed Khamis Ali Shah that on the day of incident, he went to see his cousin at his house when at 3:00 pm, the private respondent Syed Attaullah Shah along with his son Madni Shah and two unknown accused came there and made direct fire upon him, which hit on his thigh, he raised cries, which attracted the other persons who came there and then the private respondents escaped away towards their houses. The version of the appellant / complainant is not in consonance with the medical certificate, as the injury allegedly sustained by the appellant / complainant for which the certificate was issued, it was challenged by the private respondents before the Special Medical Board GMC Hospital Sukkur, where, it was opined that injuries were not co-related with

the site and size of injury, therefore, the possibility of fabrication / manipulation could not be ruled out. In such circumstances, the learned trial Court has rightly recorded the acquittal of the private respondents. The relevant portion of the impugned order is reproduced here in below;

“As per law, the Court can acquit accused u/s 265-K Cr.P.C even when no evidence is recorded, provided the Court considers that there is no probability of accused being convicted of any offence. In the case in hand, the accused has challenged the medical certificate of the complainant before Special Medical Board GMC Hospital, Sukkur wherefrom it has been opined that injuries are not co-related with site and size of injury, hence possibility of fabrication / manipulation could not be ruled out. Therefore, there is no probability that the accused would be convicted of any offence even if the case is proceeded. It is also well-settled law that justice delayed is justice denied.”

9. In view of the facts and reasons discussed above, the impugned order does not call for any interference by this Court. Consequently, the instant Criminal Acquittal Appeal is dismissed.

Judge