

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

Before:

Mr. Justice Abdul Maalik Gaddi

Mr. Justice Mohammad Karim Khan Agha

Cr. Acq. Appeal No.D-17 of 2014.

Noor Muhammad

Vs.

Muhammad Azam @ Imran and others

Appellant : Noor Muhammad	Through Mr. Ashfaq Ahmed Khaskheli, Advocate
Respondents No.1 to 3 : Mohammad Azam @ Imran and others	Through Mr. Hameedullah Dahri, Advocate
Respondent No.4 : The State	Mr. Shahzad Saleem Nahyoon, Deputy Prosecutor General
Date of hearing :	03.10.2018
Date of judgment :	03.10.2018

**J U D G M E N T**

**MOHAMMAD KARIM KHAN AGHA, J.-** This criminal acquittal appeal has been filed by the appellant against the judgment dated 05.08.2014, passed by the learned Illrd Additional Sessions Judge, Hyderabad in Sessions Case No.603 of 2012 (re-The State Vs. Muhammad Azam and others), arising out of Crime No.57/2012, registered at P.S Phuleli, under sections 302, 34 PPC, whereby the learned trial Court after full dressed trial acquitted the private respondents by giving them benefit of doubt (impugned judgment).

2. Precisely, the facts of the prosecution case are as under:-

"On 06.07.2012 at about 1600 hours, complainant Noor Muhammad son of Qadir Bux by caste Abbasi, resident of house No.22, American Quarters, lodged FIR, stating therein that he is residing on the above mentioned address and is a retired Government servant. The marriage of his daughter namely Saima aged about 29 years was solemnized with Muhammad Azam @ Imran about two years ago and out of wedlock one son namely Kamran was born,



whose age is about one and a half years. The complainant further stated that his daughter Saima used to come and go to his house which Saima's mother-in-law namely Nasreen wife of Muhammad Ramzan Abbasi, husband of Saima Muhammad Azam @ Imran and Saima's Niran Mehwish alias Huda daughter of Ramzan Abbasi disapproved of and that Saima should not come to her relatives and due to that act, they maltreated Saima. On 07.06.2012, Saima alongwith her husband came to the house of complainant at about 8:00 a.m. and then returned to their house. On 08.06.2012 complainant, his son Javed and other inmates of the house were available in the house, at about 1030, the brother of Muhammad Azam Abbasi namely Farhan came and told that at about 0930 hours, Saima has committed suicide by hanging in the fan and is died to who, his relative took to the hospital, the complainant thereafter narrated such story to his relatives Muhammad Waseem Siddiqui and Muhammad Nazim Khan Abbasi, thereafter the complainant alongwith his relatives came to the hospital and saw the corpse of Saima in the mortuary. The complainant has further stated that the police of concerned police station had also come and after conducting post mortem the corpse was handed over to the complainant. Complainant further stated that the doctors took organs from the corpse and sent the same to chemical examiner."

3. After usual investigation, challan of the case was submitted before the concerned Court. At trial, learned trial Court framed charge against the accused named above as Ex.08, to which they pleaded not guilty and claimed to be tried.
4. The prosecution in order to prove its case against the accused persons examined 07 witnesses. Then prosecution side was closed.
5. Thereafter, statements of the accused persons were recorded under section 342 Cr.P.C. wherein they have denied the prosecution allegations by claiming their innocence and false implication in this case. However, neither they examined themselves on oath nor led any defense evidence.
6. The trial court after hearing the learned counsel for the parties and assessing the evidence available on record, by the impugned judgment acquitted the accused / private respondents as stated in concluding para of the impugned judgment. Hence, this acquittal appeal has been filed by the appellant.
7. Learned Counsel for the appellant contended that the judgment passed by the learned trial court is perverse and the reasons for acquitting the private respondents are artificial, vis-à-vis the evidence on record; He submitted that the private respondents have been directly charged with the commission of the offence and that the discrepancies in the statements of prosecution witnesses are not so material on the basis of which private respondents could



be acquitted. He further submitted that the learned trial court has based its findings of acquittal merely on the basis of minor contradictions on non-vital points in the statements of prosecution witnesses and that the prosecution evidence has not been properly appreciated. However when he was asked by the court to point to a single piece of evidence to connect the respondents to the crime he was unable to do so. Learned Deputy Prosecutor General has also not supported the impugned judgment and has contended that the medical evidence was enough to prove that the deceased was murdered and did not die by suicide as no knot mark was found on the neck of the deceased and as such in his view the acquittal should be set aside and the respondents be convicted of the offense for which they had been charged

8. On the other hand learned counsel for private respondents No.1 to 3 supported the impugned judgment and submitted that it suffered from no legal infirmity and as such it should be upheld and the appeal against acquittal should be dismissed.

9. We have heard the learned Counsel for the parties and perused the evidence so brought on record alongwith impugned judgment with the able assistance of learned counsel for the parties.

10. It is settled law that judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous as held by the Honorable Supreme Court in the case of **The State v. Abdul Khaliq and others** (PLD 2011 Supreme Court 554). Moreover, the scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of the innocence is significantly added to the cardinal rule of criminal jurisprudence as the accused shall be presumed to be innocent until proved guilty. In other words, the presumption of innocence is doubled as held by the Honourable Supreme Court of Pakistan in the above referred judgment.

11. The trial court acquitted the accused for the following main reasons at paragraph 9 of the impugned judgment which is set out as under;

"9. Appraisal of the above evidence appears that this is the incident of un-witnessed, but the case against accused was of circumstantial evidence, nobody had seen the accused while committing the murder by pressing her neck. Dr. Anwar Baloch has admitted in her cross examination that no any finger marks was seen on the neck of the deceased, while the case of prosecution depend on the evidence that the murder of deceased was committed by pressing her neck, but the



subsequent activity of the accused was not witnessed by them. Even the mashir of injuries, danishtnama became hostile. It is an established principle of law that circumstantial evidence is a weak type of evidence and conviction can be based on such evidence only if the same is duly corroborated by such evidence which maintains a complete chain of the circumstances directly relatable to each other. When any link in the chain is missing in a case of circumstantial evidence, it would not be safe to record conviction. Reliance in this behalf may be placed on the case of Munawar Shah V. Liaquat Hussain and others 2002 SCMR 713 and Sh. Muhammad Amjad V. The State PLD 2003 SC 704. The evidence as discussed above shows that marked commissions are existing in the linkage of the circumstances of the case as narrated by the PWs. The same having already been discussed need not to be repeated or reiterated. It is also well settled proposition of law that the prosecution is duty bound to establish its case, but the prosecution has miserably failed to establish the case against the accused.

12. Admittedly this was an unwitnessed crime; that the case is based on circumstantial evidence; that the medical evidence does not tend to support the prosecution case that the deceased was manually strangled as there is no finger mark on the neck of the deceased; that it may be that there was no knot mark on the neck which is suggestive of hanging but such medical evidence is not definitive of strangulation especially when no finger prints are found on the neck of the deceased; all such medical evidence in our view only creates doubts and does not prove that the deceased was murdered; it is a sole piece of circumstantial evidence in a non existent chain of evidence without any corroboration which in our view alone is not sufficient to convict the accused especially as they are entitled to the benefit of doubt and there is no direct evidence of them committing the crime; even otherwise the fact that the complainant waited 28 days to lodge his F.I.R. seems to indicate that the complainant had no immediate suspicions that the accused had murdered his daughter otherwise he would have lodged his F.I.R. without delay.

13. Keeping in view the extremely narrow scope of appeals against acquittal as a matter of law as mentioned above, the fact that the respondents are entitled to the benefit of the doubt and the double presumption of innocence having again reviewed the evidence against the respondents for what has been discussed above we consider that the respondents are entitled to the benefit of the doubt and that the impugned judgment is based upon valid and sound reasons and has rightly acquitted respondents on this basis and as such the appeal against their acquittal is dismissed.

14. These are the reasons for our short order which was announced to day in open court and reads as under:

"Parties advocates have been heard at length. They have concluded their arguments. For the reasons to be recorded later on, this Cr. Acq. Appeal being without merits is dismissed along with listed applications, if any."