

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Acqtl. Appeal No.D-45 of 2012.

Present:

Mr. Justice Muhammad Iqbal Kalhoro,
Mr. Justice Irshad Ali Shah,

Appellant : Dilmurad Jatoi through Mr. Habibullah G. Ghouri,
Advocate.

Respondent : Heesab Jatoi not present.

Ms. Rubina Dhamrah, ADPP for the State.

Date of hearing: 21.02.2018.

Date of Judgment: 21.02.2018.

J U D G M E N T.

Muhammad Iqbal Kalhoro, J.- Respondent Heesab Jatoi was tried in Sessions Case No.690/2009 bearing Crime No.41/2009 of Police Station Arija, district Larkana, for offences under Section 302/34, PPC and was acquitted by learned III-Additional Sessions Judge, Larkana vide impugned judgment dated 20.11.2012. The appellant is the complainant of the said crime and offence and being aggrieved by the said judgment has preferred this acquittal appeal.

2. The facts reported in the FIR show that this incident took place on 15.7.2009 at about 3.00 a.m. at village Hasoo Jatoi in the house of the appellant as well as deceased, namely, Abdul Wahab and Rahib Ali, who were his brothers and used to reside with him in the same house. It is alleged that the respondent along with main accused, namely, Muhammad Yousuf and Mansoor and an unknown accused committed murder of above-named deceased on exchange of hot words due to a dispute between them over money matter. Co-accused Muhammad Yousuf and Mansoor are alleged to have directly fired at the deceased brothers, whereas the respondent is alleged to be present along with a pistol, which he pointed out to the complainant party and issued them threats not to move.

3. After registration of such FIR, the respondent was arrested on 06.10.2012 and his licensed pistol was recovered on his pointation from a deserted place on 16.10.2012. Later on, the challan was submitted wherein the respondent was shown arrested, whereas the remaining accused as absconders.



4. During the trial, a formal charge against the respondent was framed at Ex.4. He pleaded 'not guilty' and claimed trial. The prosecution in order to prove its case examined as many as nine witnesses including complainant and eyewitnesses Muhammad Sachal and Meer Hassan, who have produced all the necessary documents including FIR, Danistnamas, mashirnama of inspection of place of wardat, mashirnama of arrest, mashirnama of recovery of pistol, photocopy of arms license, lash chakas form, receipts of handing over dead bodies, postmortem reports, copy of sketch and chemical examiner report, etc. After their evidence, statement of the respondent/accused under section 342, Cr.P.C was recorded in which he has denied the allegations and has further claimed that he is innocent and has been falsely implicated in this case. He did not examine himself on oath; however, in his defence he has examined D.Ws Sadoro and Haji Muhammad. The learned trial Court after hearing the parties acquitted the respondent vide impugned judgment.

5. Mr. Habibullah G. Ghouri, learned Counsel for the appellant has argued that the findings of the trial Court are based on surmises and conjectures, as the trial court has not taken into account the direct evidence against the respondent; that the prosecution was able to prove its case against the respondent beyond any reasonable doubt but the learned trial Court while disbelieving the evidence of the prosecution witnesses has acquitted him which has resulted into a miscarriage of justice. He has next submitted that the respondent is shown to be present at the spot duly armed with a pistol and issued threats to the complainant party, which is sufficient to establish him sharing vicarious liability with the main accused to commit murder of the deceased. He has further submitted that respondent is brother-in-law of the complainant and deceased brothers and he used to reside with them in the same house.

6. On the other hand, learned ADPP has supported the impugned judgment and submitted that no specific role has been assigned to the respondent and no cogent evidence has been brought on record to show that the respondent was sharing vicarious liability with the main accused in commission of the offence.

7. We have considered submissions of the parties and perused the material available on record. The FIR and the evidence of the witnesses indicate that the respondent is shown to be present at the spot armed with a pistol which he had allegedly pointed out to the complainant party and threatened them not to move. Except that piece of evidence, no evidence is

available on record to suggest that the respondent played any active role and facilitated the main accused in any manner in committing the offence. Presence of the respondent in the said house in view of disclosure of learned Counsel for the appellant that he would reside with the complainant party is not surprising. Nor from his presence in the said house, it could be inferred that he had any intention to commit murder of the deceased along with the main accused. Even it is not alleged by the prosecution that in order to scare the complainant party he had made any aerial firing. Therefore, it could not be said with certainty that he shared vicarious liability with the main accused. The allegation of his being armed with a pistol has not been established beyond a reasonable doubt either. The pistol shown to have been recovered from him was his licensed weapon which allegedly was recovered on his pointation after three and half months of the incident from a deserted place. The recovery of a licensed weapon from a deserted place is not understandable and does not inspire confidence. Nonetheless, it must be mentioned that the said weapon was not used by the respondent in the commission of the offence, therefore, its recovery is of no help to the prosecution. The learned trial Court while acquitting the respondent has discussed the prosecution evidence in detail and has given cogent reasons in support of its findings of acquittal in favour of the respondent. Before us no material has been placed justifying interference by this Court for reversing the said findings. The double presumption of innocence runs in favour of the accused. We, therefore, are of the view that this acquittal appeal is without merits and is accordingly dismissed.


21-2-2018.
JUDGE


JUDGE
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