IN THE HIGH COURT OF SINDH, AT KARACHI

Cr. Acq. Appeal No. 552 of 2019 along with
Cr. Acq. Appeals Nos.597 and 598 of 2019

Present:
Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

Appellant	:	Hakim-Ul-Din Jokhio through Muhammad Ashraf Kazi and Irshad Ahmed Jatoi, Advocates, in all Appeals.
Respondent No. 1	:	The State, through Ali Haider Saleem, APG, in all Appeals.
Respondents	:	Zulfiqar Ali, Respondent No.2 in Cr. Acq. Appeals Nos.552/19 and 598/19, and Noor Muhammad, Respondent No. 3 in Cr. Acq. Appeal No.552/19 and Respondent No.2 in Cr. Acq. Appeal No. 597/19, through Wazeer Hussain Khoso, Advocate
Date of Hearing	:	01.04.2021

JUDGMENT

YOUSUF ALI SAYEED, J. - The Appellant, being the complainant of Crime No. 132 of 2014 registered on 14.09.2014 under Sections 302 and 109 read with Section 34, PPC at P.S. Makli (the "**FIR**"), has preferred the captioned Appeals under Section 417 (2A) Cr. P.C., impugning the Judgment rendered by the learned Additional Sessions Judge-I/Model Criminal Trial Court, Thatta on 23.08.2019 in the ensuing Sessions Case, bearing No. 11 of 2015 (the "**Main Case**"), culminating in the acquittal of the Respondents Nos. 2 and 3, Zulfiqar Ali and Noor Muhammad, and other accused persons, namely Ahmed Khan, Bashir Ahmed, Pir Mansoor Ahmed, Jam Awais and Moosa Khan, as well as the separate Judgments of the same date rendered by the learned trial Court in Sessions Case Nos. 414 of 2014 and 190 of 2015, arising from FIR Nos. 154 of 2014 and 51 of 2015 registered at the aforementioned P.S. under S.23-i(a) and 25 of the Sindh Arms Act, 2013.

2. Succinctly stated, the information disclosed by the Appellant in terms of the FIR related to a murderous attack allegedly undertaken by the accused Respondents against his father, Raees Taj Mohammad Jokhio (the "**Deceased**") at 0915 hours on 12.09.2014, at the link road of village Raees Walidad Jokhio, near Primary School Deh Simki, Taluka Thatta, District Thatta (the "**School**").

3. As per the FIR, the Appellant was present outside the School along with his companions, namely Samiullah and Jamyat Khan, when two persons arrived on a motorcycle, of whom the rider was said to be unknown whereas the passenger was identified as being the Respondent No.2, Zulfiqar, who apparently conversed between themselves as to the anticipated arrival of the Deceased and then, upon seeing his car approaching from the National Highway towards the aforementioned village, turned their motorcycle so as to intercept and stop the Deceased who was alone in the vehicle and at the wheel, with Zulfiqar then apparently drawing a pistol from the fold of his shalwar so as to take four straight shots at him before fleeing the scene, with the Deceased being struck by multiple bullets and succumbing to his injuries there and then.

4. After the usual investigation the police submitted the challan before the competent Court and the matter was sent up for trial, with the charge initially being framed on 06.07.2015 against the concerned accused in all three cases, other than Ahmed Khan, who surrendered on 16.08.2016, and Moosa Khan, who then subsequently joined the proceedings while on bail, with the final amended charge being framed in the Main Case on 25.09.2017, to which the accused all pleaded 'not guilty' and claimed trial.

5. In the Main Case, the prosecution examined several witnesses at trial, including two of the eye-witnesses to the incident, namely the Appellant (PW-1), whose deposition was recorded and marked as Ex.16, and Jamyat Khan (PW-2), whose deposition was recorded and marked as Ex.17. After, the ADPP for the State closed the side of the prosecution, the Statements of the accused under S.342 Cr. P.C were recorded, wherein they denied the allegations leveled against them and professed their innocence. For purposes of the offshoot cases under the Sindh Arms Act, the prosecution examined the respective investigating officers who were the complainants in those matters, as well as a mashir to the purported arrest and recovery.

6. A perusal of the impugned Judgments reflects that the learned trial Court *inter alia* found that:

(a) The incident allegedly took place on 12.09.2014 at 0915 hours, but the FIR was registered on 14.09.2014 at 1530 hours - after a delay of more than 50 hours.

(b) The Appellant, Jamiyat Khan and Samiullah deposed that they were present outside the School on the given day just prior to and at the time of the incident, hence witnessed the attack on the Deceased, yet their presence appears quite unnatural, especially when viewed in conjunction with the fact that they all happened to be away from their respective places of work and assembled outside the School at exactly the time of the incident. Furthermore, the initial record of the investigation and the Medico Legal Officer also does not reflect their presence, as their names do not appear in the relevant documents, including the postmortem examination report, despite their claim that they witnessed the incident and took the dead body to hospital.

(c) During the course of the prosecution evidence, it was sought to be shown that Zulfiqar and Noor Muhammad, both of whom are real brothers, were the assailants on the motorcycle, yet it was only Zulfiqar who was identified by name in the FIR whereas the man accompanying him was stated to be unknown, albeit it then coming to the fore from the deposition of Jamiyat Khan that Noor Muhammad had been known to him. Under such circumstances, it can scarcely be countenanced that the Appellant would have been oblivious of the identity of Noor Muhammad at the time of registration of the FIR. Furthermore, as it transpires, the wife of Noor Muhammad was a close relative of the Appellant and he had been residing with his in-laws in the same village as the Appellant.

(d) The motive stated in the FIR were alleged threats extended by accused Moosa Khan and his son Zulfiqar, including threats meted out just a day prior to the date of the incident, yet the Appellant made no attempt to warn the Deceased despite it being hat he saw Zulfiqar and his companion at the scene prior to the attack and audibly heard them conversing as to the whereabouts and anticipated arrival of the Deceased from a distance of 10 to 12 paces, and it being admitted by the Appellant that both he and the Deceased possessed mobile phones, and that a period of 2 to 3 minutes elapsed between that time and the arrival of the car of the Deceased.

(e) The attack on the Deceased was apparently made at a relatively short distance from the Appellant and his companions, yet they made no attempt to thwart the same and also did not endeavour to use the vehicle of the Deceased to rush him for medical attention, it being stated by way of explanation that they saw that he had died instantly, which is difficult for a layperson to ascertain with such exactitude in the heat of the moment so as to be absolutely certain of

dispensing with the need to make a lifesaving attempt.

(f) The entire version as to the arrest of the accused and recovery of firearms from their possession on their disclosure are ridden with doubt and contradictions. Moreover, none of the weapons and empties shown to have been recovered during the investigation were shown to have been sent to the FSL as no report in that regard was brought on record.

7. As such, from a cumulative assessment of the evidence, including the aforementioned factors, the learned trial Court determined that the prosecution had failed to prove the guilt of the Respondents, hence duly extended them the benefit of doubt, resulting in their acquittal in the aforementioned cases.

8. When called upon to demonstrate the misreading or non-reading of evidence or other infirmity afflicting the impugned judgment, particularly the points noted herein above, learned counsel for the Appellant was found wanting and could not point out any such error or omission.

9. The learned APG also did not support the Appellant, instead, defended the Impugned Judgments as being correct and unexceptionable.

10. Needless to say, it is axiomatic that the presumption of innocence applies doubly upon acquittal, and that such a finding is not to be disturbed unless there is some discernible perversity in the determination of the trial Court that can be said to have caused a miscarriage of justice. If any authority is required in that regard, one need turn no further than the judgment of the Honourable Supreme Court in the case reported as Muhammad Zafar and another v. Rustam and others 2017 SCMR 1639, where it was held that:-

> "We have examined the record and the reasons recorded by the learned appellate court for acquittal of respondent No.2 and for not interfering with the acquittal of respondents Nos.3 to 5 are borne out from the record. No misreading of evidence could be pointed out by the learned counsel for the complainant/appellant and learned Additional Prosecutor General for the State, which would have resulted into grave miscarriage of justice. The learned courts below have given valid and convincing reasons for the acquittal of respondents Nos.2 to 5 which reasons have not been found by us to be arbitrary, capricious or fanciful warranting interference by this Court. Even otherwise this Court is always slow in interfering in the acquittal of accused because it is well-settled law that in criminal trial every person is innocent unless proven guilty and upon acquittal by a court of competent jurisdiction such presumption doubles. As a sequel of the above discussion, this appeal is without any merit and the same is hereby dismissed."

11. In the absence of any such factor in the matter at hand, it is apparent that the instant Appeals are devoid of merit. Furthermore, the appellant not being the complainant in FIR Nos.154 of 2014 and 51 of 2015, even otherwise has no locus standi to maintain Cr. Acquittal Appeals No.597 and 598 of 2019 so as to assail the Judgment recorded in the ensuing Sessions Cases. As such, the captioned Appeals are accordingly dismissed.

JUDGE

CHIEF JUSTICE