

IN THE HIGH COURT OF SINDH AT KARACHI*Present: Ahmed Ali M. Sheikh, CJ and Omar Sial, J*

Cr. Acquittal Appeal No. 258 of 2020

Appellant Gulzar Hussain
through Mr. Sagheer Ahmed Abbasi, Advocate.

Respondent The State & others
through Mr. Ali Haider Saleem, DPG

ORDER

Omar Sial, J: Gulzar Hussain has impugned a judgment dated 1-2-2020 passed by the learned Additional District and Sessions Court, Karachi East. In terms of the said judgment Ahsan Elahi alias Shani was acquitted in a case arising out of F.I.R. No. 7 of 2017 registered under section 302 P.P.C. at the KIA police station in Karachi.

2. A brief background to the case is that Gulzar Hussain lodged the aforementioned F.I.R. on 5-1-2017 narrating an incident that had occurred the previous date i.e. 4-1-2017. He recorded that he was informed by police officials that his son Rizwan Hussain had sustained a bullet injury and had died. Gulzar went to the mortuary of Jinnah Hospital and identified his son. A.S.I. Azhar Khan who was present at the mortuary informed Gulzar that before dieing Rizwan had named Ahsan Elahi has the person who had shot him.

3. Ahsan pleaded not guilty to the charge and after a full dress trial he was acquitted through the dint of the impugned judgment.

4. Learned counsel when asked to point out the defect in the impugned judgment with which he was aggrieved said that the learned trial court had not considered the statement made by the deceased as a dying declaration, hence, a mis-reading of evidence had occurred.

5. We have heard the learned counsel for the appellant as well as the learned DPG and have also perused the record. Our observations are as follows.

6. The learned trial court in paragraphs 14, 15, 16 and 17 has extensively addressed the aspect of the dying declaration and given cogent reasons for not

believing that an effective dying declaration was recorded. In fact the learned trial court has cast doubt as to whether it was made in the first place. We find no reason to interfere with the findings of the learned trial court on this ground.

7. The learned counsel has not convinced us that the impugned judgment suffers from any mis-reading or non-reading of evidence or that the said judgment is capricious, arbitrary or suffers from any jurisdictional issue. Needless to say that a double presumption of innocence also works in favour of the respondent.

8. The appeal stands dismissed.

JUDGE

CHIEF JUSTICE