

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Acq. Appeal No.419 of 2019

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Date	Order with Signature(s) of Judge(s)
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1.For orders on office objection a/w reply of advocate at flat "A".

2.For hearing of main case.

27.02.2025

Mr. Tariq Hussain, Advocate for Appellant.

Mr. Zulfiqar Ali Khan Jalbani, Advocate for Respondent No.1.

Mr. Abrar Ali Khichi, Addl. Prosecutor General.

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The respondent No.1, Muhammad Sabir s/o Jamat Ali, was tried by the Court of Addl. District & Sessions Judge-1/Model Criminal Trial Court, Karachi-East in Session Case No.898 of 2009, arisen out of F.I.R. No.794 of 2008, registered at P.S. Shahrah-e-Faisal, Karachi under section 302/34, P.P.C., and after a full-fledged trial, he was acquitted of the charge by the Trial Court vide judgment, dated 30.05.2019, which has been impugned by the appellant/complainant, Bhagwan Das, in this Criminal Acquittal Appeal.

2. Learned counsel for the appellant contends that the entire prosecution case rests on "last seen evidence" of Din Muhammad (PW-2), who has fully implicated the respondent No.1 and deceased co-accused, Krishan Chand, in his evidence but the Trial Court ignoring the same has

recorded acquittal of the respondent No.1. He further contends that it is a fit case wherein Trial Court was required to record conviction of the respondent No.1 and to award him sentence in accordance with law; hence, impugned judgment is not sustainable in law being outcome of misreading and non-reading of the evidence on record.

3. On the other hand, learned counsel for respondent No.1 and Addl. Prosecutor General Sindh have fully supported the impugned judgment.

4. Heard and record perused.

5. Briefly stated facts of the case are that, on 14.10.2008, the appellant lodged the aforesaid F.I.R. for murder of his nephew, Amit Kumar, who was found dead on 11.10.2008 due to firearms shot in his Flat No. F-402, 4<sup>th</sup> Floor, Shumail Arcade, Block-7, Gulistan-e-Johar, Karachi. He nominated Krishan Chand (*now deceased*) as accused by suspecting him that since he had to pay Rs. 6,00,000/- to his deceased nephew, he and his unknown friends might have committed his murder.

6. It may be relevant to observe here that “last seen evidence” is a type of circumstantial evidence that suggests that two persons were lastly seen together alive, and then one of them was found dead. It is based on the idea that the living person was responsible for the death of the other.

7. In the instant case, it is an admitted position that there is no eye-witness of the incident. Din Muhammad (PW-2), the watchman of Shumail Arcade, claimed to be the witness of last seen. He has deposed that, on 11.10.2008 at about 10:00 a.m., he was cleaning the vehicles near stair, when he heard fire shot, he then started going upstairs then he again heard two fire shots; he reached third floor of the flats and found that some persons were coming out of Flat No. 402 and going at down stairs; that the deceased

had already prior to incident disclosed him that the person running away was his relative Krishan; that on the next day, he was called at P.S where sketches of accused persons were prepared in his presence and four photographs were also shown to him, out of them, he identified two accused. In cross-examination, he disclosed that the persons were empty handed at the time of going upstairs and returning downstairs. It is an admitted position that the said PW did not see the accused and the deceased together at the crime scene. It is strange as to how empty-handed person can make fires. It is also noticeable that the Flat of the deceased was locked when his dead body was recovered by the police. No explanation is available as to how and when the deceased disclosed the name of co-accused Krishan to said P.W. Besides, the said PW has not deposed that the deceased also disclosed the name of respondent No.1. Further, the alleged incident took place on 11.10.2008 at about 10:00 a.m. while the F.I.R. was lodged by the complainant on 14.10.2028 at 2050 hours. The said PW on the next day of the incident identified two accused persons at P.S through photographs shown to him, while the F.I.R was lodged on third day of the incident. Hence, the alleged last seen evidence was available with the complainant well before logging of F.I..R but was not mentioned therein which created serious doubts regarding such piece of evidence.

**8.** It is also an admitted position that no motive has been alleged and established against the respondent No.1 for committing of alleged offence. It is matter of record that the respondent No.1 was neither having any enmity with the deceased nor he was associated in any manner with the nominated accused Krishan. The prosecution has failed to bring on record any confidence inspiring evidence to connect the respondent No.1 with the alleged offence.

9. The impugned judgment has been passed by the learned Trial Court after considering all the relevant facts and the evidence on record, which requires no interference of this Court under its appellate jurisdiction under section 417(2-A), Cr. P.C. Hence, this Criminal Acquittal Appeal is dismissed, accordingly.

JUDGE  
JUDGE

*Abrar*