

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Appeal No.24 of 2021
Cr. Acquittal Appeal No.35 of 2021

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| Date | Order with signature of Judges |
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For hearing of main case

21.10.2022.

Mr. M. Hashim, holding brief for Mr. Ali Tahir, Advocate for Appellant in Cr. Appeal No.24 of 2021.
Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.

Muhammad Karim Khan Agha, J. Mr. Muhammad Nasir, advocate appearing on behalf of the appellant Haq Nawaz in Cr. Acquittal Appeal is called absent without intimation and same was the position on the last date of hearing. It appears that the appellant has lost interest in pursuing this appeal against acquittal, however, we are deciding the same on merits.

2. Respondent Haq Nawaz was tried in the Court VII Additional Sessions Judge / Model Criminal Trial Court No.2, Karachi (Central) in Sessions case No.1261 of 2019 in respect of FIR No.82 of 2019 u/s. 302/34 PPC lodged at PS Gabol Town, Karachi whereby his co-accused was convicted and sentenced to life imprisonment while Haq Nawaz (respondent herein) was acquitted of the charge.

3. Brief facts of the prosecution case are that on 25.06.2019 at 1000 hours SIP Anwar Ali lodged FIR of this case in which he narrated that he was resident of Surjani Town doing labor work and his elder brother namely Shahnawaz s/o Allah Ditta aged about 42/43 years was working in Karachi at shop of wood of Abdul Raheem and Muhammad situated at Godhra Stop, Karachi. On 19.06.2019, the elder brother of complainant suddenly became missing as such complainant met with his relatives, started search of his elder brother and also filed application at PS Gabol Town, Karachi showing suspicious on one person namely Abdul Jabbar as he used to remain with his brother all the time. Complainant disclosed to police that Abdul

Jabbar was present at Bangali Para as such police along with complainant reached there at about 2115 hours, apprehended Abdul Jabbar was brought to him at PS who disclosed to police on enquiry that he had killed Shahnawaz on the roof of his Karkhana by hitting him with block and concealed his dead body under Sand (Bajri) lying there. On such disclosure police along with complainant and Abdul Jabbar reached at the roof of Karkhana (2nd floor) and pointed out the Sand (Bajri) lying there disclosing that he had concealed the dead body in it, as such, the police recovered the dead body of deceased Shahnawaz in presence of complainant from the said Sand (Bajri), hence this FIR.

4. In essence, the trial Court acquitted the respondent based on the fact that this was a case of circumstantial evidence and there was insufficient evidence to enable the prosecution to prove its case beyond a reasonable doubt.

5. We have gone through the impugned judgment and material available on record with the able assistance of learned Additional Prosecutor General Sindh.

6. We note that this was a case of last seen evidence which was the only piece of evidence brought on record against the respondent whereas greater evidence brought on record in respect of the convicted appellant. The last seen evidence, which is a circumstantial evidence in nature is to be viewed with extreme caution by the Court and needs to be corroborated from an unimpeachable independent source which was lacking in this case. The confession made before the police by the respondent is also inadmissible in evidence and cannot be ^{used} to corroborate the last seen evidence. Since there was no other tangible corroborative evidence we find that the Court has rightly acquitted the respondent. It is well settled now by the Hon'ble Supreme Court in the case of **The State v. Abdul Khaliq and others** (PLD 2011 SC 554) that in appeals against acquittal the scope is very narrow and limited because the respondent enjoys double presumption of innocence. Based on these legal principles we find no reason to interfere with the impugned judgment in which we do not

find any legal infirmity in acquitting the respondent Haq Nawaz. As such the appeal against acquittal is dismissed in limine.

7. Office is directed to put up the Criminal Appeal No.24 of 2021 before a single bench of this Court according to roaster on 06.12.2022.