

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Acquittal Appeal No.d-38 of 2022

Before:

Mr. Justice Irshad Ali Shah

Mr. Justice Zulfiqar Ali Sangi

Appellant: Mst. Rehana widow of Muhammad Ali Soomro, **Through** Mr. Shabbir Ali Bozdar advocate.

Respondents: Nadir Ali Buriro, Gul Muhammad, Peeran @ Peer Dino, Irsahd Ali Buriro, Rab Dino Buriro and Arsahd Buriro **Through** Mr. Muhammad Hamzor Buriro, advocate.

The State: Syed Sardar Ali Shah Rizvi, Additional Prosecutor General.

Date of hearing: 14-02-2024

Date of judgment: 14-02-2024.

J U D G M E N T

IRSHAD ALI SHAH, J- The facts in brief necessary for disposal of instant Crl. Acquittal Appeal are that an FIR was lodged with PS Kandhra by Muhammad Ali alleging therein that the private respondents with rest of the culprits, after having formed an unlawful assembly and in prosecution of its common object have caused him fire shot injuries with intention to commit his murder; subsequently, he allegedly died of such injuries; therefore, the private respondents were challaned accordingly; they joined the trial and were acquitted by learned IVth Additional Sessions Judge (Hudood) Sukkur vide judgment dated 23-06-2022, which is impugned by the appellant before this Court by preferring the instant Crl. Acquittal Appeal.

2. It is contended by learned counsel for the appellant that learned trial Court has recorded acquittal of the private respondents in very hasty manner without recording evidence of the material witnesses or providing chance of hearing to the appellant being widow of the deceased; therefore, their acquittal is liable to be set aside by this Court, which is not opposed by learned Additional P.G for the State; however, learned counsel for the private respondents by supporting the impugned judgment has sought for dismissal of the instant Crl. Acquittal Appeal by contending that the

prosecution has not been able to prove its case against the private respondents beyond shadow of doubt.

3. Heard arguments and perused the record.

4. It is evident of the record that on single date, evidence of PW Abdul Jabbar was recorded, cross examination to PW Abdul Ghaffar was made, the private respondents were examined u/s 342 Cr.P.C and then the judgment of acquittal in their favour was passed without recording evidence of PWs Ibrahim and Barkat Ali or providing chance of hearing to the appellant being widow of the deceased and/or waiting for the opinion of the Medical Board with regard to the actual cause of the death of the deceased in terms of its own order. Such hasty exercise is appearing to be in derogation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, which prescribes right of fair trial to everyone, which in present case has apparently been denied to the appellant being aggrieved person and the *State*.

5. In view of above, the impugned judgment is set aside with direction to, record evidence of the PWs, ascertain the actual cause of the death of the deceased in terms of its own order, examine the PWs which the prosecution/appellant wants to examine and then to dispose of the case afresh in accordance with law, by the Court of the competent jurisdiction other than the one which has passed the impugned judgment to be nominated by learned Sessions Judge, Sukkur.

6. The private respondents were enjoying the concession of bail at trial; they to enjoy the same concession subject to their furnishing fresh surety in sum of Rs. 100,000/- (one lac) each and P.R bond in the like amount to the satisfaction of learned trial Court.

7. The instant Criminal Acquittal Appeal is disposed of accordingly.

JUDGE

JUDGE