

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Acquittal Appeal No. 603 of 2019

Appellant : Muhammad Umar
through Mr. Muhammad Nawaz Tahiri, Advocate

Respondents : The State & another
through Mr. Abrar Ali Khichi , DPG

Date of hearing : 12th January, 2021

Date of order : 14th January, 2021

ORDER

Omar Sial, J.: Muhammad Umar has impugned a judgment dated 6-9-2019 passed by the learned 1st Additional Sessions Judge, Thatta. In terms of the said judgment Zakir Ali (respondent no. 2) was acquitted in a case arising out of F.I.R. No. 3 of 2016 registered against him under sections 302, 201 and 34 P.P.C at P.S. Jhoke Sharif.

2. Brief facts of the case are that the aforementioned FIR was lodged on 12.3.2016 by Muhammad Umar narrating therein that between 8.3.2016 and 9.3.2016, his son Riaz Ali disappeared and his dead body was subsequently found in a field. He suspected the involvement of 4 persons, 1 was Zakir Ali whereas the remaining 3 he nominated were let of by the police under section 169 Cr.P.C. After a full dress trial, Zakir Ali was acquitted.

3. We have heard the learned counsel for the appellant and the respondent no. 2 as well as the learned DPG. Our observations and findings are as follows.

4. At the very outset we asked the learned counsel for the appellant to point out the defect in the impugned judgment. Learned counsel argued that the learned trial court while acquitting Zakir Ali did not take into account the fact that Zakir had made an extra judicial confession; that he had pointed out the place of incident to the police; that recovery of a scarf and a phone of the deceased was effected on his pointation and that his section 342 Cr.P.C. statement was contradictory to his plea of innocence.

5. Learned counsel could not however rebut that an extra judicial confession made to the police would not be admissible in evidence under Article 38 of the Qanun-e-Shahadat Order, 1984. Further, it was the prosecution case that Zakir had made the extra judicial confession while standing at a bus stop on 14-3-2016. The record shows that the witness to the memo of arrest testified that Zakir was arrested on 13-3-2016 thus it was not possible that he would be standing at a bus stop making a confession the previous day. Learned counsel attempted to justify the value of the extra judicial confession by relying on Article 40 of the Order of 1984, in that the extra judicial confession led to the recovery of a scarf and a phone of the deceased, however he was unable to rebut the fact that the scarf and the telephone ostensibly recovered at the pointation of Zakir Ali was not produced as evidence at trial. He could also not rebut the fact that according to well settled principles of law, the burden of onus of proof was on the prosecution and it was only when such an onus had been effectively discharged that what the accused said in his section 342 Cr.P.C. statement would become important. In the backdrop of all the foregoing, the allegation that Zakir had pointed out the place of incident becomes doubtful.

6. The learned counsel tried his best and argued very well but in view of the facts of the case, he struggled with raising a convincing ground of non-reading or mis-reading of evidence by the learned trial court. He very frankly did concede that a number of lacunas had risen in the case due to a faulty investigation. Very reluctantly he agreed that the benefit of doubt which arose in the case, albeit due to a weak investigation, would go to the accused.

7. We do not find that the impugned judgment is capricious or arbitrary or that it has been passed without jurisdiction. Needless to say a double presumption of innocence also works in favour of the accused.

8. In view of the above, the appeal stands dismissed.