

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Before:
Ahmed Ali M. Shaikh, CJ
Yousuf Ali Sayeed, J

Cr. Acquittal Appeal No.898 of 2019
For hearing of main case.

Date of hearing 23.04.2021

Mr. Nisar Ahmed Metlo, Advocate for the appellant.
Mr. Saleem Akhtar Buriro, Additional PG, Sindh.

AHMED ALI M. SHAIKH, CJ Captioned acquittal appeal impugns the Judgment dated 07.12.2019 handed down by Model Criminal Trial Court/1st Additional Sessions Judge, Malir, Karachi, in Sessions Case No.1666 of 2019 (FIR No.358/2019 registered at PS Steel Town, Karachi, under Section 302/34 PPC), acquitting the private respondents of the charge, in respect of murder of Gulshad Soomro, whose slaughtered and burnt dead body was found lying near Village Soomar Goth, Katcha Path, situated within the precinct of Police Station Steel Town, Karachi.

2. Learned counsel contended that the impugned Judgment is outcome of sheer misreading and non-reading of evidence adduced at the trial and same was passed in a posthaste manner without looking into the factual and legal aspects of the case. According to him, though the prosecution witnesses fully supported the complainant's version the trial Court failed to consider such material. He further submitted that during investigation accused/private respondents confessed their guilt but such interrogation statement was not made part of evidence. He also submitted that despite recovery of mobile phone and the CDR data in use of the private respondents, said recovery and CDR data was not considered by the trial Court. He urged with vehemence that similarly the recovery of crime weapon i.e. cutter used in the offence was also arbitrarily brushed aside by the trial Court.

3. Conversely, the learned Additional PG has supported the impugned Judgment and submitted that the trial Court while acquitting the private respondent has minutely examined each and every aspect of instant blind case and in an appeal against acquittal presumption of double innocence is always attached to the accused.

4. We have considered the contentions of the learned counsel for the appellant, learned Additional PG and with their able assistance have gone through the material available on record. 7. At the outset, we may point out that in instant case, the FIR was lodged by ASI Dilshad of Police Station Steel Town, Karachi, on 09.08.2019 on behalf of the State. But neither he nor State did choose to file Appeal against acquittal of the private respondents and instead Mst. Rukhsana, mother of the deceased, filed the instant Acquittal Appeal. Though in terms of Section 417 Cr.P.C. a person aggrieved or the State may file an Acquittal Appeal, but keeping in view the supervisory jurisdiction of this Court, we deem it proper to look into the matter with regard to propriety and legality of the impugned Judgment.

5. It seems that on 09.08.2019 ASI Dilshad of PS Steel Town lodged report narrating that on same day while on duty he received a message through phone from Muhammad Soomar son of Sher Muhammad that a slaughtered and burnt dead body of an unknown person is lying near Village Soomar Goth, Katcha Path. He reached the said place where an ambulance of Edhi driven by Riaz Shah also arrived. In presence of Muhammad Soomar after securing blood stained earth, pieces of burnt cloths of the deceased, one match box containing ten rupees, one small water bottle containing chemical or oil, etc., and completing the legal formalities the unknown dead body was shifted to MLO Dr. Abdul Ghaffar of Jinnah Hospital, Karachi, for determining the cause of death. Thereafter the dead body was shifted to Edhi Home Mortuary for five days. Police tried its best to find out the legal heirs of the deceased but could not succeed. Consequently, FIR was registered against the unknown persons and none including the private Respondents were nominated.

6. During trial prosecution examined PW-1 ASI Dilshad, exhibit 5, who produced entry, exhibit 6, memo of inspection of dead body and recovery, exhibit 7, inquest report, exhibit 8, letter to MLO exhibit 9, letter to Edhi Mortuary, exhibit 10, copy of FIR, exhibit 11, entry exhibit 12, memo of site inspection exhibit 13 and publication X/1. Prosecution then examined Abdul Ghaffar Sheikh, PW-2, exhibit 14. He produced letter to MLC exhibit 15. Next, Soomar PW-3 was examined at exhibit 16 and PW 4 Maria exhibit 17, latter produced memo of arrest and recovery of respondent Sumaira, exhibit 18. Hasan Shabbir, PW-5 was examined at exhibit 19, who produced memo of arrest and recovery of motorcycle and seizure, exhibit 20. Prosecution then examined PW-6 Shareef, exhibit 21 who produced application at exhibit 22, memo of pointation of place of incident and recovery of crime weapon, exhibit 23; PW-07 Ashraf, exhibit 24 who produced

letter to Incharge Edhi Cold Storage exhibit 25, PW-8 Manzoor Hussain, exhibit 26 who produced entries as exhibits 27 and 28, sketch of place of incident, exhibit 29, entries exhibits 30 and 31, CDR reports exhibits 32 and 33, letter to SSP investigation for CDR, exhibit 34, entries at exhibits 35 and 36, letter for chemical examiner, exhibit 37, chemical report exhibits 38 and 39, application for FSL of mobile phones, exhibit 40, examination report, exhibit 41, entry of PS exhibit 42. After closure of prosecution side vide exhibit 43, statements of private Respondents in terms of Section 342 Cr.P.C. were recorded as exhibits 44 and 45 in which they denied the prosecution story but they neither examined themselves on oath nor examined any witness in their defense.

7. Admittedly, this is a blind case as none claimed to be eyewitness of the alleged occurrence. Besides, during course of trial prosecution could not adduce any evidence to show that deceased and accused were found together at any point of time. It seems that the private Respondents were implicated on the basis of an application dated 17.8.2019 given by the family members of victim Gulshad Soomro and produced by the deceased's real brother PW Shareef during his evidence. However, said PW in his evidence has not disclosed the source of information as to how he came to know that the private respondents have committed the murder of deceased Gulshad. He only deposed that fact as to the relationship between private Respondents was revealed only to him by deceased brother. PW Ashraf, real brother of deceased in his deposition did not utter a single word as to how he could ascertain the private respondents have committed the alleged offence. Moreover, the CDR of sim numbers 0310-2201057 and 0310-8559192 was rightly not considered by the trial as the same did not contain signature and or stamp of authorized officer while none from the said cellular company was examined.

8. In view of above and in absence of ocular version and or circumstantial evidence connecting the respondents with the commission of alleged offence, we reached at an irresistible conclusion that prosecution has failed to prove its case beyond shadow of reasonable doubt, thus, the impugned Judgment passed by the trial Court is well within four corners of law. Consequently, the Acquittal Appeal is dismissed.

Chief Justice

Judge

“A. To direct the respondent No.1 and 2 to depute the honest Senior Official of the rank of SSP or DSP for the re-investigation of the case and in the light of the investigation said managed F.I.R. 03/2021 u/s 8(1), SPPA (ROE) 2010 PS Anti-Encroachment Force Zone-II, Karachi;

B. To restrain the official respondents not to lodge any false FIR against the petitioner and his family members without prior permission of this Hon’ble Court.

C. Cost of petition

D. Any other relief/relief(s), which this Hon’ble court may deem fit and proper in the interest of justice.”

2. From the pleadings it appears that on 03.02.2021 first informant Aijazul Hasan, Mukhtiarkar, Gulzar-e-Hijri, Scheme 33, Karachi, set the law into motion through FIR No.03/2021 verbally stating that Zafar Hussin, Tapedar (patwari) Deh Thoming, submitted a written report that Amjad Hussain, Muhammad Hasrish Shaikh, Tufail, Khadim Husain Rind, Sufi Hasan aka Sufi Bilder, Syed Kashif Ahmed, Ghulam Fareed, Majeed Ring, Habib Pathan, Rasheed Bozar, Khadim Marphani, Rasheed Taggar, Abdul Hafeez Marphani, Younus Khan, Hanif Soomro, Saleem Arain, Hubdar, Abdullah mallah, Naikh Muhammad Lashari, Hafiz Gilal, Saleh Tunio, Hussain Samejo, Bashir Khaskheli, Habibullah Ujjan, Roshan Ujjan, Zohaib, Lal Khan, Ismail, Diyar Khan have illegally occupied 12 acres government land situated in Deh Thoming near Madina Colony, Gulzar-e-Hijri, Scheme No.33, carving out and selling plots by erecting boundary wall and constructing Mosque. Complainant visited the site and found aforesaid persons are involved in raising illegal construction on the said government land. He accordingly issued a notice dated 21.12.2020, served through Tapedar and was received by all the aforesaid accused persons except Haneef Soomro, Hubdar, Taleh Tunio, Rasheed Bozdar and Sufi Hasan. Ultimately, after completing codal formalities and on instructions of the high-up complainant lodged the FIR No.03/2021.

3. Learned counsel contended that apart from the petitioners a number of co-accused were nominated in the FIR; however, the IO with malafide intention and with collusion of respondent No.7/complainant has let off majority of the accused by placing their names in the column No.II solely for insufficient particulars/evidence while petitioners who are neither land grabbers nor encroachers have been sent up to face trial without any justification. Counsel contends that the IO has submitted challan with ulterior motive just to fix the petitioners in concocted case as they failed to grease his palm.

4. We have considered the contention raised by the learned counsel for the petitioners and perused the material available on record. It seems that after usual investigation challan has been submitted before the concerned Court. Besides, there is nothing on record to suggest that before invoking the Constitutional Jurisdiction of this Court, the petitioners have either approached the highups of the police department for redressal of their grievances viz transfer of investigation and its assignment to any high ranking officer for impartial investigation, etc. Besides, the factual controversy as to the status of the land in question cannot be determined or adjudicated in a petition. Accordingly, as the petitioners have failed to exhaust the efficacious remedies provided under the law and have prematurely approached this Court, the petition has no merits and is dismissed accordingly alongwith pending misc. application.

Chief Justice

Judge

applicant Shaukat Khan seeks restoration of vehicle bearing registration No.TTB-813, Engine No.JO8C-C-1077, Hino, Model 1994, subject matter of IFR No.138/2019 under Section 9-C, CNS Act, 1997, registered at PS Airport. Earlier, the learned Sessions Judge, Malir, Karachi, vide impugned order dated 07.02.2020 dismissed an application in terms of Section 516-A Cr.P.C.

2. It would be worthwhile to mention here that during pendency of instant proceedings, the learned 1st Additional District and Sessions, Judge, Malir, Karachi/Model Criminal Trial Court, vide Judgment dated 12.10.2020 disposed of the Sessions Case No.1959 of 2019 (FIR No.138/2019 of PS Airport), handing down life imprisonment to accused Sajid Rehman and Shahid Habib. However, the said Judgment is silent as to the fate of the case property viz vehicle No.TTB-813. As per comments furnished by the Model Criminal Trial Court, Malir, due to oversight and rush of work no order in terms of Section 517 Cr.P.C. with regard to aforesaid vehicle was passed.

3. Learned counsel contended that per prosecution on 06.11.2019 a police party headed by SIP Muhammad Hussain of PS Airport, apprehended accused Sajid Rehman and Shahid Habib and recovered a carton containing 20 packets of Garda Chars, weighing 23 KGs from the cabin of the subject vehicle, driven by Sajid Rehman while co-accused was sitting beside him. Per counsel, the applicant

herein is owner of the subject vehicle while accused/convicts Sajid Rehman and Shahid Habib were employed as driver and cleaner respectively. Besides, during course of investigation or at the trial prosecution could not collect/adduce any material connecting the applicant/owner with the commission of the offence. Besides, there is no iota of evidence to suggest that either the applicant had prior knowledge or was privy to the aforesaid episode. In fact, he was not aware that the contraband material was being transported through vehicle owned by him. He also submitted that there is nothing on the record that prior to this, the applicant was ever indulged in likewise illicit activities or remained connected with the offences related to trafficking of contraband material. He further submitted that, pursuant to order dated 10.2.2021 passed by this Court, the Senior Excise and Taxation Officer-V, Motor Registering Authority (Commercial), Quetta, submitted his report dated 15.02.2021, manifesting applicant herein as owner of the subject vehicle.

4. Mr. Ali Hyder Saleem, learned DPG, could not controvert the contention raised by the learned counsel for the applicant. Besides, during hearing he could not refer to any incriminating evidence to establish nexus of the present applicant with the commission of aforesaid offence.

5. We have heard the contentions advanced at the bar by the learned counsel, DPG and scanned the record. It seems that on 06.11.2019 a police party arrested accused Sajid Rehman and Shahid Habib, recovered concealed contraband material from subject vehicle and accused were sent up to face charge. Later, they were awarded life imprisonment by the trial Court vide Judgment dated 12.10.2020. However, during the investigation or at the trial the prosecution failed to produce/adduce any material to show that the applicant herein, owner of the subject vehicle, had conscious knowledge or nexus of whatsoever nature regarding transportation of contraband substance through his aforesaid vehicle. Yet the trial Court while passing the final verdict has also overlooked such aspect and the Judgment dated 12.10.2020 is completely silent with regard to the fate/disposal of the subject vehicle.

For foregoing reasons, instant criminal misc. application is allowed. Let vehicle bearing registration No.TTB-813, subject matter of these proceedings, be restored to its owner/applicant provided production of original registration book and its verification by the trial Court through concerned/competent authority.

Chief Justice

Judge

Acquittal Appeal in hand impugns the Judgment dated 02.10.2019 passed by the learned 1st Additional Sessions Judge, Malir, Karachi/Model Criminal Trial Court, in Sessions Case No.691 of 2017 (FIR No.232/2017 of PS SSHIA registered under Sections 302/34 PPC), whereby respondents No.2 and 3 were acquitted of the charge.

2. Contents of the prosecution case in a nutshell are that on 08.05.2017 dead body of deceased Muhammad Shareef was recovered from a well situated in the lands of Rehmat Bibi. The dead body was shifted to Abbasi Shaheed Hospital for postmortem conducted by MLO Muhammad Nadeemuddin who opined the cause of death as drowning. Nabi Bux father of the deceased on 14.05.2017 lodged FIR against Maloo and his accomplices.

3. It also appears that PWs Muhammad Ashraf and Naseer informed the complainant that on 06.5.2017 they found deceased Muhammad Shareef boarded on a motorcycle with Ajmal and Talib. Later, they came to know that Muhammad Shareef was murdered.

4. It further appears that none including the complainant is eyewitness of the alleged occurrence. In fact the entire prosecution case hinges on the evidence of PW-4 Muhammad Ashraf and PW-6 Naseer. The latter in his examination in chief stated that on 06.05.2017 at about 0130 hours he left his house to answer the call of nature in the nearby bushes of his house where he shifted few days back. He saw that respondent Ajmal and Talib were going on a motorcycle alongwith deceased towards the lands of Rehmat Bibi. The deceased was sitting in between the private respondents. After ten minutes he saw Ajmal and Talib returning while deceased was not with them. Dead body of the deceased was recovered from the well on 08.05.2017. He disclosed these facts to the father of the deceased who after two days took him to the police station where police registered FIR.

5. However, the trial Court did not find his evidence trustworthy on the ground that same was not corroborated as no such statement was produced by the prosecution. Besides, if he had disclosed these facts to deceased's father on 08.05.2017, why the complainant failed to narrate the same story while recording FIR on 14.5.2017. The trial Court further observed that the IO/SIP Irshad Ahmed, PW-7, in his evidence has stated that after registration of the FIR complainant

came at the police station on 17.05.2017. He recorded statements of complainant and PW Naseer on 17.05.2017, which belies the deposition of PW Naseer.

6. It is also worthwhile to mention here that PW Naseer is resident of Haji Ibrahim New Karachi and at Ahmed Goth he was available at his sister's house; however, the I.O. PW-7 in his evidence deposed that PW Naseer resides at village Ahmed Goth in his own house.

7. Similarly, evidence of PW-4 Ashraf reflects that on 06.05.2017 at about 2230 hours while he was outside his house he saw deceased alongwith Ajmal and Talib on a motorcycle proceeding towards the house of deceased. Thereafter, he came to know that Shareef was murdered and his dead body was recovered from a well. In cross-examination he admitted that his 161 Cr.P.C. statement was recorded on 17.05.2017, eleven days after deceased was seen riding on a motorcycle alongwith private respondents Ajmal and Talib and nine days after the recovery of the dead body, which delay was not explained at all by the prosecution. While rendering the impugned Judgment, the trial Court has very minutely examined and apprised aforesaid aspects of the case in the light of the dicta laid down by the Honourable Supreme Court of Pakistan, and in our humbly view has thus rightly come to the conclusion. It is settled principle of law that scope of acquittal appeal is quite narrow unlike the Appeal against conviction and ordinarily the superior Courts do not interfere with the findings arrived at by the trial Court acquitting the accused unless such findings are artificial, shocking, contradictory, arbitrary and/or against the material/evidence available on record.

For the foregoing reasons we do not find any merit in the instant Acquittal Appeal, which is accordingly dismissed.

Chief Justice

Judge