

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

Criminal Acquittal Appeal No.D-71 of 2020
Criminal Acquittal Appeal No.D-72 of 2020

PRESENT:

Mr. Justice Abdul Malik Gaddi
Mr. Justice Khadim Hussain Tunio.

Appellant: Wishandas S/o Gharo Mal Meghwar
through Mr. Ghulam Nabi Meo Rajput,
Advocate

Respondents: Kelash, Rano @ Ranio, Ghulam Hyder and
Mukesh, through Mr. Ali Hassan Chandio,
Advocate.

The State: Through Ms. Rameshan Oad,
Assistant P.G.

Date of hearing: 21.01.2020.
Date of judgment: 21.01.2020.

JUDGMENT

Khadim Hussain Tunio, J.- By this common judgment, we intend to dispose of the above captioned criminal acquittal appeals filed by appellant Vishan Das son of Gharo Mal Menghwar, impugning one and same judgment dated 17.07.2019 passed by learned Additional Sessions Judge-I / Model Criminal Trial Court, Umerkot, in Sessions Cases Nos.136 & 137 of 2017, arising out of one and same Crime bearing No.76 of 2017 registered at P.S Kunri under Sections 302, 201 & 34 PPC, whereby respondents / accused, namely Kelash, Rano @ Ranio, Ghulam Hyder and Makesh were acquitted of the charges.

2. Concisely, the facts of the prosecution case as narrated in the F.I.R are that on 25.06.2017 at 1120 hours, complainant Vishan Das Menghwar lodged F.I.R alleging therein that his son Suneel, aged about 19 years, was working as labourer at a hotel in Samaro Town. On 22.06.2017 at late night his son did not come back to the house. The complainant reached at hotel of Zahid

Qaimkhani for inquiring his son, where Zahid Qaimkhani disclosed that he gave motorcycle and cash amount of Rs.35000/- to his son for purchasing some items, who said that he will purchase the said items in the morning. Thereafter, the complainant alongwith his relatives as well as Zahid Qaimkhani also searched Suneel but of no avail; however, the complainant informed such facts at Police Station. On 24.06.2017 at 09:00 a.m., complainant received information that a dead body was found in Bushtan Minor near Bushtan. On such information, complainant alongwith his son Aneel, brother Aatam and relative Madhu Ji and Zahid Qaimkhani went for identification at Kunri, where they came to know that police has shifted the dead body at Taluka Hospital, Kunri; however, they reached there and identified the dead body to be Suneel, who sustained sharp cutting injuries on his head and backside of head and due to remaining in the water the dead body was in decomposed condition. After conducting postmortem, the dead body of Suneel was handed over to the complainant. After funeral ceremony, the complainant went to Police Station and lodged the subject F.I.R.

3. After registration of F.I.R and conducting investigation, the accused / respondents were arrested and challan was filed against them before the learned trial Court. Learned trial Court vide order dated 14.09.2017 bifurcated the case of accused Kelash being juvenile from the case of other accused.

4. After providing necessary documents, formal charge was framed against the respondents / accused, in which they denied prosecution allegations and claimed to be tried.

5. In order to substantiate the charge against the accused / respondents, the prosecution examined as many as 12 (twelve) witnesses, namely Vishan Das Meghwar, Lekhraj Meghwar, Zahid Ali Qaimkhani, Hakam Ali Otho, Qutub Ali Shah, Muhammad Yaseen Kapri, Dr. Mubarak Ali Dars, Atam Meghwar, PC Rizwan Hussain Khaskheli, PC Nathomal Bheel, Riaz Ahmed Laghari and Syed Atif Hussain, who produced numerous documents in their evidence.

6. Statements of accused under Section 342 Cr.P.C were recorded separately, in which they denied the allegations made against them by the prosecution. However, neither they examined themselves on oath nor adduced any defence evidence.

7. After hearing the respective parties, learned trial Court acquitted the respondents / accused by extending them benefit of doubt; hence, these acquittal appeals have been preferred against the said acquittal.

8. Learned Counsel for the appellant / complainant has contended that the learned trial Court has passed the judgment in hasty manner without applying judicious mind; that the prosecution has proved its case against the respondents / accused beyond reasonable shadow of doubt; that the learned trial Court has committed illegalities and irregularities while acquitting the respondents / accused; that all the prosecution witnesses have supported the case of the complainant and that there is no contradiction in the evidence of the prosecution witnesses; that learned trial Court has committed misreading and non-reading of the evidence led by the prosecution; that the learned trial Court while acquitting the respondents / accused has given undue weight to the minor discrepancies, if any, came in the evidence of the prosecution witnesses. He lastly prayed that acquittal of the respondents / accused is not in accordance with the law; hence, the same may be set aside and the respondents / accused may be convicted in accordance with law.

9. Learned Assistant P.G as well as learned Counsel for the respondents have supported the impugned judgment by submitting that no illegality and irregularity has been committed by the trial Court; that learned trial Court while delivering the judgment has discussed each and every aspect of the case; as such, they pray for upholding the impugned judgment.

10. We have heard learned Counsel for the appellant, learned Counsel for the respondents as well as learned Assistant P.G appearing for the State and perused the record minutely.

11. From the perusal of impugned judgment, it reveals that the learned trial Court has recorded the acquittal in favour of the respondents with significant and sound reasoning. There is unexplained delay in lodging of the F.I.R. The alleged incident is witnessed as none has seen the respondents / accused while committing the murder of deceased Suneel except the last seen evidence of PW Lekhraj who is alleged to have seen the deceased alongwith respondents / accused prior to commission of the alleged incident, but his version has not been supported by any independent evidence. More particularly, PW Zahid Qaimkhani, who being independent witness, has deposed that PW Lekhraj remained present from 22.06.2017 to 04.07.2017 in front of his hotel where he is running his fruit cart. Though PW Lekhraj has stated that on 22.06.2017 he went to Karachi, worked there in a factory and came to village at Samaro Town after two weeks; however, he has not produced any documentary proof in support of his contention, though he has tried to substantiate his plea by stating that he was working at Karachi in a factory but he did not disclose the name, company and address of the company as well as designation and his wages where he worked. Even he has not disclosed any fair ticket of bus / or train through which he proceeded to Karachi or returned back from Karachi to Samaro. Surprisingly, PW Lekhraj informed the complainant that he saw deceased Suneel with respondents / accused but he did not inform the complainant though his house is situated after two houses of neighbours from the house of complainant. There is also retracted confession of respondent / accused Rano @ Ranio which has not been recorded in accordance with law by the learned Magistrate while observing all the legal formalities and the same has not been recorded in presence of natural guardian or parents of the respondents / accused and that the confessional statement has been recorded after two days of his arrest despite respondent / accused Rano @ Ranio was produced one day before recording of his confessional statement before the learned Magistrate in police custody; hence, violated the guidelines laid down by the superior courts for recording confessional statement as observed by the learned trial Court. It is by now well established principle of law that the last seen evidence

is a weak type of circumstantial evidence and cannot be made base for conviction of murder charges when the witness was related to the deceased and his testimony was not corroborated by any other evidence. All the pieces of circumstantial evidence are not interconnected and if the chain of any circumstantial evidence is broken, the whole prosecution case would fall on the ground. Moreover, when there is no direct evidence, the chain of events furnished by the circumstances should be so far complete as not to leave any reasonable ground for conclusion consistent with innocence of accused. The recovery of articles on the pointation of respondents / accused has been disbelieved by assigning cogent reasons by the learned trial Court as the same articles were not recovered from the alleged place of incident, but the same have been recovered after four days of arrest of the respondents / accused. Even otherwise, the number of denomination currency notes recovered on the pointation of respondents / accused has not been disclosed in the memo of recovery; hence, such discrepancies in the prosecution story made the case against the respondents doubtful; therefore, the learned trial Court has rightly acquitted the respondents / accused after discussing each and every aspect of the case. Learned Counsel for the appellant / complainant during course of his arguments has failed to point out any illegality or irregularity, if any, committed by the trial Court while recording impugned judgment, which has been passed by learned trial Court after applying its judicious mind so cautiously.

12. It may be observed here that an accused is presumed to be innocent in law and if after regular trial he is acquitted of the charge, he earns double presumption of innocence and there is heavy onus on the prosecution to rebut the said presumption. In view of the discrepant and inconsistent evidence led, the guilt of accused is not free from doubt, therefore, this Court is of view that the prosecution failed to discharge the onus and the finding of acquittal recorded by the learned trial court is neither arbitrary nor capricious to warrant interference. More so, when an accused is acquitted from the charge by court of competent jurisdiction, then it is well established principle of law that double presumption of

innocence will remain attached with the judgment of acquittal, therefore, such judgment cannot be interfered with unless it is proved that same is arbitrary, shocking capricious, fanciful and against the settled principles of criminal administration of justice. In this respect, reliance may respectfully be placed on the cases of ***Yar Muhammad and 3 others v. The State (1992 SCMR 96, State/Government of Sindh through Advocate General, Sindh Karachi v. Sobharo (1993 SCMR 585), The State & others v. Abdul Khaliq& others (PLD 2011 SC 554), Muhammad Zafar and another v. Rustam Ali and others (2017 SCMR 1639), Zulfiqar Ali v. Imtiaz and others (2019 SCMR 1315).***

13. It is settled principle of law that whenever there creates some reasonable doubts about the guilt of an accused, the benefit of which is to be extended to the accused as a matter of right but not as a matter of grace or concession as held by the Hon'ble Supreme Court in numerous cases. No fresh or cogent reason / ground has been assigned to this Court by learned Counsel for the appellant, which may suggest that these appeals may be dealt with against the impugned judgment which even otherwise has rightly been delivered by the learned trial Court after having applied its judicious mind; hence, the appellant has no case against the respondents / accused, who have rightly been acquitted by the learned trial Court and such acquittal in absence of the evidence on part of the complainant cannot be interfered in a manner being taken by the complainant by way of these appeals. Accordingly, these acquittal appeals were dismissed by a short order announced in open Court today i.e. 21.01.2020. These are the reasons for the said short order.

JUDGE

JUDGE