

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Cr. Acquittal Appeal No.D- 122 of 2019

PRESENT:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Abdul Mobeen Lakho

For hearing of case.

Date of hearing: 27.10.2020.

Date of judgment: 27.10.2020.

None present for appellant.

Mr. Riaz Ali Panhwar, Advocate for respondents No.2 and 3.

Mr. Shewak Rathore, D.P.G. for State.

J U D G M E N T

MUHAMMAD SALEEM JESSAR, J: At the very outset, learned D.P.G submits that instant appeal against acquittal was filed by appellant on 11.10.2000 and was fixed before the court for hearing on 27.11.2000 when learned counsel sought time to file certain documents therefore, it was adjourned. However, after many consecutive dates it was admitted for regular hearing on 10.05.2001. He further submits that after admission of the appeal, process was issued against respondents who after effecting their appearance also furnished required surety in terms of order dated 10.05.2001 vide Bonds No.8199, 8200 and 8201 dated 17.09.2001 and then the appellant as well his counsel had chosen to remain absent on one or the other date and consequently, it was not decided. However, on 28.10.2019, the following order was passed:-

“None present for appellant. It appears that instant appeal against acquittal was filed against the judgment dated 14.09.2000

on 11.10.2000, whereby respondents were involved in a murder case. Though the appeal was admitted for regular hearing on 10.05.2001 and BWs against respondents No.2 and 3 were directed to be issued in sum of Rs.100,000/- each and subsequently, on service they have furnished their required surety before this court on 17.09.2001 vide Bond No.8199, 8200 as well 8201. Since the case involves with capital punishment therefore, this appeal is required to be heard and decided by a Divisional Bench of this court. Accordingly, office is directed to place it before Divisional Bench of this court as per roster by assigning it proper number as per institution. Meanwhile, notice be issued to appellant and his counsel at the address given by him in his Vakalatnama as well through Secretary Sindh Bar Council with direction to provide duplicate set / copy of memo of appeal along with its` annexures to the office for further proceedings.

To come up on 06.11.2019."

2. Right from 28.10.2019, neither the appellant nor his counsel have took pain to get the matter fixed before court for hearing by filing an application nor have bothered to effect their presence. Such apathy could be deemed as negligence on the part of appellant and his counsel which shows either the purpose for which instant appeal against acquittal was filed has been served or the appellant has lost his interest in the proceedings, therefore, he and his counsel have chosen to remain absent instead to pursue their case vigilantly.

3. We have also gone through impugned judgment and find that there is no illegality or infirmity in it nor it is the case of non-reading or misreading of evidence which may require interference by this court. The scope of appeal against acquittal is much narrow then the appeal against conviction.

4. Before parting with the judgment, it would be appropriate to reproduce the discussion made by trial court under impugned judgment from pages 25 to 33, which reads as under:-

"Complainant Ali Gul in his evidence has stated that deceased Mst. Jameela was his daughter. She was married

with accused Mohd. Zaman. About four months back, he along with his sons Nizamuddin and Jiando had gone to fetch his daughter. He asked for permission of his daughter from accused Zaman and his father Amin but they half heartedly allowed him to take away his daughter. Mohd Zaman and Mohd Amin then went out of their house. He then along with his sons and daughter Mst. Jameela were going to their village and when they reached near the sugarcane crop of Wali Dahri, Mohd Zaman and Mohd Amin armed with hatchet and pistol emerged from sugarcane and gave hakal to them. Accused Mohd Amin on the point of pistol terrorized them and kept them away whereas accused Zaman took Mst. Jameela from her arm and gave her hatchet blows, who fell down on the ground. She raised cries, which attracted PW Khair Mohd (Khair Bux) Mari. The accused then ran away. The complainant then along with Khair Bux went to P.S. to lodge the report leaving his sons with the dead body. The evidence of complainant is at variance with the FIR atleast on one important point i.e. the complainant in the FIR has stated that he had gone to the house of his daughter which is the house of accused Zaman on 4.12.1999 in the evening and had stayed over night in their house but in his evidence he has not stated so. In his cross-examination he has stated that he had not stayed in the house of accused on the night preceding the day of incident. The Investigating Office in his evidence has stated that the complainant had about over night stay in the house of accused on the night preceding the incident. There being contradiction in the version of complainant himself, attempt was made to ascertain the truth about this from the statement of other witnesses. In this respect, PW Nizamdin son of complainant is the person, who according to complainant was all along with him who has supported the version of complainant to this effect and has denied to have stayed over night in the house of accused preceding the day of incident. The question arises as to why the Investigating Officer of this case wrote about the fact of over night stay of complainant in the house of accused Zaman when he had no interest to add or omit any fact from the FIR to damage the case of complainant. It seems to me that the complainant has given turn to his original story which was in fact incorrect story due to the facts stated by PW Nizamdin and Jiando in their statement U/S 164 Cr.P.C. PW Nizamdin has produced his statement U/S 164 Cr.P.C. at Ex-8A in which he has not made mention of their over night stay in the house of accused, therefore, the complainant in order to bring the evidence in line with the statement 164 Cr.P.C of PW Nizamdin has denied to have stayed night in the house of accused Zaman. However, statement of PW Nizamdin U/S 164 Cr.P.C. cannot be taken into consideration as the cross-examination to this witness was reserved at the request of the accused but then the witness was never called back for cross-examination. An other important fact which creates doubt on the truthfulness of the evidence of complainant Ali Gul is that the complainant has stated in the FIR that he had gone to lodge the report at the P.S. leaving his two sons and PW Khair Bux (Khair Mohd) with the deadbody but in his evidence the complainant has

stated that he had gone to P.S. with Khair Bux to lodge the report leaving his sons with the deadbody.

PW Khair Mohd in his evidence, Ex-11, has stated that he took the complainant on his motorcycle to P.S. where the complainant lodged FIR. Investigating Officer of this case in his evidence EX-13, has stated in his cross-examination that complainant had come alone at P.S. and PW Khair Mohd was present at the place of occurrence when he visited the place of incident. He has further stated that Khair Mohd had not come to P.S. Bandhi. The complainant had no reason to deviate from the fact mentioned in the FIR that he had left his two sons and PW Khair Mohd with the deadbody except to improve his case. The prosecution has set out the case that Khair Mod had reached on his motorcycle at the time of incident, therefore, the prosecution after second thought considered it more convenient to adopt the line that the complainant was taken to P.S. on motorcycle by PW Khair Mohd. In presence of motorcycle at the place of occurrence it would have been difficult for the prosecution to convince as to how the complainant proceeded to P.S. on foot when the motorcycle was available. It is why the prosecution has shifted its line of action in this respect. I am unable to understand as to how the complainant took one hour to reach the P.S. Bandhi on motorcycle which is at a distance of 3 KMs from the place of incident. This shows that the complainant and PWs are attempting to give a flavor of truth to their evidence. The ocular evidence of complainant and PW Nizamdin being father and brother of deceased is of highly interested witnesses. The motive for causing murder of Mst. Jameela set out in the FIR is annoyance of the accused on seeking permission for taking away Mst. Jameela to her parents house. This is a weak type of motive for causing murder. Admittedly the marriage was an exchange marriage and the visit to her parents house cannot create a motive for murder. There is an other aspect of the case which also creates doubt about the presence of the witnesses at the time of incident. Tapedar Abdul Sattar has been examined at Ex-14, who has prepared site plane and has indicated the point in Ex-14A, as the place of death of Mst. Jameela. This point 'A' is situated at a distance of about 4620 feet away from the village Abdul Aziz Talpur which is the village of Dilmurad Brohi. He has further stated in his cross-examination that a person going on foot from village of the accused to the village of complainant need not pass from point 'C' shown in the Ex-14A, from where the deceased alleged to have been taken by accused and murdered her at point 'A' as there is short cut path from Tre-wato. This shows that the place where the deceased was murdered was not a place on the usual path from the village of accused to the village of complainant. It further shows that Mst. Jameela was specifically taken to the point and was murdered in a circumstance shrowded in the mystery. The ocular evidence of all the three witnesses is therefore highly doubtful and not confidence inspiring. The corroborative evidence of recovery of hatchet is also not as the hatchet alleged to have been produced by the accused was stained with blood and was not

sent to the Chemical Examiner to ascertain the fact that if contained human blood. Therefore, the recovery does not corroborate the case of the prosecution. Therefore, the point No.2 also stands not proved.”

5. It is settled principle of law that after getting acquittal accused always earns double presumption of innocence and the superior courts have also avoided to interfere in acquittal judgments. The basic ingredients as well guiding principles for making interfere in the impugned judgment as laid down by Honourable Supreme Court of Pakistan in case of **Ghulam Sikandar and another v. Mamaraz Khan and others** (PLD 1985 Supreme Court 11) are lacking in this case. Consequently, and in view of discussion made by trial court under the impugned judgment, instant appeal against acquittal seems to be devoid of its merits and require no interference by this Court. Accordingly, it is hereby dismissed alongwith pending application(s), if any.

JUDGE

JUDGE

Tufail

