

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

**Crl. Acquittal Appeal No.D-119 of 2016**

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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For hearing.

Present:

**Mr. Justice Naimatullah Phulpoto &  
Mr. Justice Rasheed Ahmed Soomro.**

Mr. Shabbir Ali Bozdar Advocate for the appellant/complainant.  
Mr. Abdul Rehman Kolachi, Deputy P.G for the State.  
Respondents No.1&2 are present in person.

Date of hearing: 06-08-2019

Date of short order: 06-08-2019

**J u d g m e n t**

**NAIMATULLAH PHULPOTO J.**, Respondents/accused Ashique Ali and Shaman Ali were tried by learned Sessions Judge, Ghotki in Sessions Case No. 172 of 2013 arising out of Crime No. 03 of 2012, under sections 302, 34 PPC of P.S, A-section, Ghotki.

2. Brief facts of the prosecution case, as disclosed in the FIR are that complainant Majid Ali, his father Mashooque Ali and other family members were sitting in their house on 13.12.2013. Meanwhile, his father received a telephonic call of one Rizwan, whereby he called his father to reach at Ghotki. Complainant's father went to Ghotki, but did not return to his home. Thereafter, complainant along with his maternal uncles Imdadullah and Irshad Ahmed went to Ghotki in search of his father. At about 06.30 a.m, when they reached near sugarcane crop of Kolachi, they saw three accused Ashique Ali, Shaman, Rizwan armed with hatchets and

two unidentified person armed with pistols. Accused had overpowered his father. One of unidentified accused having pistols was seated over father of complainant, whereas, other unidentified persons armed with pistol aimed his pistol upon complainant and witnesses. It is further alleged in FIR that accused Ashique Ali caused hatchet blows on the head of complainant's father Mashooque Ali. Accused Shaman Ali caused hatchet blows on the head and neck of complainant's father. Accused Rizwan caused hatchet blows on the forehead of complainant's father, who succumbed to his injuries at spot. Accused issued threats of murder to complainant and witnesses, as such they remained silent. Thereafter, they brought dead body of deceased at Government Hospital, Ghotki, for conducting its postmortem examination. Later on complainant lodged FIR vide crime No.03 of 2013 at P.S, A-section, Ghotki under sections 302, 34 PPC. After usual investigation, challan was submitted against the accused.

3. The trial Court framed the charge against the accused, to which they pleaded not guilty and claimed trial.

4. In order to substantiate the charge, prosecution examined PW-1 Majid Ali at Exh.01, PW-2 Irshad Ahmed at Exh.10, PW-3 Ghulam Fareed at Exh.11, PW-4 I.O/ASI Mehrban Ali Kolachi at Exh.12, PW-5 Dr. Moula Bux at Exh.13, PW-6 Tapedar Ali Gohar Hakro at Exh.14, PW- PC Khuda Bux at Exh.15, PW-8 SIP Ali Nawaz Dayo at Exh.15, PW-9 CIA Inspector Rana Nasrullah at Exh 16, PW-10 Muhammad Murad at Exh.17, PW-11 SIP Irshad Ali Rajper at Exh.20, PW-12 SIP/I.O Muhammad Asif at

Exh.21, PW-13 PC Muhammad Ameen Bhutto at Exh.22. Thereafter, side of the prosecution case closed.

5. Statements of respondents/accused were recorded under Section 342 Cr.P.C at Exh.19, in which they claimed false implication and denied the allegation levelled by prosecution against them.

6. Trial Court after hearing arguments of learned counsel for the parties and on the assessment of the evidence vide judgment dated 08.08.2016 for the following reasons acquitted the respondent:-

“From the evidence brought on record, it is clear that deceased Mashooque Ali went missing on 13.12.2012. Perusal of whole evidence would also itself show that the version of complainant Majid Ai and eyewitness Irshad Ahmed is not believable that they saw deceased Mashooque Ali alive and injuries were caused to him in their presence, as no prudent mind would believe that father was killed before the eyes of his son by his real uncle and he not only remained silent but also took active part in the investigation and after 26 days came forward with another fact. It is also clear that from the evidence that dead body of deceased Mashooque Ali was only found as there is deep enmity in between accused Ashique and Masoo and others as such he wanted to encash the dead body and settle his dispute with Masoo and others as such he registered FIR No.307/2012 and when case was not proved and was near to disposed of, complainant Majid Ali came forward with another set of story against his real uncle but neither Ashique can prove the case against Masoo and others who were motive behind enmity between Mashooque and Ashique, Majid came forward with another story to settle

his dispute with real uncle Ashique but it is clear from the evidence brought on record that due to zig zag investigation and zig zag version of complainant as in both FIRs he also could prove the case against his uncle and Shaman beyond reasonable doubt. The rule of criminal jurisprudence to give benefit of doubt is much more than mere rule of law which is one of the foundation of all good and civilized societies. Said rule is rule of prudence which no judge acting in accordance with provisions of Qanoon-e-Shahadat can ignore.

The rule to giving benefit of doubt to accused was also rigorously enforced by Islam as well, when it was laid down in; “when possible save the muslim from incident (punishment) do it whenever you found any loop hole case it is better for the Imam (Judge) to err in the acquittal then in conviction (Tirmizi)”.

If there is any possible way of doing it save Gods creature from punishment conviction and punishment (ibin-i-Maja).

Naid punishment with doubt i.e. if any doubt arises avoid conviction (Masnad Abu Hanifa).

Perusal of whole evidence brought on record the case of complainant his highly doubtful on each and every count, specially when no crime weapon is recovered from both the accused in these circumstances in the light of authorities cited at Bar and authorities of Islamic Scholar I can do nothing but to answer this point in negative”.

7. Learned counsel for the appellant could not satisfy this Court about the conduct of the complainant Majid Ali and PW Irshad Ahmed as to

why they did not react at the time of murder of the deceased if they were present. Counsel for appellant also could not satisfy about the unexplained delay of 26 days in lodging of FIR.

8. We have carefully perused the evidence available on record. Presence of complainant Majid Ali and other eyewitnesses on the crime spot due to their unnatural conduct has become highly doubtful. Therefore, no explicit reliance can be placed on their testimony, keeping in view the provision of Article 129 of the Qanoon-e-Shahadat, which is to the following effect:

“S. 129. Court may presume existence of certain facts. ---The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case-“.

9. Moreover, it is by now well settled that acquittal once granted cannot be recalled merely on the possibility of a contra view. Unless the impugned view is found on fringes of impossibility, resulting into the miscarriage of justice freedom cannot be recalled, as held in the recent judgment delivered by the Honourable Supreme Court in the case of Zulifqar Ali v Imtiaz Ali and others (2019 S C M R 1315). The view taken by the trial Court is a possible view structured in evidence available on record. We are unable to take different view.

10. For the aforesaid reasons, this acquittal appeal fails, therefore the same was dismissed by our short order dated 06.08.2019 and these are the reasons in support of our short order.

JUDGE

JUDGE

Ahmad