

JUDGMENT 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- 16 of 2019

Date of hearing 04.02.2020
Date of judgement: 04.02.2020.

Mr. Pir Bux Bhurgri, Advocate for appellant.

Mr. Shahzado Saleem Nahiyoan, D.P.G. for the State (on Court notice).

J U D G M E N T

ABDUL MAALIK GADDI, J- The captioned appeal is directed against the judgment dated 07.02.2019 passed by learned 1st Additional Sessions Judge, Dadu in Sessions Case No.540 of 2016 arisen out of Crime No.15 of 2016 registered U/S 302, 34 PPC at PS Wahi Pandhi, whereby the learned trial Court after full dressed trial and after hearing the parties acquitted the accused/respondents U/S 265-H(i) Cr.P.C by extending benefit of doubt in their favour.

2. Brief facts of FIR lodged by complainant Khawand Bux Rustamani at P.S Wahi Pandhi on 06.07.2016 are that he used to do cultivation. They are six brothers and his brother Allah Bux aged about 10/12 years is on fourth number. He further alleged that on 18.06.2016 his brother Allah Bux came at Wahi Pandhi, he was enticed by some unknown persons and he could not return till evening. They searched him as well as gave information to P.S Wahi Pandhi and on 02.07.2016 they came to know that a dead body of one unknown boy was lying in Skelton condition at Koter-Dero near Village Sahib Khan Leghari. On receiving such information complainant, his cousin Lateef and sister's son Ismail

@ Misri as well as other relatives went there for identification, such information was also given to Wahi Pandhi Police and the police came there. Near to the dead body, clothes and romal were lying and from the pocket of shirt one Rosary on which beads "Allah & Muhammad" were embossed, one comb and round broken mirror was found and on the basis of these articles complainant identified that the dead body was of his brother Allah Bux, who was murdered by some unknown accused and due to passage of time the dead body was secured in skeleton condition. After completing legal proceedings and post-mortem the police handed over the skeleton to complainant party and after funeral the complainant got lodged his FIR to the above effect.

3. Record reveals that after registration of FIR further statement of complainant was recorded on 10.07.2016 wherein it is stated by complainant that they gave Holy Quran to vicinity people for giving information regarding real culprits, to that Shamsuddin Rustamani and Muharram Rustamani informed complainant party that on 18.06.2016 his brother Allah Bux was fallen down on the earth by accused Jeewan Bozdar, Ramzan Rustamani and Mehboob Rustamani while Allahdino Rustamani took out knife from his fold of shalwar and committed his murder by slaughtering.

4. After registration of FIR, usual investigations were carried out and Challan of the case was submitted before the competent Court of law showing accused Allahdino and Mehboob in custody while accused Ramzan and Jeewan as absconding. The absconding accused were declared proclaimed offenders after completing legal proceedings. R & Ps of the case were sent-up to the Court of Honourable Sessions Judge, Dadu. Soon after accused Ramzan granted bail and joined the trial. This

case was transferred to the Court of learned Additional Sessions Judge-II Dadu for its disposal in accordance with law.

5. After supplying case papers to accused Allahdino, Mehboob and Ramzan, a formal charge was framed against them by the Court of learned Additional Sessions Judge-II Dadu at Ex.7 and their pleas were recorded at Ex.7/A to Ex.7/C. Subsequently, on 19.06.2017 accused Jeewan was sent-up to face his trial through supplementary challan. After supplying case papers to him at Ex.8, charge against present accused was framed at Ex.9 and their pleas were recorded at Ex.10 to Ex.13 wherein they plead not guilty and claimed for trial.

6. At the trial prosecution examined P.W-1 Dr. Ghulam Mustafa Lashari at Ex.14 who produced police letter and post-mortem report at Ex.14/A and Ex.14/B, P.W-2 Tapedar Roshan Ali at Ex.15 who produced letter and sketch at Ex.15/A and Ex.15/B, P.W-3 complainant Khawand Bux at Ex.16 who produced receipt, FIR and further statement at Ex.16/A to Ex.16/C, P.W-4 witness Shamsuddin Rustamani at Ex.17, P.W-5 witness Muharram Rustamani at Ex.18, P.W-19 mashir Meer Muhammad Rustamani at Ex.19 who produced memo of dead body in skeleton condition and place of incident at Ex.19/A, Danistnama at Ex.19/B, memo of clothes at Ex.19/C, memo of arrest of accused Allahdino and Mehboob at Ex.19/D, P.W-7 Investigation Officer ASI Rehmatullah Memon at Ex.20 who produced daily diary entries No.15, 13 & 16 at Ex.20/A to Ex.20/C and P.W-8 Inspector Nooruddin who conducted further investigation at Ex.21 who produced copy of letter under which he sent the clothes of deceased e.t.c to the chemical examiner at Ex.21/A. Learned DDPP for the State vide his statement at Ex.22, produced chemical examiner report at Ex.22/A. Thereafter,

learned DDPP for the State vide his statement at Ex.23 closed the side of prosecution.

7. The statements of accused as provided under S.342 Cr.P.C were recorded at Ex.24 to Ex.27 respectively wherein they denied the prosecution allegations, alleged false implication on account of enmity and professed innocence. However, neither they have examined themselves on Oath nor led any evidence in their defence.

8. Mr. Pir Bux Bhurgri, learned counsel for appellant contended that the judgment passed by learned trial court is perverse and the reasons are artificial viz-a-viz the evidence on record; that the grounds on which the trial court proceeded to acquit the accused persons are not supported from the documents and evidence on record. He further submitted that accused have directly been charged and the discrepancies in the statements of witnesses are not so material on the basis of which accused could be acquitted. He further contended that learned trial court has based the findings of acquittal mainly on the basis of minor contradictions on non-vital points of the statements of prosecution witnesses and that the prosecution evidence has not been properly appreciated therefore, under these circumstances, he was of the view that this appeal may be allowed and the accused involved in this case may be given exemplary punishment.

9. On the other hand, Mr. Shahzado Saleem Nahiyoon, learned D.P.G. present in court in some other cases, waives notice and has supported the impugned judgment by arguing that the impugned judgment passed by the learned trial court is perfect in law and on facts; that no direct evidence is available against the respondents and the complainant of the case is not eye witness of the incident and whole case of the prosecution is based upon surmises and conjunctures,

therefore, no reliance could be safely placed for conviction of the respondents.

10. Arguments heard. Record perused.

11. After scanning the evidence of prosecution witnesses, we have come to the conclusion that prosecution has miserably failed to establish its case beyond reasonable shadow of doubt. From perusal of the impugned judgment, it reveals that the trial court has recorded the finding of acquittal in favour of the respondents with sound and significant reasoning. FIR is delayed for about 18 days. No direct evidence is available on record and the FIR has been lodged on the basis of hearsay evidence. All these aspects have been highlighted by the learned Presiding Officer of the trial court in its judgment. For the sake of convenience, it would be appropriate to reproduce some of those aspects/points for acquittal of the respondents, which reads as under:-

“Incident is shown to have taken place on 18.06.2016 at unknown time whereas the FIR was lodged on 06.07.2016 on disclosure of the PWs Shamsuddin Rustamani and Muhammad Rustamani. Complainant is not the eye witness of incident and his evidence is hearsay. Complainant lodged FIR against unknown culprits on 06.07.2016 but in his subsequent statement recorded by police on 10.07.2016 after the delay of about three days of registration of FIR, he twisted from his own version which he already alleged in the FIR. Both the witnesses who are close relatives and cousins of complainant and deceased had seen the incident on 18.06.2016 and they remained silent till 10.07.2016 without any reason knowing that the accused persons committed murder of their cousin. It is alleged by complainant that on 02.07.2016 when he came to know about the presence of dead body he went alongwith Shah Nawaz and Meer but in

subsequent statement he did not disclose the same fact as alleged in the FIR.”

12. We have examined the reasoning assigned by the trial court as reproduced above and have come to the conclusion that the learned trial court has dealt with all aspects of the matter quite comprehensively in light of all the relevant laws dealing with the matter and now before us the appellant was unable to demonstrate that the impugned judgment by any means suffers from any illegality or miscomprehension or non-appreciation of evidence by way of documents available on record. The accused/respondents were acquitted by the trial court on merits as well as delay in lodging of FIR which has been lodged on the basis of hearsay evidence and the appellant has not been able to satisfy this court on either ground to interfere in the impugned judgment. Besides this, there is clear distinction in between appeal against conviction and appeal against acquittal. Accused who has/have been acquitted in a crime can claim double innocence, one at the pre-trial stage and the other he/they may earn on the basis of judgment of acquittal in his/their favour from the court of competent jurisdiction.

13. In view of the above, instant Criminal Acquittal Appeal being devoid of merit, is hereby dismissed alongwith pending application(s), if any.

14. These are the reasons of our short order dated 04.02.2020, whereby we had dismissed this appeal against acquittal.

JUDGE

JUDGE

