IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Acq. Appeal No. 239 of 2020

Present:

Justice Zafar Ahmed Rajput
Justice Miran Muhammad Shah

Appellant	:	Sher Muhammad s/o Muhammad Khan, through Mr. Farooq Rasheed, Advocate
Respondent No.1	:	Asif Ali s/o Haji Muhammad Amir Ali (Nemo)
Respondent No.2	:	The State, through Mr. Mumtaz Ali Shah, A.P.G.
Date of hearing	:	**09.09.2025**
Date of order	:	**09.09.2025**

JUDGMENT

ZAFAR AHMED RAJPUT, J:- This Criminal Acquittal Appeal is directed against the Judgment, dated 28.04.2011, whereby the learned Ist Addl. Sessions Judge, Karachi-South **("Trial Court")** acquitted the respondent No.1 of the charge under section 265-H (i), CrPC by extending him benefit of doubt in Sessions Case No.364 of 2004, arising out of FIR No. 28 of 2004, registered at P.S. Railway, Cantt., Karachi under sections 302, 324, P.P.C.

2. Brief facts of the case are that, on 27.06.2004 at 0300 hrs., complainant Ghulam Hur recorded his statement under section 154, CrPC, on the basis thereof, police lodged the FIR. It is alleged that, on 26.05.2004, the complainant was present at home at 8:10 pm, when his uncle Machya came and told him that Muhammad Arshad s/o Khan Muhammad was sitting on railway tracks at about 8:00 pm, when respondent/accused, Asif Ali s/o Amir, fired on him from his pistol and after causing him injuries, he went

towards the quarters where he fired and caused injuries to his sister Mehnaz. Mehnaz succumbed to the injuries and Arshad Ali was taken by the area councilor and other people to hospital. The incident was witnessed by (1) Machya, (2) his wife Haleema, (3) Talib s/o Ghulam Muhammad, (4) Muneer Abbas s/o Allah Dita and other mohalla peoples. The complaint, therefore, nominated Asif Ali in the FIR for committing Qatl-e-Amd of his daughter-in-law *(Bahu)* Mehnaz as well as for causing injuries to Muhammad Arshad. However, during treatment injured Muhammad Arshad also expired in hospital.

3. After usual investigation, police submitted the charge-sheet against the respondent/accused. After completing codal formalities, the Trial Court framed the charge against the respondent/accused, to which he pleaded not guilty. Thereafter, the Trial Court examined as many as ten P.Ws., who produced relevant documents. The Trial Court also recorded the statement of the respondent/accused under section 342, Cr. P.C, wherein he denied the allegations against him and claimed to be innocent. After hearing the learned counsel for the respondent as well as learned DDPP for the State, the Trial Court recorded acquittal of the respondent, vide impugned judgment.

4. Heard learned counsel for the appellant as well as A.P.G and perused the material available on record.

5. It reflects from the perusal of the record that the complainant himself is not an eyewitness of the incident. The incident was narrated to him by his uncle Machya, who was cited as witness in the charge sheet, but he was given up by the prosecution (Ex. 18) by stating that he was won over by the accused. It also reflects that in the FIR, the complainant, besides his uncle

Machya, has named three persons, namely, (1) Mst. Haleema w/o Machya, (2) Talib and (3) Muneer Abbas as eyewitnesses. Mst. Haleema was also given up by the prosecution (Exh. 26) by stating that she was also won over by the respondent/accused. Talib has not been cited as witness in the charge-sheet, while Muneer Abbas was examined as PW-6, (Exh. 21). He claimed to be the eyewitness but PW-3, Ghulam Hussain, complainant, has negated his such claim by stating that he *(Muneer Abbas)* was with him at his house when somebody told him about the incident. Meaning thereby, P.W-6 was not present at the occurrence at the relevant time. It further reflects that the prosecution has produced PW-2, Sher Muhammad, who also claimed to be the eyewitness; however, his name is not cited in the FIR and his statement under section 161, CrPC was admittedly recorded after seven days of the incident, which creates doubts on his credibility as eyewitness.

6. The learned Trail Court after perusing the evidence on record carefully reached to conclusion that the prosecution has not come out with true version. The record suggests that the Trial Court has rightly reached such conclusion and extended benefit of doubt to respondent/accused.

7. It is also an admitted position that neither the State nor the complainant has preferred any appeal against the impugned judgment. The appellant Sher Muhammad is so-called eyewitness.

8. Learned counsel for the appellant has given much stress on the point that the respondent/accused was convicted of the charge in connected case under section 13-d of the Arms Ordinance, 1965 by the Vth Judicial Magistrate, Karachi-South, however, this aspect of the fact has not been considered by the Trial Court while recording acquittal of the respondent/accused. Suffice it to

say that alleged recovery of the pistol on pointation of respondent/accused would merely constitute an offence under section 13-d (ibid) but would not be relevant as a corroborative piece of evidence to substantiate his indictment of murder of deceased.

9. It would be relevant to mention here that the extraordinary remedy of an appeal against an acquittal is different from that of an appeal against the conviction and sentence because a presumption of double innocence of the accused is attached to the order of acquittal. Thus, on the examination of an order of acquittal as a whole, credence is accorded to the findings of the Trial Court whereby the accused has been exonerated from the charge of commission of the offence. Therefore, to reverse an order of acquittal, it must be shown that the acquittal order is unreasonable, perverse and manifestly wrong. The order of acquittal passed by the Trial Court which is based on correct appreciation of evidence will not warrant interference in appeal. The Apex Court while dealing with the appeal against acquittal has been pleased to lay down the principle in the case of *Muhammad Shafi Vs Muhammad Raza & another* **(2008 SCMR 329)** that *"an accused is presumed to be innocent in law and if after regular trial he is acquitted, he earns a double presumption of innocence and there is a heavy onus on the prosecution to rebut the said presumption."*

10. For the foregoing facts and reasons, we are of the view that the impugned judgment does not suffer from any illegality or infirmity and misreading or non-reading of evidence leading to miscarriage of justice; therefore, the same is not open for interference by the High Court under section 417 (2A), Cr. P.C. Hence, this Appeal is dismissed, accordingly.

JUDGE

JUDGE

Athar Zai