JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Present:
Mr. Justice Abdul Maalik Gaddi.
Mr. Justice Khadim Hussain Tunio.

Cr. Acquittal Appeal No. D- 120 of 2000

Date of hearing 11.02.2020
Date of judgement: 11.02.2020.

Syed Tarique Ahmed Shah, Advocate for appellant.
Ms. Rameshan Oad, A.P.G. for the State.
None present for the respondents.

J U D G M E N T

ABDUL MAALIK GADDI, J- The captioned appeal is directed against the judgment dated 30.06.2000 passed by learned IInd Additional Sessions Judge, Badin in Sessions Case No.86 of 1994 arisen out of Crime No.93 of 1994 registered U/S 302, 114 r/w Section 34 PPC at P.S. Badin, whereby the learned trial Court after full dressed trial and after hearing the parties, acquitted the accused/respondents U/S 265-H Cr.P.C by extending them benefit of doubt.

2. Brief facts of the case as disclosed in FIR lodged by complainant Ghulam Ali are that on 20.06.1994 in the evening deceased Abdul Rasool diverted water from watercourse No.25-R in his land. It was about 11-00 P.M, when Abdul Rasool reached at the wood which was put on watercourse No.25-R for crossing. Complainant Ghulam Ali, his son Muhammad Haroon and P.W Ramzan were standing on the southern side of watercourse. Abdul Rasool crossed watercourse over the wood. He saw that flow of water in his land was blocked. All the three accused persons namely Rajo, Mubeen and Ghulam Hussain were standing there. Accused Mubeen and Ghulam Hussain were armed with hatchets. Abdul Rasool enquired from accused persons as to why they had closed the water in his land on which accused Rajo instigated his sons Mubeen and Ghulam Hussain not to spare Abdul Rasool. Accused Mubeen gave hatchet blow to Abdul Rasool on his Jaw

and accused Ghulam Hussain gave hatchet blow to Abdul Rasool which hit him above right eye. Abdul Rasool fell down. Complainant party challenged the accused not kill Abdul Rasool on which accused persons threatened the complainant party not to come near else they will also be killed. On the cries of complainant party, P.W Uris and other villagers came and all the three accused persons went away to their houses. Complainant, leaving P.Ws at the place of vardat went to Zamindar Muhammad Yousif Dars in his village and informed him about the incident and on his advise complainant lodged such report at Police Post Nindo in the station diary which was subsequently incorporated in 154 Cr.P.C. at Police Station Badin. After completing the investigation, accused named above were challaned as mentioned above.

3. A formal charge was framed against accused u/s 302, 114 r/w section 34 PPC at Ex.04, to which they pleaded not guilty and claimed to be tried vide their pleas at Ex.5, 6 and 7.

4. At the trial prosecution examined complainant Ghulam Ali at Ex.8, who produced the copy of station diary at Ex.9, P.W Muhammad Haroon at Ex.10, who produced his statement u/s 164 Cr.P.C. at Ex.11, P.W Muhammad Ramzan at Ex.12, who produced his statement u/s 164 Cr.P.C. at Ex.13, P.W Uris at Ex.14, P.W Muhammad Yousif at Ex.15, P.W Dr. Abdul Razzak at Ex.16, who produced post-mortem report of deceased Abdul Rasool at Ex.17, P.W Muhammad Sulleman at Ex.18, who produced the judicial confession of accused Mubeen at Ex.20, Mashir Muhammad Usman at Ex.21, who produced mashirnama of vardat and inquest report, mashirnama of recovery of cloths of deceased, mashirnama of arrest of all the three accused, mashirnama of recovery of hatchet from accused Mubeen at Ex.22 to 27, Tapedar Muhammad Younis at Ex.28, who produced sketch of vardat at Ex.29, HC Mir Hassan Rajo at Ex.30, who produced the report of chemical examiner at Ex.31 and FIR at Ex.32. Thereafter, side of the prosecution was closed by learned DDA vide his statement at Ex.33.

5. Statements of accused as provided under S.342 Cr.P.C were recorded at Ex.34 to Ex.36 respectively wherein they denied all the prosecution allegations levelled against them. However, neither they examined any witness in their defence nor they examined themselves on Oath in disproof of the charge though asked for.

6. Syed Tarique Ahmed Shah, learned counsel for appellant contended that the judgment passed by learned trial court is perverse and the reasons are artificial viz-a-viz the evidence on record; that the grounds on which the trial court proceeded to acquit the accused persons are not supported from the documents and evidence on record; that accused have directly been charged and the discrepancies in the statements of witnesses are not so material on the basis of which accused could be acquitted; that there is undeniable evidence and the accused and complainant party are close relatives; that at the instigation of father, his sons have caused hatchet injuries to the deceased; that FIR was lodged promptly, there is recovery of hatchet from accused Ghulam Hussain whereas accused Mubeen made his confessional statement on 23.06.1994 and positive chemical report is available on record; that learned trial court has based the findings of acquittal mainly on the basis of minor contradictions on non-vital points of the statements of prosecution witnesses and that the prosecution evidence has not been properly appreciated therefore, under these circumstances, he was of the view that this appeal may be allowed and the accused involved in this case may be given exemplary punishment. In support of his contentions, he has placed reliance upon the case of Muhammad Akram alias Akrai v. The State reported as 2019 SCMR 610.

7. On the other hand, Ms. Rameshan Oad, learned A.P.G. 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 whole case of the prosecution is based upon surmises and conjunctures, therefore, no reliance could be safely placed for conviction of the respondents.

8. Arguments heard. Record perused.

9. Before proceeding further, it would be pertinent to mention here that on perusal of order dated 14.01.2020 passed by this court, when Bailable Warrants were issued against the respondents and respondent No.3 Ghulam Hussain was present, it was reported by SIP Muhammad Yaseen Brohi of P.S Badin that respondent No.1 (Rajo) and respondent No.2 (Mubeen) have already been died by their natural death. Such report dated 14.01.2020 alongwith statements of two Nekmards of the locality was filed by said SIP, which is available on record. Hence the proceedings against respondent No.1 (Rajo) and respondent No.2

(Mubeen) are hereby abated. The instant Criminal Acquittal Appeal now is to be proceeded only against respondent No.3 Ghulam Hussain who on 14.01.2020 was present in court and did not wish to engage a counsel.

10. After scanning the evidence of prosecution witnesses, we have come to the conclusion that prosecution has miserably failed to establish its case beyond reasonable shadow of doubt. From perusal of the impugned judgment, it reveals that the trial court has recorded the finding of acquittal in favour of the respondents with sound and significant reasoning such as motive, contradictory evidence, confessional statement etc. All these aspects have been highlighted by the learned Presiding Officer of the trial court in its judgment. For the sake of convenience, it would be appropriate to reproduce some of those aspects/points for acquittal of the respondents, which reads as under:-

> ***"According to judicial confession of accused Mubeen no role was played by accused Rajo and Ghulam Hussain in commission of the offence and they came later on. It is a well settled principle of law that confession of the accused must be accepted in toto, or not at all. Judicial confession of accused Mubeen is further not corroborated by mashirnama of vardat which does not show the recovery of spade from the place of vardat which deceased was allegedly carrying at the time of incident. Since the judicial confession of accused Mubeen on one hand is contradicted by ocular testimony of three eye witnesses and on the other hand it is contradicted by mashirnama of vardat due to non-recovery of spade. In the present case the motive is not proved due to the non recovery of spade from the place of vardat by the side of dead body.***
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> ***Summing up the case, I have come to the conclusion that there are material contradictions in the depositions of eye witnesses which creates doubt regarding their presence at the place of vardat. The verision of all the three eye witnesses is further contradicted by non-recovery of the spade by the side of dead body from the place of vardat and non-availability of cot at the teathering place of their cattle.***

The confession of accused Mubeen is retracted one and it is not corroborated by ocular testimony. ”

11. We have also noted that there is no signature of accused / respondents on their pleas recorded by the trial court. We have also noted that material questions / pieces of evidence i.e. with regard to medical evidence, motive of the offence as well as forensic science laboratory report with regard to the recovered articles from the present respondents were not put to accused in their statements recorded u/s 342 Cr.P.C. which was the primary responsibility of the trial court to ensure that truth is discovered. The law is settled by now that a piece of evidence or a circumstance not put to an accused person at the time of recording of his statement under section 342 Cr.P.C. cannot be considered against the accused person facing the trial. In the case in hand through an act or omission of the Court a serious lacuna in that regard had crept into the case of the prosecution and the accused persons could not be prejudiced on account of the said act or omission of the Court. In this regard reliance can be made upon the case of **MUHAMMAD NAWAZ and others Versus The STATE AND OTHERS** (2016 SCMR 267), wherein the Honourable Supreme Court of Pakistan has observed as under:-

> “…….While examining the appellants under section 342, Code of Criminal Procedure, the medical evidence was not put to them. It is well settled by now that a piece of evidence not put to an accused during his / her examination under section 342, Code of Criminal Procedure, could not be used against him / her for maintaining conviction and sentence.”

12. We have also examined the reasoning assigned by the trial court as reproduced above and have come to the conclusion that the learned trial court has dealt with all aspects of the matter quite comprehensively in light of all the 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 available on record. Learned counsel for the appellant has also failed to point out any illegality or irregularity in the impugned judgment. This matter pertains to 1994, almost 26 years have been passed and this appeal has been filed

in the year 2000, therefore, it is noted that the respondents have suffered a lot and they have faced the agony of protracted trial and the reasons assigned in the judgment of acquittal appears to be sound on facts and law, therefore, need not to be disturbed. It is well settled law that once the accused was acquitted by the competent court of law after facing the agonies of protracted trial, then he would earn the presumption of double innocence which could not be disturbed by the appellate court lightly.

13. In view of the above, instant Criminal Acquittal Appeal being devoid of merit, is hereby dismissed alongwith pending application(s), if any.

JUDGE

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