



complainant woke-up and tried to come at the wardat. The culprit armed with gun fired at Mst. Shahzia with the result she sustained injury on his neck and fell down and ultimately breathed her last. The culprit re-loaded the gun and fired at complainant Aslam who was grappling with co-accused Ibrahim but fortunately that firing hit co-accused Ibrahim who sustained injury. Aftab, Israr and complainant, however succeeded in over powering co-accused Ibrahim who was armed with the pistol and co-accused Mitho Samoon. It is the case of the prosecution that there were two other accused who were standing outside the house. After this incident, both of them tried to enter into the house to rescue their companions but the villagers came with the result those culprits made their escape good. However, they were identified to be the accused Basham and Sulleman.

3. Charge against accused was framed on 17.02.1992 wherein they plead not guilty and claimed for trial.

4. At trial, the prosecution to prove its case examined the following witnesses:

- i. P.W-1 Muhammad Aslam examined at Ex.10.
- ii. P.W-2 Aftab Ahmed examined at Ex.12.
- iii. P.W-3 Israr Ahmed examined at Ex14.
- iv. P.W-4 Khuda Bux examined at Ex.18.
- v. P.W-5 Tappedar Allah Bux examined at Ex.28.
- vi. P.W-6 Karim Bux examined at Ex.30.
- vii. P.W-7 Dorctor Saleem Akhtar examined at Ex.32.
- viii. P.W-8 SHO / I.O Abdul Khaliq examined at Ex.48.

All above prosecution witnesses have been cross examined by learned defence counsel.

5. After closure of prosecution side, accused namely Mitho, Muhammad Sulleman and Basham alias Muhammad Sharif were examined at Ex.32 to 43 whereas accused Muhammad Ibrahim has been died in a police encounter after his release on bail from the Court, as such, proceedings against him was

abated vide order dated 21.05.1995 at Ex.16. Accused Mitho examined himself on oath u/s 340(2) Cr.P.C at Ex.38. However, in support of his defence, he has also examined two witnesses namely Sono at Ex.39 and Muhammad Uris at Ex.40.

6. Ms. Ramesha Oad, Assistant Prosecutor General on behalf of State / appellant at the very outset, does not press this criminal acquittal appeal to the extent of respondents Basham @ Muhammad Sharif and Muhammad Sulleman s/o Muhammad Siddique as according to her at the time of incident they were standing outside the house of complainant however, submits that the case against respondent Mitho has been proved as there is sufficient evidence against him available on record and further the said respondent has played active role in the commission of offence and this fact according to her is evident from the evidence of witnesses available on record but the trial Court while acquitting the said respondent / accused has not appreciated the evidence against him in its true perspective, therefore, she prayed that the said respondent may be given exemplary punishment.

7. On the other hand, Mr. Mir Shakir Ali Talpur, Advocate appearing on behalf of respondents has supported the impugned judgment by arguing that the impugned judgment passed by the learned trial court is perfect in law and on facts and according to him no incident has taken place as stated in the F.I.R. He further submits that the trial Court after scanning all evidence and documents on record acquitted the respondents with sound reasoning, therefore, this acquittal appeal may be dismissed.

8. We have heard the learned counsel for the parties and have gone through the evidence and documents available on record as well as the impugned judgment.

9. From perusal of record it appears that this appeal containing chequered history in respect of maintaining the conviction to the respondents in the subject crime or otherwise. It is noted that this case pertains to year 1990 and almost 29

years have been passed however, the history of the case shows that initially accused / respondents were convicted and sentenced to suffer life imprisonment each on 04.10.2000 by learned 2<sup>nd</sup> Additional Sessions Judge, Hyderabad. Thereafter, this Court vide judgment dated 13.07.2001 passed in Criminal Appeals Nos.170 and 173 of 2000, remanded back the case to the trial Court for examining the Investigating Officer and for recording statements of accused u/s 342 Cr.P.C. Later on again the accused persons were convicted and sentenced to suffer life imprisonment each on 24.12.2003 by the trial Court and again this Court vide order dated 17.05.2006 passed in Cr. Appeals Nos.8, 10 & 11 of 2004 remanded back the case to the trial Court with the following observations:

“Perusal of the charge as well as order passed by learned IV-Additional Sessions Judge, Hyderabad on 24.12.2003 shows that learned Judge has failed to give a clear judgment and to understand section 460 PPC. The judgment of the lower court is vague in respect to the holding of the accused guilty in respect to the offence narrated in the F.I.R in respect of lurking house trespass and Qatl and but the punishment which has been provided do not match with the finding as it is only under section 460 PPC.

In the circumstances, the learned Judge is required to go through the judgment dated 24.12.2003 and after providing an opportunity to the accused for recording his statement under section 340(2) or 342 Cr.P.C may proceed further and pass judgment within 03 months from the date hereof.

In the circumstances stated above, the judgment of Additional Sessions Judge dated 24.12.2003 is set aside to enable the learned Sessions Judge to pass fresh judgment in the light of above on merit.

With the above observation this Cr. Appeal is disposed of”.

10. Later on, after the above said directions of this Court, the trial Court after hearing the parties acquitted the respondents through the impugned judgment dated 22.05.2007 on the following grounds:

- a. “There is over writing in the F.I.R specially over the name of accused Basham.
- b. The evidence of tapedar Allah Bux Ex.28 reveals that there was no light on the road beside the place of occurrence therefore, the identification of accused Basham alias Muhammad Sharif and Muhammad Sulleman by witnesses is doubtful. These two accused have put forward

plea of alibi and have examined themselves under section 340(2) Cr.P.C on oath.

- c. Mashir of recovery P.W-4 Khuda Bux Ex.18 is not from the locality although it is admitted fact many people had collected from the locality at the time of preparation of mashirnamas Ex.24 and 25.
- d. The prosecution case is that the body of the deceased was taken to the hospital at about 2:30 or 2:45 a.m. The time given by the prosecution has been belled by the Doctor who has said that he received the dead body at 2:00 a.m.
- e. The sketch Ex.29 produced by tapedar Allah Bux clearly shows that house of Israr Ahmed is separate house having separate iron gate containing park and so also another iron gate surrounded by wall. Whereas the house of informant Muhammad Aslam is totally different and nowhere, in the house of complainant, it is mentioned that where is the electric available on which, the accused were identified by PW Karim Bux. Nor it is mentioned in the sketch that where P.W Aftab Ahmed or Israr Ahmed were sleeping.

11. During the course of arguments we have specifically asked the question from learned A.P.G to point out any illegality or irregularity in the order of acquittal in favour of the respondents on the above said grounds, she has no satisfactory answer with her.

12. It is noted that the alleged incident took place on 01.07.1990 at 11:15 hours in the night at the house of complainant whereas F.I.R was lodged on 02.07.1990 alleging therein that on the said date and time the respondents duly armed with weapons entered into the house of complainant and has committed lurking house tress pass by night or house breaking but it is surprising to note that nothing has been robbed or snatched by them. It is admitted by learned A.P.G that during this incident no robbery or snatching was proved against the respondents. However, she submits that in this matter one innocent lady Mst. Shahzia has lost her life whereas complainant received injuries.

13. On perusal of case file it further reveals that the prosecution in its entire evidence has failed to show as to what made accused Mitho to fire at Mst. Shahzia wife of Muhammad Aslam / Complainant. It is not the case of the prosecution that

the accused intended to kill Mst. Shahzia, nor the accused wanted to commit robbery or theft which was resisted by Mst. Shahzia nor it is the case of prosecution that accused wanted to hit complainant Muhammad Aslam while he was grappling with co-accused Muhammad Ibrahim because complainant resisted accused Mitho for committing any offence of theft or murder. The allegation that accused Mitho at the time of occurrence was armed with double barrel gun and used cartridges while killing Mst. Shahzia and hitting accused Ibrahim by shooting of two cartridges. The gun cartridge when fired from such distance the palates of cartridge are usually spread in such a way that there would be a number of wounds on the person who was hit, whereas Mst. Shahzia and accused Ibrahim have been said to have received only one palate shot injury each which cannot be in any case by a double barrel gun cartridge shot. It could be a fire arm like a pistol or revolver which could have been clear it, the ballistic expert report would have been brought on the record which it seems that the prosecution has intentionally failed to bring it on the record. The medico legal report of Doctor Abdul Hameed Halepoto also belies the allegation of prosecution that the wounds received by deceased Mst. Shahzia and accused Ibrahim were by a cartridge shot from a double barrel gun.

14. As observed above, this case has been remanded back to the trial Court twice by two different benches of this Court and conviction and sentenced awarded to the respondents has not been confirmed whereas in the third round of litigation the respondents have been acquitted through the impugned judgment therefore, on this ground it could be safely inferred that the case of the prosecution is not free from doubts.

15. We have also perused the impugned judgment along with relevant record so placed before us and come to the conclusion that the learned trial Court has dealt with all aspect of the matter quite comprehensively in the light of all relevant laws dealing with the matter and now before us the appellant was unable to demonstrate that the impugned judgment by any means suffers from any illegality or miscomprehension or non-

appreciation of evidence by way of documents and evidence on record. It is noted that this appeal has not been filed by the complainant or the legal heirs of deceased Mst. Shahzia. However, this appeal has been filed by the State with a prayer that the accused may be awarded exemplary punishment but no ground for interference in the impugned judgment has been pointed out.

16. In view of the above, this Cr. Acquittal Appeal being bereft of merit, was dismissed along with pending application[s], if any through our short dated 12.03.2020 and these are the detailed reasons for the same.

**JUDGE**

**JUDGE**

***\*Hafiz Fahad\****