

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Acqt. Appeal No.519 of 2021

Date	Order with signature of Judges
1.	For orders on office objection at Flag "A"
2.	For orders on MA No.10147/2021
3.	For Hg. of Main Case.

30.11.2022.

Mr. Muhammad Jamil, advocate for the appellant.

MOHAMMAD KARIM KHAN AGHA, I:- Appellant is aggrieved by the judgment of Court of IVth Additional Sessions Judge, Model Criminal Trial Court - Extension, Karachi (South) in Sessions Case No.616 of 2016 dated 19.07.2021 whereby accused Syed Azam was acquitted of the charge in respect of Crime No.156/2014, under Sections 302/109/34 PPC registered at Police Station Malir City, Karachi.

The brief facts of the case are that on 01.09.2014, complainant Syed Shahid Raza Naqvi S/o Syed Ali Kausar Naqvi had appeared at P.S. Malir City and lodged above said FIR for murder of his sister Tabassum Zehra, allegedly committed on 29.08.2014 at about 2040 hours, against her husband Syed Azam and his two sisters namely (i) Mst. Zakia and (ii) Mst. Syed Abida. It is narrated in FIR that about 05 years ago, marriage of the complainant's younger sister namely Tabassum Zehra had been solemnized with Syed Azam S/o Syed Kazim resident of Jaffer-e-Tayyar Society, Malir Karachi and out of said wedlock couple were blessed with two babies. Complainant alleged in FIR that he had borne first delivery expenses of Tabassum Zehra as her

husband was not working, and because of that couple was in stern relations rather fighting with each other. It is alleged in FIR that on 29.08.2014 at about 2017 Syed Azam made a phone call to the complainant asking him to take his sister back and disconnected the phone, and the complainant alongwith his family members reached at Jaffer-e-Tayyar Society where acknowledged that something gruesome occurred. It is further alleged in FIR that complainant alongwith his brothers namely Zahid, Asif, Raza and sister Rauf Zehra 11, arrived at the house of Syed Azam and when entered in his room situated at first floor they saw dead body of Tabassum Zehra lying in pool of blood and a 30 bore Pistol was lying beneath her head. Complainant alleged in FIR that accused Syed Azam with consultation of his two sisters namely (i) Zakia Fatima and (ii) Abida Fatima had shot at and killed Tabassum Zehra and escaped away while the incident of murder was also confirmed by his niece Uroos Fatima D/o Tabassum Zehra, hence FIR.

After usual investigation the matter was challaned and the appellant was sent up to face trial. He pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined ten PWs and exhibited various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. wherein he denied allegations against him. However, he did not give evidence on oath or call any DW in support of his defence.

After hearing learned counsel for the parties and appreciating the evidence on record, the learned trial Court acquitted the respondent hence, the appellant/complainant has filed this appeal against the acquittal.

The main reason for which the respondent was acquitted is set-out at page-10 of the impugned Judgment, which reads as under:-

"It is settled principle of law for safe administration of criminal justice that when the prosecution fails to prove the charge against the accused beyond reasonable shadow of doubt, then statement of accused is to be relied upon for deciding the allegations he is charged with. The accused Syed Azam while recording his statement under section 342 Cr.P.C. (available at Ex 17) took specific plea that at the time of occurrence he was not available at his house but when returned he found his wife dead lying in the pool of blood and he immediately called 15 Police Helpline and informed police about the death/suicide by his wife. The stance of the accused is supported by the document available at Ex 11 /A i.e. suicide report bearing Entry No. 50 dated: 29.08.2014 at 2050 hours of P.S Malir City and the said entry narrated that one Muhammad Azam having phone number 0322-3370028 resident of House No.A-55, Jaffer-e-Tayyar, Malir informed police about the suicide committed by his wife. Further, the stance of accused regarding calling the police is evident from the fact that when the complainant party reached at the house of accused police was already available carrying/inspecting the dead body and place of occurrence Furthermore, per medical evidence except a single fire shot no other mark of violence was observed by the WMLO during postmortem examination of the deceased lady which fact also supports the contention of the accused regarding suicide of his wife."

It is well settled that an appeal against acquittal has a very narrow scope and the respondent acquires a double presumption of innocence.

We have gone through the evidence on record alongwith learned counsel for the appellant / complainant, who has not been able to point out any legal infirmity in respect of impugned judgment, which requires interference by this Court.

Keeping in view the narrow scope of law in respect of appeals against acquittal, we find no ground to interfere in the impugned judgment, hence this appeal against acquittal is hereby dismissed ***in limine***.

Naveed PA