

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

Present:-

Mr. Justice Abdul Maalik Gaddi.

Mr. Justice Adnan-ul-Karim Memon

Cr. Acquittal Appeal No. D- 37 of 2020

1. For orders on office objection.
2. For orders on M.A No.2175/20.
3. For hearing of main case.

15.09.2020

Mr. Masood Rasool Babar Memon, Advocate for appellent.

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JUDGMENT

ABDUL MAALIK GADDI, J- The captioned acquittal appeal is directed against the judgment dated 26.02.2020 passed by the learned Additional Sessions Judge-I / MCTC, Mirpurkhas in Sessions Case No.218 of 2019 arisen out of Crime No.38 of 2019 registered U/S 302 PPC at PS Taluka Mirpurkhas, whereby the learned trial Court after hearing the parties acquitted the respondent / accused u/s 265-H(i) Cr.P.C of the charge by extending benefit of doubt to her.

2. Brief facts as narrated by the complainant Ramdas in his F.I.R are that on 27.07.2019 he and his wife had gone to his land at Gagan Faqir, while his son Jaisingh went for his labour at 0700 hours and wife of his son Jaisingh namely Shrimati Aneeta and his son namely Naresh aged about 06-07 years remained in the house. At about 1130 hours when he and his wife returned to home, his son Naresh was not available at home, while their daughter-in-law Shrimati Aneeta was present. On enquiry she replied that she has no knowledge about Naresh. During search his brother Bhooro told him that he saw Shrimati Aneeta alongwith his son Naresh, having cloth and suckle in her hand were going in sugar cane crop behind school for cutting grass. Thereafter the complainant alongwith his brother Bhooro went towards their sugar cane crop, where they found the dead body of his son Naresh with cutting throat and blood was oozing. The complainant then informed the matter to Police, who came at the place of incident and shifted the dead body to Civil Hospital Mirpurkhas, where after completing the legal formalities, the dead body was handed over to him and after burial he went to P.S and lodged the FIR.

3. The Prosecution in order to substantiate the charge against the respondents / accused, examined the following ten (10) witnesses:

- P.W No.1** M.O Dr. Herchand examined at Ex:03.
- P.W No.2** Complainant Ramdas examined at Ex:04.
- P.W No.3** Mashir Ajeet Kumar examined at Ex:05
- P.W No.4** Witness Bhooro examined at Ex:08.
- P.W No.5** Mashir Dhanji examined at Ex:09.
- P.W No.6** Witness Jaisingh examined at Ex:10.
- P.W No.7** Mashir PC Dedomal examined at Ex:12.
- P.W No.8** Tapedar Mashooque Ali examined at Ex:13.
- P.W No.9** 2nd I.O Inspector Ghulam Sarwar examined at Ex:14
- P.W No.10** First I.O SIP Akbar Khan examined at Ex:15.

All the above named witnesses have been cross-examined by learned State counsel.

4. Learned trial Court after hearing the respective parties acquitted the respondent /accused under Section 265-H(i) Cr.P.C as stated in the preceding paragraph; hence, this Cr. Acquittal Appeal.

5. Learned counsel for the appellant / complainant at the very outset, submits that the impugned judgment passed by the trial Court is not sustainable under the law as there was sufficient evidence available on record against the accused person but the trial Court brushed aside the same; that even the Investigating Officer supported the prosecution case and completed all codal formalities; that all the witnesses appeared to have not made any major and material contradiction damaging prosecution case rather they brought unchallenged evidence on record, which made the accused liable to be punished; that there is no contradiction in between ocular and medical account. Lastly, he prayed for allowing this Cr. Acquittal Appeal.

6. We have heard the learned counsel for appellant at a considerable length and have gone through the documents and evidence so brought on record.

7. It is an admitted fact that there were some matrimonial disputes between the appellant/complainant and respondent/accused. It appears from the record that it is an unseen incident and nobody had seen the accused while committing the alleged offence/murder of deceased Naresh. It is noted that PW-4 namely Bhooro has stated in his examination-in-chief that he saw the respondent / accused Sht.

Aneeta along with deceased Naresh was going towards the sugar cane having suckle in her hand whereas said PW in his cross examination has stated that appellant/complainant and respondent/accused were not on good terms prior to the alleged incident. This piece of evidence supports the version of respondent/accused taken by her in statement recorded u/s 342 Cr.P.C, wherein she has stated that complainant party used to maltreat her on petty issues, therefore, it can be said that appellant/complainant in order to involve/implicate the respondent/accused falsely has cooked-up the entire prosecution story. It is settled principle of law that last seen evidence is a weak type of evidence and could not be relied upon unless it is corroborated by other strong circumstantial evidence. In this regard, we are fortified with the case of **Altaf Hussain v. Fakhar Hussain and others** (2008 SCMR 1103), wherein it has been held that the last seen evidence is a weak type of evidence unless corroborated with some other piece of evidence. This is a case of circumstantial evidence. To sustain the conviction, evidence must be unimpeachable and trustworthy but here the prosecution has utterly failed to prove its' case by bringing some strong and confidence inspiring evidence which in this case is lacking.

8. Perusal of record further shows that complainant in his cross examination has deposed that on the day of incident first he and his wife left the house and just after his son PW Jaisingh left the house at 0700 hours. Whereas, PW Jaisingh in his cross-examination has stated that he left the house at 0700 hours and then his father complainant and his mother left the house for cultivation. This aspect of the case also gives jolt to the prosecution story. However, when these facts were confronted to the learned counsel for appellant, he has no satisfactory answer with him.

9. It is also noted that alleged incident took place on 27.07.2019 at 0700 hours whereas F.I.R was lodged on 28.07.2019 after the delay of about 01 day for which no satisfactory explanation has been furnished by the complainant. On query, learned counsel for appellant has also failed to explain this aspect of the case.

10. It is not out of context to make here necessary clarification that appeal against acquittal has distinctive feature and approach to deal with appeal against conviction is distinguishable from appeal against acquittal, because presumption of double innocence is attached in latter case. Order of acquittal can only be interfered with when it is found on the face of it as capricious, perverse, arbitrary in nature or

based on misreading, non-appraisal of evidence or is artificial, arbitrary and led to gross miscarriage of justice. Mere disregard of technicalities in a criminal trial without resulting injustice, is not enough for interference. Suffice is to say that an order / judgment of acquittal gives rise to strong presumption of innocence rather double presumption of innocence is attached to such an order. While examining the facts in the order of acquittal, substantial weight should be given to the findings of the lower Courts whereby accused were exonerated from the commission of crime as held by the Apex Court in the case reported as **Muhammad Ijaz Ahmed v. Raja Fahim Afzal and 2 others** [1998 SCMR 1281]. It is settled law that whenever there is doubt about guilt of accused, its benefit must go to him and Court would never come to the rescue of prosecution to fill the lacunas appearing in the evidence of prosecution case as it would be against established principles of dispensation of criminal justice.

11. Apart from above, we have also perused the impugned judgment and come to the conclusion that the learned trial Court has dealt with all aspects of the case quite comprehensively in the light of all relevant laws dealing with the matter and the appellant in his appeal is unable to point out that the impugned judgment by any means suffers from any illegality or miscomprehension or non-appreciation of evidence by way of documents and evidence available on record. We are also not satisfied with any of the grounds agitated by appellant in the memo of appeal for indulgence of this Court in the matter. Therefore, we find that the impugned judgment passed by the trial Court is perfect in law and facts and needs no interference by this Court.

12. Whatever mentioned above, more particularly in light of case laws referred above, we reached at the irresistible conclusion that the appellant has miserably failed to prove his case against the accused person beyond shadow of reasonable doubt, therefore, no interference in the impugned judgment dated 26.02.2020 is required by this Court. Resultantly, the instant Criminal Acquittal Appeal being devoid of any merit is hereby **dismissed** in **limine** along with listed application[s].

JUDGE

JUDGE