ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Acq. A. No.D- 27 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

1. For orders on office objection.
2. For hearing of main case.

29.10.2020

Ms. Rameshan Oad, A.P.G.
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None present for appellant.

Learned A.P.G submits that impugned judgment does not suffer from any illegality or infirmity, which may require interference by this Court. She, therefore, submits that by dismissing the instant appeal against acquittal impugned judgment passed by the trial Court may be maintained and precious Court time may be saved.

2. Through this Criminal Acquittal Appeal, appellant has assailed the judgment dated 05.09.2018, handed down by learned Sessions Judge, Hyderabad in Sessions Case No.702 of 2011 (re: The State Vs. Amanullah and another) being outcome of FIR No.125 of 2011, registered at Police Station A-Section Latifabad, under sections 302/34 PPC, whereby after full dressed trial, respondents No.2 and 3 have been acquitted of the charges.

3. It appears that being aggrieved with the aforementioned judgment, appellant has filed memo of instant appeal against acquittal in the office on 09.10.2018, whereas it was fixed before the Court for hearing on 18.10.2018, when notice was ordered to be issued to A.P.G Sindh. Thereafter, appellant as well as his counsel have failed to pursue it vigilantly.

4. We have gone through the impugned judgment and the evidence adduced by the prosecution witnesses before trial Court as well as annexed with the file. While delivering the impugned judgment learned trial Court has discussed all material aspects of the case in entirety as well as the contradictions and lacuna which were found in prosecution case and evidence in the following terms:-

> " **Ocular evidence.**
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> The ocular evidence, as stated, comprises of complainant Mukhtar and P.W Dilawar Iqbal who were admittedly the brothers of the deceased.

The complainant in his evidence deposed that he had witnessed the incident and identified accused Amanullah but for analyzing his version there are several factors in the case which need to be kept in mind. Firstly, the timing of the incident according to prosecution itself was the midnight i.e 12:45 a.m and the complainant claimed that he identified one accused who was on the back-seat of the motorcycle as Amanullah on street-light but there was no mention about any such light in the mashirnama of vardat which was admitted by the Investigation Officer SIP Nasir Nawab in his cross-examination. Thus the very source of light for identifying accused Amanullah appeared dubious. Further, the complainant to show his presence, stated that after taking meals, he went to take drink/juice at about 12:30 a.m(night) and on return saw the incident. However, the timing of 12:30 midnight were too odd for taking the drink. In fact the complainant had cited same reason in the NC report also which he had produced to show his previous quarrel with accused. Thus not only the source of light was not established but the reason of presence shown by the complainant was also not free from doubt. Further, in his evidence the complainant mentioned that as he came near his house, he heard a firearm shot and saw a person lying injured (identified as Imran) and then saw two persons on motorcycle out of whom one on back-seat fired with pistol which hit his brother Muhammad Ishtiaq who was sitting at the gate of the house. Again it was bit uncommon and hard to believe that the deceased was sitting at the gate of house at such late hours of the night. Furthermore, the complainant stated that he identified accused Amanullah when the accused started fleeing on motorcycle but in the cross-examination, mentioned that he saw the accused from their sides and not from their front. He also deposed that he called his brother Dilawar Iqbal after the accused moved from the place of incident who was sleeping which led to conclude that Dilawar Iqbal awoke and came only after the accused had departed. This in turn eclipsed the claim of Dilawar Iqbal to have seen the accused. In fact SIP Nasir Nawab in his evidence admitted that the said Dilawar Iqbal had not stated before him that he had seen the accused which made his claim of seeing the incident more doubtful. Another point of contradiction was that while the complainant stated that the deceased was sitting at the gate at the time of incident while Dilawar Iqbal stated that he was standing. It is also to be noted that nobody else from the vicinity or neighbourhood was cited as witness though it was conceded by P.W Dilawar Iqbal that injured Imran was taken away by other people who had gathered there. However, none from them was either shown witness or their names given in the case. P.W Dilawar Iqbal further stated that complainant Mukhtar was about 50 feet away from the deceased at the relevant time. This made the claim of complainant to be present and identifying accused Amanullah more dubious. There was also delay in lodging FIR as the incident was said to have taken place at 12:45 midnight of 04.6.2011 while its' report was lodged on the following night at 11:30 p.m i.e after about 22 hours without any plausible reason. Thus in view of close relationship of complainant Mukhtar and P.W Dilawar Iqbal with the deceased, contradiction in their evidence and delay in lodging the FIR coupled with other infirmities highlighted above, rendered their version not worthy of implicit reliance.

As regards accused Rao Naveed, he was linked only on the basis of his identification by the complainant in the test held before the Magistrate. However, the complainant in the cross-examination mentioned that he saw the Police available in the office of the Magistrate and saw no other

accused with the Police. This suggested that he saw accused Naveed before the identification test was held and that being so the test was rendered of no much value. Moreover, in the mashirnama of identification test prepared by the Magistrate, name of the accused was given as Nadeem son of Kashif while the accused here was Naveed son of Ashiq. This also made it more doubtful. It was indeed admitted by the Investigation Officer that he had taken copy of the mashirnama of identification test and yet he did not care to have the name of the accused corrected. Thus the linkage of accused Rao Naveed was also not firmly established with the alleged offence.

ii) **Circumstantial evidence**:

The circumstantial evidence has been attempted in shape of recovery of empties from the place of incident and of pistol from accused Amanullah. It was said by the prosecution that the pistol which was used in the offence belonged to Farhan as its' licencee. It was also alleged by the prosecution that on 05.6.2011, accused Amanullah and Rao Naveed together with above said Farhan were found together and arrested. Firstly it was hard to believe that the accused having committed such offence would roam about together in the area and strangely the said Farhan was also with them keeping in his pocket the licence also which was secured from him while the pistol was secured from Amanullah. This does not appeal to reason. Moreover, it was admitted by SIP Hassan Jaffri that the pistol recovered from accused Amanullah was not sealed and while it was said that in all 8(eight) empties were secured by Police from vardat but mashir Dilawar Iqbal in his evidence stated that the Police had not secured empties in his presence. Co-mashir Gulzar was also relative of the complainant party/deceased. Further, the evidence of the complainant would show that he spoke about one accused(Amanullah) on the back-seat of the motorcycle who fired at the deceased. He did not utter a word about the other accused driving the motorcycle to have made any firing. Thus his evidence suggested that the firing was made only by one accused(Amanullah) from the pistol but the ballistic report certified only one empty appeared to have been fired from it while the other seven empties were not certified to have been fired from it. This also caused a fatal blow to the case of prosecution and as stated earlier, P.W Dilawar Iqbal had stated that no empty was secured in his presence. It was therefore that the Advocate for accused Amanullah contended that the empty which was shown tallying with the pistol was probably fired later just to strengthen the case. On analysis of the said points, the recovery of pistol and empties also appeared doubtful and not capable of reliance."

5. There is no cavil with the legal proposition that an acquittal appeal stands on a different footing than an appeal against conviction. In acquittal appeal, the Superior Courts generally do not interfere with unless they find that miscarriage of justice has taken place. The factum that there can be a contrary view on re-appraisal of evidence by the Court hearing acquittal appeal simpliciter would not be sufficient to interfere with acquittal judgment. In case of **Muhammad Tasaweer v. Hafiz Zulkarnain and 2 others** (PLD 2009 Supreme Court 53), Honourable Supreme Court of Pakistan has laid down following dictum:-

> "11. Needless to emphasize that when an accused person is acquitted from the charge by a Court of competent jurisdiction then, double presumption of innocence is attached to its order, with which the superior courts do not interfere unless the impugned order is arbitrary, capricious, fanciful and against the record. It was observed by this Court in Muhammad Mansha Kausar versus Muhammad Asghar and others, (2003 SCMR 477). "that the law relating to reappraisal of evidence in appeals against acquittal is stringent in that the presumption of innocence is doubled and multiplied after a finding of not guilty recorded by a competent court of law. Such findings cannot be reversed, upset and disturbed except when the judgment is found to be perverse, shocking, alarming, artificial and suffering from error of jurisdiction or misreading non-reading of evidence.... law requires that a judgment of acquittal shall not be disturbed even though second opinion may be reasonably possible".

6. It is also well settled law that medical evidence may confirm the ocular evidence with regard to the seat of injury, nature of the injury, kind of weapon used in the occurrence' but it would not connect the accused with the commission of the crime.

7. In view of above legal position, it appears that instant appeal has wrongly been filed, even the basic principle for initiating appeal against acquittal as laid down by Honourable Supreme Court of Pakistan in the case of **Ghulam Sikandar and another v. Mamaraz Khan and others** (PLD 1985 Supreme Court 11) are also lacking in this case. The impugned judgment does not suffer from any illegality or infirmity which may warrant interference by this Court. Accordingly and in view of above facts and case law, instant appeal against acquittal is dismissed alongwith pending application.

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