

ORDER 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- 37 of 2019

For hearing of main case.

30.01.2020

Appellant Muhammad Shahid present in person.

Mian Taj Muhammad Keerio, Advocate along with respondent No.2.

Mr. Shawak Rathore, Deputy Prosecutor General.

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ORDER

ABDUL MAALIK GADDI, J- The captioned appeal against acquittal is directed against the judgment dated 03.05.2019 passed by the learned Model Criminal Trial Court / 1st Additional Sessions Judge, Hyderabad in Sessions Case No.123 of 2007 arisen out of Crime No.18 of 2007 registered u/s 302, 324, 384, 147, 148, 149 PPC at PS Tando Jam Hyderabad, whereby the learned trial Court after full-dressed trial of the case, acquitted the accused u/s 265-H(i) Cr.P.C.

2. Brief facts of the prosecution case are that on 21.02.2007 at 1200 hours complainant Muhammad Arif lodged instant F.I.R alleging therein that on 20.02.2007 he was sitting in the house of his uncle where at 11:45 hours his younger brother Muhammad Abid came and disclosed that his nephew Majid, who went to Agricultural University in order to attend his class, has been seriously injured in university and taken to civil hospital Hyderabad; thereafter, on such information the complainant along with his brothers Muhammad Abid and Muhammad Shahid together reached the Civil Hospital Hyderabad, where they saw that son of complainant Majid having serious injuries on his person lying in the emergency ward and he was unconscious; one boy namely Waqas

Rajput was also lying on nearby bed in injured condition, and on being asked Waqas told them that today (date of incident) at 10:45 hours some boys came and demanded money and said that if you do not give money then you will be killed. However, he refused to fulfil such demand on which those students started beating him and in the meanwhile on getting information Majid came and he told Majid that those students have demanded money from him and on his refusal, they started beating him, simultaneously, they both Majid and Waqas were talking to each other and in the meanwhile, the companions of aforementioned students namely Malik Soomro, Asif Chandio, Nadir Soho armed with pistols while Khalil Junejo, Farrukh Pathan, Shah Nawaz Bhutto, Mukhtar Chandio and other 20/25 unknown boys who were holding iron rods, chains and hunters, came there; however, we could identify the unknown boys and after seeing them who while coming attacked us. Malik Soomro, Asif Chandio and Nadir Soho struck Majid with pistol butts on his head and injured him seriously upon that he became unconscious and fell down and again those boys struck Majid with iron rods on different parts of his body then our friends came and took both of us to the Rural Health Centre, Tando Jam from where we have been referred to Civil Hospital Hyderabad. On such information, complainant and his brothers stayed in the civil hospital Hyderabad for Majid's treatment where Majid was operated from 6:00 to 10:00 PM; however, he could not regain his senses. Thereafter, complainant leaving his brother at Majid and Waqas in the hospital, went to PS and lodged FIR submitted that above said accused persons with collusion of each other created trouble and on account of not giving them money (bhatta) with intention to attempt the murder struck his son Majid with pistol butts on his head and body and injured him severely and also injured Waqas after beating him seriously. Majid is still under treatment in Civil Hospital Hyderabad in an unconscious condition who after regaining his senses will disclose the names of rest of the accused persons in his statement.

3. Record reflects that prior to the announcement of impugned judgment, case of co-accused persons namely Shahnawaz and Mukhtar Ali was proceeded and after full-dressed trial accused Shahnawaz was convicted vide judgment dated 22.07.2013 by learned 2nd Additional Sessions Judge, Hyderabad, while accused Mukhtar was acquitted u/s 265-H(i) Cr.P.C.

4. Appellant Muhammad Shahid submits that the impugned judgment is perverse and reasons assigned therein are artificial viz-a-viz the evidence on record; that the impugned judgment is not sustainable under the law as there was sufficient evidence available on record against the accused but the trial Court brushed aside the same, more particularly, the accused was acquitted without assigning any valid reason; that the grounds on which the respondent

No.2 was acquitted are not supportable from the evidence as well as documents on record; that respondent No.2 has been directly charged and the contradictions and discrepancies in the statements of prosecution witnesses are not so material on the basis of which respondent No.2 could be acquitted; that the learned trial Court has given findings of acquittal mainly on the basis that the injury was not attributed to present respondent; that the prosecution evidence has not been properly appreciated; therefore, under these circumstances, he was of the view that on the basis of available record, prima facie, involvement of respondent No.2 is apparent but the learned trial Court without considering the evidence in a hasty manner has acquitted respondent No.2 without assigning any valid reason.

5. Conversely, Mr. Mian Taj Muhammad Keerio, Advocate representing the respondent No.2 / accused, while supporting the impugned judgment and opposing the instant appeal against acquittal has argued that there is no gross illegality, irregularity or infirmity in the impugned judgment as there are sufficient reasons and grounds which create reasonable doubt in favour of the accused. He further submits that trial Court has rightly passed the impugned judgment which needs no interference by this Court; that there general allegations against respondent No.2 and on the basis of general allegations co-accused Mukhtar has been acquitted by the trial Court and on filing criminal acquittal appeal by the complainant party being Cr. Acq. Appeal No.D-22/2013 the same was dismissed by this Court and the order of this Court in said acquittal appeal has been maintained by the Honourable Supreme Court of Pakistan in Cr. P. 104-K of 2017 vide order dated 06.04.2018; not only this, co-accused Shahnawaz was also acquitted by this Court although he was awarded life imprisonment by the trial Court and the Honourable Supreme Court of Pakistan has also maintained such acquittal order of accused Shahnawaz by the said order passed in Cr. P. 103-K of 2017. He further submits that nothing incriminating was recovered from respondent No.2 and according to him, the learned trial Court has rightly extended benefit of doubt in favour of respondent No.2, therefore, the order of acquittal passed by the trial Court in this case needs no interference.

6. Mr. Shawak Rathor learned D.P.G appearing for the State has also supported the impugned judgment and opposed the instant appeal against acquittal and further submits that the acquittal order in favour of respondent No.2 is perfect and contains valid reasons for acquitting him.

7. We have heard the parties at a considerable length and have perused the record available with their assistance.

8. It is noted that no specific injury was attributed to respondent No.2 in this case either to deceased Majid or to injured / P.W Waqas. Perusal of medical evidence shows that deceased had received only one injury and injured / P.W had received three injuries. Nothing incriminating was recovered from respondent No.2. It is also noted that on the basis of same set of evidence co-accused Shahnawaz has been acquitted by this Court whereas co-accused Mukhtar has been acquitted by the trial Court and order of acquittal of Mukhtar has maintained by this Court in Cr. Acq. Appeal No.D-22 of 2013. Against these orders the complainant party preferred appeals before the Honourable Supreme Court in Cr. Petition Nos.103-K and 104-K of 2017 whereby the Honourable Supreme Court vide order dated 06.04.2018, passed in the said petitions, dismissed the plea(s) of the appellant / complainant party and maintained the order / judgment of this Court dated 11.10.2017 in Cr. Appeal No.D-74 of 2013, Cr. Acquittal Appeal No.D-22 of 2013 and Cr. Rev. A. No.S-118 of 2013.

9. We have perused the impugned judgment. It would be conducive to reproduce the relevant / concluding para of the impugned judgment, which reads as under:-

“ Prior to discussion on P.Ws evidence, it may be mentioned here that co-accused Shah Nawaz and Muhammad Arif have already got benefit of judgment passed by Honourable High Court of Sindh on 11.10.2017 as in said judgment, Honourable Sindh High Court has extended benefit of doubt to the said co-accused. Since, the alleged role of present accused Khalil Junejo is identical to that of co-accused Mukhtiar Chandio, since acquitted, therefore, this court is of the view that instant matter needs no longer discussion for the reason that set of evidence is same and during course of recording evidence against present accused, same P.Ws have been produced by the prosecution including main eye-witness Waqas and they have deposed almost in same manner. However, evidence of injured Waqas needs some little discussion on the ground that he disclosed the matter of bhatta being background of alleged incident. Pertinent to mention here that prosecution did not produce a single witness of staff of university, teachers or other students supporting the said evidence of said P.W Waqas. This reveals that matter remained on same footing during the course of trial against the present accused Khalil Junejo. Judgment of Honourable Sindh High Court dated 11.10.2017 is on record and it appears that same has been maintained by Honourable Supreme Court of Pakistan vide order dated 06.04.2018.”

10. During the course of arguments, we have specifically asked the question from appellant to point out any illegality or infirmity in the impugned judgment, he has no satisfactory answer with him.

11. Considering all the above aspect of the case, we have come to the conclusion that the trial Court has rightly extended the benefit of doubt in favour of the accused / respondent No.2 and the impugned judgment contain valid reasons for extending benefit of doubt in his favour hence, does not

require any interference by this Court. We may further observe that there is clear distinction in appeal against conviction and appeal against acquittal. It is settled law that accused who has been acquitted in crime can claim double innocence, one at the pre-trial stage and the other he may earn on the basis of judgment of acquittal in his favour from the Court of competent jurisdiction. The competent Court in the instant matter has extended benefit of doubt to the accused / respondent No.2 after examining the entire evidence, therefore, we see no reason to interfere with the impugned judgment. Consequently, this appeal against acquittal is dismissed along with pending application(s), if any.

JUDGE

JUDGE

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