

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Amjad Ali Sahito

CrI. Acquittal Appeal No.657 of 2018

Appellant : Shoukat Ali S/o Abdul Latif
Through Mr. Tahir Rahim, Advocate.

Respondent # 4 : The State
Through Mr. Saghir Ahmed Abbasi,
Advocate.

Date of hearing : 29.03.2019

Date of order : 29.03.2019

J U D G M E N T

AMJAD ALI SAHITO, J.— Being aggrieved and dissatisfied with the judgment dated 08.10.2018, recorded under Section 265-H(i) Cr.P.C. in favour of the respondents No.1 and 2 by the learned Vth Additional Sessions Judge, Karachi West, in Sessions Case No.291/2010 arising out of the FIR No.186/2010 for offence under section 302/34 PPC registered at PS Mauripur, Karachi, whereby the respondents No.1&2 were acquitted from the charge.

2. The case of the prosecution as depicted in the FIR is that with reference to report No.74 SIP Muhammad Ashfaq reached at Civil Hospital and conducted proceeding under section 174, Cr.P.C. upon a dead body in presence of witnesses, namely, HC Fida Hussain and HC Naseem Khan, whereafter upon the letter of said police officers, the post mortem of deceased was conducted by MLO, who has issued cause of death on the letter of police by hitting with firearm bullets in head. Police recorded statement u/s. 154 Cr.P.C. of the father of deceased, who stated wherein that he works as a labor and his son Muhammad Sohail worked of bearing supply. On 12.03.2010 his son gone to work but did not return back till night. The complainant tried to

contact his son with his mobile phone, which was switched off. On 13.03.2010 at 03:00 hours police of PS Mauripur informed him that his son has been killed by his friend, namely, Maroof and Muhammad Saeed by firing and the dead body of his son was lying at Civil Hospital. The complainant went to the hospital and saw the dead body of his son and identified him. On his head would of the bullet and another bullet on his right hand and wrist. The claim of complainant is against both the accused of murdering his son through firearm injuries. Action may be taken against them.

3. The charge was framed against accused on 15.06.2010 to which he pleaded not guilty and claimed to be tried.

4. At the trial, in order to establish accusation against the accused, the prosecution examined the following witnesses:

- i. PW-1 Shoukat Ali (complainant/father of deceased) at Ex.7.
- ii. PW-2 S.I Fida Hussain at Ex.8, who produced memo of arrest and seizer, inquest report, memo of inspection of a dead body at Ex.8/A to 8/C.
- iii. PW-3 ASI Punhal Shar at Ex.10, who produced memo of arrest, memo of seizer of bloodstained clothes of the deceased, memo of arrest and recovery and entry at Ex. 10/A to 10/E.
- iv. CW-1 ASIP, Syed Hassan Raza Shah at Ex. 11 regarding untraceability of PW Abdul Rehman.
- v. PW-4 ASI Ahmed Khan at Ex. 12, who produced entry and memo of site inspection at Ex.12/A & 12/B.
- vi. PW-5 MLO, Dr. Ghulam Sarwar Channa at Ex.13, who produced police letter, post mortem report and cause of death at Ex.13/A to 13/C.

vii. CW-2 SIO, Abdul Razzaque, the Station Investigation Officer regarding the demise of investigation officer SIP Akram Rasheed at Ex.14.

5. Statement of the accused was recorded under Section 342 Cr.PC, wherein they denied the prosecution allegations leveled against them.

6. The learned trial Court, after hearing the learned counsel for the parties and appraisal of the evidence, acquitted the appellants vide judgment dated 08.10.2018. The acquittal recorded by the learned trial Court has been impugned by the complainant before this Court by way of filing the instant Criminal Acquittal Appeal.

7. Learned counsel for the appellants argued that the impugned judgment is based on misreading and non-reading of evidence, which is not maintainable; that the dead body was recovered from the place/house, which is exclusive property of the accused; that both the respondents Muhammad Maroof and Muhammad Saeed Akbar Shah were trying to dispose of the dead body at somewhere else at the police apprehended them; that dead body was recovered from the house of respondents when it was wrapped in a cotton bedding; that the respondent No.1 was arrested along with bloodstained clothes, which connect respondents with the commission of offence; that the learned trial Court has not considered all the material points and acquitted the accused. Lastly, he prayed that this appeal may be allowed and the respondents/accused may kindly be convicted in accordance with law.

8. Conversely, the learned A.P.G. while supporting the impugned judgment argued that respondents are innocent and have falsely been implicated in this case as no motive of murder has been proved by the prosecution to involve the respondents/accused with the commission of offence; that as per

medical report, duration between dead and post mortem is about 10 to 12 hours; that investigating officer failed to collect any document, which connect the respondents that they were owner of the said house; that respondent No.1 was allegedly arrested with human blood but no blood group was taken by the Doctor and nor matched with the clothes to believe that it is same blood group, which connect the appellant with the commission of offence; that the complainant has implicated present appellants on the basis of suspension without any substantial proof. He lastly supported the impugned judgment passed by the learned trial Court.

9. We have heard the learned counsel for the parties and have gone through the evidence as well as impugned judgment with their able assistance.

10. Learned counsel for the appellant as well as learned A.P.G have agreed that the criteria of interference in the judgment against acquittal, is not the same as against the cases involving a conviction. The scope of interference in appeal against acquittal is narrow and limited for the reasons that in an acquittal, the presumption of innocence is significantly added to the cardinal rule of Criminal Jurisprudence that an accused shall be presumed to be innocent until proved guilty. In other words, the presumption of innocence is doubled. The case of the prosecution is that on 12.03.2010 at about 01:30 AM, P.W-2 SIP Fida Hussain arrested the respondents from the place of the incident along with the dead body, one of the respondents, namely, Muhammad Maroof was found bloodstained clothes. After the arrest of the accused, the dead body was sent to the Civil Hospital, Karachi for its postmortem. The claim of PW-2 SIP Fida Hussain is that respondents are the owners of the place of incident, but during the investigation, the Investigating Officer failed to collect any evidence or documents, which connect the respondents that they are the owner of the house where the

incident took place. Learned counsel for the appellant admits that at that time, it was an abundant place, hence no independent person has been cited as a witness of the incident to connect the appellants with the commission of the offence. Furthermore, while preparing a memo of arrest and recovery and inquest report, PW-2 SIP Fida Hussain has not disclosed that any family members were present in the house or any household article was lying in the house, hence the first link is missing from the chain. The second piece of evidence with the prosecution is that that the respondent No.1 Muhammad Maroof was found with bloodstained clothes, but surprisingly, the doctor/Medico-legal Officer has failed to disclose blood group of the deceased nor has taken any efforts to see as to whether the bloodstains on the clothes of the accused, which were worn by the respondent No.1, are the same blood group to connect the appellant with the commission of offence. Furthermore, PW-5 Dr. Ghulam Sarwar Channa has examined the dead body of the deceased and found the following injuries:-

- i. Puncture wound 1 cm diameter on left temporal region margin were inverted wound of entry, no blackening was seen.*
- ii. Puncture 1.5 cm and diameter on right temporal region margin were averted, wound of exit.*
- iii. Puncture 0.5 cm and diameter on posterior aspect of mid of right forearm. Margin were inverted. Wound of entry. No blackening was seen.*
- iv. Puncture 0.5 cm in diameter on interior aspect of mid of right forearm. Margin were averted wound of ext.*

11. In the postmortem report of the deceased, the time duration between death and the postmortem was 10 to 12 hours. Though the PW-2 SIP Fida Hussain arrested the appellant on 13.03.2010 at about 0130 hours and if, we will count the duration from the arrest of the appellant, then it would be the time of death between 2:30/3:00 P.M. and the place of incident

was abundant place, as no one was residing in the said house then what was the fun to shift the dead body from the place of incident when the place of incident was already an abundant place, hence, another link is missing to connect the respondents with the commission of offence. Furthermore, the picture, which was produced by the PW-6 Abdul Razzak, shows that the respondent No.1 was wearing bloodstained clothes. It was humanly impossible that after committing the murder, he will remain with bloodstained clothes, in such a situation, every person will try to remove the bloodstained from his clothes but he was wearing clothes which also creates doubt, as such, another link is also missing. The complainant failed to disclose the motive of the offence, which forced the respondents to commit the murder of the deceased Muhammad Sohail.

12. We are fully satisfied with appraisal of evidence done by the learned trial Court and we are of the view that while evaluating the evidence, the difference is to be maintained in appeal from conviction and acquittal appeal and in the latter case, interference is to be made only when there is gross misreading of evidence resulting in miscarriage of justice. Learned counsel for the appellant failed to disclose any misreading and non-reading of evidence. In the case of **Muhammad Zafar and another v. Rustam and others (2017 SCMR 1639)**, the Hon'ble Supreme Court of Pakistan has held that:-

“We have examined the record and the reasons recorded by the learned appellate court for acquittal of respondent No.2 and for not interfering with the acquittal of respondents No.3 to 5 are borne out from the record. No misreading of evidence could be pointed out by the learned counsel for the complainant /appellant and learned Additional prosecutor General for the State, which would have resulted into grave miscarriage of justice. The learned courts below have given valid and convincing reasons for the acquittal of respondents Nos. 2 to 5 which reasons have not been found by

us to be arbitrary, capricious or fanciful warranting interference by this Court. Even otherwise this Court is always slow in interfering in the acquittal of accused because it is well settled law that in criminal trial every person is innocent unless proven guilty and upon acquittal by a court of competent jurisdiction such presumption doubles. As a sequel of the above discussion, this appeal is without any merit and the same is hereby dismissed”

13. The sequel of the above discussion is that we are satisfied with the appreciation of evidence evaluated by the learned trial Court while recording acquittal of the respondents No.1&2/accused persons by extending the benefit of the doubt, which does not call for any interference by this Court. Consequently, the instant appeal merits no consideration and is dismissed accordingly.

JUDGE

JUDGE