

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

*Crl. Acquittal Appeal. No.D- 148 of 2019*  
*Crl. Acquittal Appeal. No.D- 214 of 2019*

**Present:-**

*Mr. Justice Naimatullah Phulpoto, J.*  
*Mr. Justice Abdul Mobeen Lakho, J.*

Date of hearing: 26.10.2022  
Date of judgment: 26.10.2022

Mr. Iftikhar Ali Arain Advocate for appellant/complainant.  
Mr. Nusrat Ali Memon Advocate for respondent No.2&3 in  
Crl. Acq. Appeal No.D-148 of 2019.  
Syed Sardar Ali Shah, Addl. Prosecutor General Sindh.

**J U D G M E N T**

**ABDUL MOBEEN LAKHO, J:** Through captioned acquittal appeals the appellant/complainant Muhammad Nadeem Malik has impugned the judgment dated 02.08.2019 and order dated 21.10.2019 passed by learned Ist Additional Sessions Judge/Model Criminal Trial Court, Naushehro Feroze, in Sessions case No.282/2014 (*Re-Fayaz Hussain Charan and others*) arising out of Crime No.10/2014 Police Station, Halani for offence punishable u/s 302, 337H(ii), L(ii), 34 PPC, whereby the respondents Sikandar, Atta Muhammad and Fayaz Hussain were acquitted by extending benefit of doubt. Being aggrieved by the aforesaid judgment and order of acquittal, appellant filed captioned Criminal Acquittal Appeals.

2. The crux prosecution case, as unfolded in the FIR, lodged by complainant Muhammad Nadeem son of Muhammad Ibrahim Malik, is that he serving in Ranipur Sugar Mill while deceased Shoukat Ali son of

*Abdul Mobeen*

Mushtaque Ahmed Malik being his nephew, aged about 30/32 years owning a welding shop at Behlani was also working as Field Officer in Syngenta Pesticide Company. It is alleged that on 22.01.2014 complainant while returning from Ranipur called Shoukat Ali on his Cell phone to inform him that Ghulam Murtaza and Saleem Ahmed are waiting to accompany him for proceeding to their village. At about 6:30 p.m, complainant reached at Halani where they were taking tea. During conversation Shoukat Ali informed complainant that his amount is outstanding against Fayaz Charan and his friends who on his demands are issuing threats of dire-consequences. After having tea they all proceeded towards their village on motorcycles. Shoukat Ali being ahead from complainant, when at about 7:00 p.m. they reached near Banana Garden four persons standing on the road with opened faces, three of them were armed with weapons while fourth one with a club "Danda", out of them one identified as Fayyaz Hussain son of Muhammad Saffar Charan armed with pistol and three unidentified persons, two were armed with pistols while one had a club "Danda" who used it to inflict injury, to Shoukat Malik and Ghulam Murtaza who were on motorcycle, upon receiving such inquiry they fell down on the ground. Accused Fayaz Charan pointed out Shoukat to other accused persons, the persons who armed with pistols made fires at Shoukat Ali which hit him and threatening complainant party not to come near to them and while making aerial firing ran away in the Banana Garden. Complainant party found Shoukat sustained firearm injuries on left side of his face, left side of neck and left side of clavicle bone and he went unconscious. Ghulam Murtaza also sustained club "Danda" blows. Complainant then shifted Shoukat Ali and Ghulam Murtaza to Halani hospital where Shoukat Ali succumbed to his injuries and died.

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After getting free from postmortem and burial rite, complainant lodged FIR. After usual investigation challan was submitted against the accused under the above referred sections.

3. Trial court framed charge against the respondents/accused at Ex.2. Accused pleaded not guilty and claimed to be tried.
4. In order to prove it's case, prosecution examined in all 08 witnesses. Thereafter, prosecution side was closed.
5. Statements of respondents/accused were recorded u/s 342 Cr.P.C in which they claimed false implication in this case and denied the prosecution allegations. Accused neither examined themselves on Oath nor they led any evidence in their defence in disproof of the prosecution allegations.
6. Trial court after hearing the learned counsel for the parties and on assessment of evidence, by judgment dated 02.08.2019 acquitted the accused/respondents as stated above. Hence, this appeal.
7. Mr. Iftikhar Ali Arain, learned advocate for the appellant contended that the learned trial court has passed the impugned judgment without application of judicial mind. He further contended that ocular account was fully supported by medical evidence. He further contended that the trial Court did not appreciate the evidence according to the settled principles of law. He also submitted that this acquittal may be converted into conviction.
8. On the other hand, Mr. Nusrat Hussain Memon, learned Advocate for the respondents No.2&3 as well as Syed Sardar Ali Shah Additional Prosecutor General for the State argued that unnatural death of deceased has been fully established by Medical Officer in his evidence

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and postmortem report as well as ocular evidence has also been fully established and even mere relationship of witnesses is not sufficient to discard their evidence unless it is established through reliable evidence that they had motive to falsely implicate the accused/respondents. They have argued that the judgment of acquittal is based upon sound reasons.

9. After hearing the learned counsel for the parties, we have perused the judgment of trial court. The relevant portion is reproduced hereunder:-

**Point No. 3**

***In view of the findings arrived at forgoing point, I have reached to the conclusion that ocular & medical evidence brought on record suffers from infirmities, material irregularities, major contradictions and is not confidence inspiring. The prosecution has miserably failed to prove its case against present accused, therefore, extending benefit of doubt, accused Sikandar and Atta Muhammad are acquitted of charge under Section 265-H(i) Cr.P.C. They are present on bail, their bail bonds stand cancelled and sureties are discharged. The case against proclaimed offender Fayyaz Hussain Charan is hereby kept on dormant file till his arrest."***

10. We have carefully perused the prosecution evidence and impugned judgment passed by the trial Court dated 02.08.2019. We have come to the conclusion that the trial court rightly acquitted the accused/respondents for the reasons that neither names of respondents are mentioned in the FIR nor their features have been given and they were introduced by complainant and PWs in their further statements recorded on 25.02.2014 without disclosing the source of information. This improvement clearly shows that supplementary statement was

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made after due consultation and deliberation to falsely involve the accused. In case of **Muhammad Rafique and others v. The State and others (2010 SCMR 385)**, the Honourable Supreme Court has held that *"Improvement made by complainant had created serious doubt about his veracity and credibility. Complainant had made his supplementary statement after due consultation and deliberation to falsely involved the accused. Other eye witnesses had also improved their statements in Court on various material points"*. In this case the complainant has also lodged FIR with consultation and due deliberation and the names of accused/respondents do not transpire hence, the credibility of further statement of complainant in this case does not arise at all. To sustain conviction in an offence of capital punishment evidence of unimpeachable nature was required which was not available in this case. Prosecution failed to produce reliable evidence before trial Court. Trial court for sound reasons disbelieved prosecution evidence. There were several circumstances in the case which had created reasonable doubt in the prosecution case. In the cases of circumstantial evidence strong evidence is required for convicting the accused, which is lacking in this case. Even complainant party has failed to prove sinister motive against accused/respondents to strengthen his case.

11. Moreover, appreciation of evidence in the case of appeal against conviction and appeal against acquittal are entirely different as held in the case of **Ghous Bux v. Saleem and 3 others (2017 P.Cr.L.J 836)**.

12. Judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous. The scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of innocence is significantly

added to the cordinal rule of criminal jurisprudence as the accused shall be presumed to be innocent until proved guilty. In other words, the presumption of innocence is doubled as held by the Honourable Supreme Court of Pakistan in the case of ***The State and others v. Abdul Khaliq and others (PLD 2011 Supreme Court 554)***.

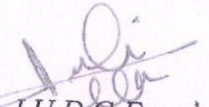
13. It is well settled that High Court can only interfere in an appeal against acquittal if the view of learned trial judge is either manifestly perverse on facts or vitiated in law. If the view taken by the trial judge can reasonable be said to be arrived at, this court does not substitute it with its own view as held in the case of ***The State v. Abdul Khalique and others (PLD 2011 Supreme Court 554)***. Moreover, principles for appreciation of evidence in appeal against acquittal are different from the appeal against conviction.

14. So far as the case of accused/respondent Fayaz Hussain is concerned, he at the time of pronouncement of judgment dated 02.08.2019 remained absconder and his case was kept on dormant file, later on he joined the trial. During proceedings, he filed an application under Section 265-K Cr.P.C which was allowed by learned trial Court vide order dated 21.10.2019 and he was acquitted of the charge on the ground that co-accused Sikandar and Atta Muhammad had faced full-fledged trial have already been acquitted vide judgment referred to above and there is no tangible evidence or concrete material available on record from which guilt of accused Fayaz Hussain could be deduced and charge against him was groundless and even if case against him is proceeded, it will not entail into conviction rather sheer wastage of time.

15. For the above stated reasons, there is no merit in both the appeals against acquittal of the respondents/accused. Acquittal recorded by trial

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Court in favour of respondents/accused named above in impugned judgment dated 02.08.2019 and Order dated 21.10.2019 are based upon sound reasons, which require no interference. As such, the appeals against acquittal being without merits <sup>were</sup> ~~was~~ dismissed by our short order dated 26.10.2022 and these are the reasons whereof.

  
JUDGE  
18/11/22  
JUDGE 18.11.2022