

**HIGH COURT OF SINDH CIRCUIT COURT,
HYDERABAD**

Cr. Acquittal Appeal No.D-31 of 2020

Cr. Acquittal Appeal No.D-57 of 2020

DATE

ORDER WITH SIGNATURE OF JUDGE

PRESENT:

MR. JUSTICE NAIMATULLAH PHULPOTO

MRS. JUSTICE KAUSAR SULTANA HUSSAIN

Date of hearing : 30.03.2021
Date of judgment : 30.03.2021
Appellant/complainant : Through Mr. Shoukat Ali Pathan advocate
Respondents : In person
State : Through Mr. Shahzad Saleem Nahiyoan,
Deputy Prosecutor General Sindh

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Respondents / accused (i) Nangar S/o Bhongar, (ii) Ali Gul S/o Pir Bux alias Kamoon, (iii) Ali Gul S/o Dawood, (iv) Zubair Shah S/o Shahmir Shah, (v) Taj Muhammad S/o Long and (vi) Dost Muhammad alias Dosoo S/o Allah Bachayo were tried by learned Additional Sessions Judge-I/Model Criminal Trial Court, Mirpurkhas for offences punishable u/s 302, 114, 337-H(ii), 506(ii), 148 & 149 PPC and after full-fledged trial accused/respondents No.1 to 6 were acquitted by the learned Trial Court vide judgment dated 21.02.2020. Whereas, the case of absconding Noor Hassan S/o Allah Dino was kept on dormant file, who was arrested later-on and after full dressed trial the case against him also ended to acquittal, vide judgment dated 05.06.2020. The appellant/complainant has filed two separates acquittal appeals against both the aforesaid judgments, which we intend to decide through this single judgment, as both are outcome of same crime bearing No.48 of 2019 registered at PS Jhudo for offences u/s 302, 114, 337-H(ii), 506(ii), 148 & 149 PPC.

2. Brief facts of the prosecution case, as mentioned by the Trial Court in its judgment dated 21.02.2020, are that on 19.03.2019 at 1810 hours complainant Muhammad Ramzan lodged the FIR by stating that he is having agricultural land in Deh-205, Taluka Jhudo; they have dispute with Zubair Shah, Nangar Laghari, Noor Hassan Bhatti, Taj Muhammad Bhatti, Ali Gul Khaskheli and others; his brother-in-law Abdul Majeed came from Bahawalpur as guest; on 19.03.2019, his

brother-in-law after performing Assar prayer was sitting at his land on cot, while he alongwith his son Muhammad Nawaz and nephew Asghar were doing work, when at about 1730 hours Nangar Laghari armed with repeater, Noor Hassan Bhatti armed with hatched, Taj Muhammad armed with pistol, Ali Gul Khaskheli having lathi, Moulvi Ali Gul armed with rifle, Zubair Shah armed with pistol and Dost Muhammad alias Dosoo Bhatti armed with pistol came over there and Zubair Shah instigated other accused persons to commit murder of his brother-in-law, on such instigation Noor Hassan Laghari caused hatchet below on the head of his brother-in-law Abdul Majeed with intention to commit his murder, due to which he fell down on the ground, then Nangar Laghari put his repeater gun on chest of his brother-in-law Abdul Majeed and made fire with intention to commit his murder while Ali Gul caused lathi below at the body of his brother-in-law, thereafter they started hue and cry, whereupon in order to create harassment accused persons made reckless firing, they saved themselves by hiding in the water course, then accused persons went away by making firing and issuing threats of dire consequences, then they saw that his brother-in-law Abdul Majeed stood expired in front of them, thereafter they took the dead body at RHC Jhudo and lodged the FIR.

3. After usual investigation, challan was submitted against accused persons, wherein accused Noor Hassan was shown as absconder. Trial Court framed the charged against accused/respondents No.1 to 6 (of acquittal appeal No.D-31 of 2020), to which they pleaded not guilty and claimed trial. Then Trial Court recorded evidence of the witnesses, who exhibited numerous documents. Thereafter, prosecution side was closed and Trial Court recorded the statements of accused u/s 342 Cr.PC, in which they simply stated their false implication in the case and denied the prosecution allegations. Then Trial Court after hearing the learned counsel for the parties and assessment of the evidence acquitted the accused/respondents No.1 to 6 (of acquittal appeal No.D-31 of 2020), vide judgment dated 21.02.2020 and, as stated above, case against absconding accused/respondent Noor Hassan was kept on dormant file, who was subsequently arrested and after full dressed trial met with the same fate, vide judgment dated 05.06.2020.

4. We have heard the learned counsel for the appellant/complainant, learned DPG and respondents, who are present in person. Perusal of the impugned judgments reflects that respondents/accused have been acquitted by the Trial Court mainly for the following reasons:

“In the circumstances discussed above, I have come to the conclusion that the presence of complainant, P.W Muhammad Nawaz and P.W Ali Asghar said to be eye-witnesses at the place of incident at the time of incident is highly doubtful because admittedly the accused had actual dispute with the complainant and not with the deceased, therefore, how it is believable that the accused killed the deceased instead of their actual enemy, if they were present helpless with the deceased and they were at the mercy of the accused and further how it is believable that accused persons made straight firing with repeater, rifle and pistols upon complainant and both P.Ws, but no bullet or even pellet was hit to them, therefore, the prosecution cannot be said able to prove beyond the shadow of reasonable doubt that any of accused has committed murder of the deceased Abdul Majeed as alleged. Accordingly the Point No.2 is answered as not proved.”

5. Learned counsel for the appellant/complainant mainly contended that Trial Court has failed to appreciate the evidence according to the settled principles of law. He further contended that the reasons assigned by the Trial Court for recording acquittal of the accused/respondents are not cogent. He lastly prayed for allowing these acquittal appeals.

6. Learned DPG supports that impugned judgments and argued that prosecution has failed to prove its case against the present accused/respondents.

7. In our considered view, the Trial Court has assigned sound reasons while recording acquittal in favour of the accused/respondents, mainly for the reasons that according to prosecution case there were three eye-witnesses namely complainant Muhammad Ramzan, PWs Muhammad Nawaz and Ali Asghar and it is unbelievable that accused/respondents being armed with deadly weapons made indiscriminate firing but not a single injury was caused to the eye-witnesses. Learned counsel for the complainant/appellant has read out the evidence of complainant and his cross-examination. In the cross-examination complainant has admitted that respondents/accused had quarrel with him and deceased had restrained the accused persons not to quarrel with the complainant; this clearly shows that motive was against the complainant, but surprisingly no harm was caused by the accused/respondents to the complainant. Story narrated by the complainant appears to be unnatural and unbelievable. We agree with the findings of Trial Court that presence of eye-witnesses at the time of incident was highly doubtful.

8. Admittedly, parameters to deal with the appeal against conviction and appeal against acquittal are totally different because acquittal carries double presumption of innocence and same could be reversed only when found blatantly perverse, illegal, arbitrary, capricious or speculative, shocking or rests upon

impossibility. If there is a possibility of a contrary view even then acquittal could not be set aside as has been held by the Honourable Supreme Court in the case of The State through P.G Sindh versus Ahmed Omar Shaikh & Others (*Criminal Appeals No.599 to 602 of 2020 etc*), vide judgment dated 28.01.2021.

9. As already discussed above, the whole prosecution evidence was doubtful. Prosecution had failed to prove the guilt of the accused/respondents, as has been rightly held by the Trial Court. Moreover, scope of acquittal appeal is quite narrow and limited. The findings of acquittal recorded by the Trial Court by means of impugned judgments are neither arbitrary nor capricious. As such, these appeals against acquittal are without merit and the same are accordingly dismissed.

JUDGE

JUDGE

Sajjad Ali Jessar