

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD

Criminal Acquittal Appeal No.D-15 of 2016

Present:-

Mr. Justice Muhammad Iqbal Kalhoro,
Mr. Justice Amjad Ali Sahito

Date of hearing: 05.08.2019.

Date of Judgment: 05.08.2019.

Appellant: Mol Chand through Miss. Sobia
Qambrani, Advocate

Respondent No.1: Mr. Nazar Muhammad Memon A.P.G.
Sindh.

Respondents No.2to5: None present.

J U D G M E N T

AMJAD ALI SAHITO, J.- Being aggrieved and dissatisfied with the judgment dated 08.05.2016, recorded under Section 265-H (i) Cr.P.C. in favour of the respondents No.2to5 by the learned Sessions Judge, Mirpurkhas in Sessions Case No.70/2010 arising out of the FIR No.27/2010 for offence under sections 302, 325, 202, 34 PPC registered at PS Taluka, Mirpurkhas, whereby the respondents No.2to5 were acquitted from the charge.

2. The case of the prosecution as depicted in the FIR is that on 23.03.2010, the appellant/complainant Mol Chand lodged report with police station that unknown culprits have

committed *Qatl-i-amd* of his brother namely Teekam Das with his three minor daughters namely Parvati, Aarti and Kiran.

3. The charge was framed against respondents/accused by the trial Court, to which they pleaded not guilty and claimed to be tried.

4. At the trial, in order to establish accusation against the accused, the prosecution examined complainant Mol Chand, PWs Tejo Mal, Aalachand, mashir Dheero Mal, PW SIP Mashoor Ahmed, PW Dr. Naheed Sultana, Dr. Partab Puri, PWs SIO/DSP Attaullah, SIO/DSP Jameel Ahmed, SIO/Inspector Qadir Dad, mashirs P.C Rasool Bux, Rafique Ahmed and Mr. Abdul Qayoom Syed, the then Judicial Magistrate.

5. Statements of the respondents/accused were recorded under Section 342 Cr. P.C, wherein they denied the prosecution allegations leveled against them. However, neither they examined themselves on oath nor led defense evidence.

6. The learned trial Court, after hearing the learned counsel for the parties and appraisal of the evidence, acquitted the respondents No.2to5 vide judgment dated 08.05.2016. The acquittal recorded by the learned trial Court has been impugned by the appellant / complainant before this Court by way of filing the instant Criminal Acquittal Appeal.

7. Learned counsel for the appellant argued that the impugned judgment is based on misreading and non-reading of evidence, which is not maintainable; that the PW Aalachand has implicated all the respondents / accused for committing murder of three innocent children and their father Teekam Das; that the learned trial Court has not considered all the material points and acquitted the respondents / accused. Lastly, she prayed that this appeal may be allowed and the respondents / accused may be convicted in accordance with law.

8. Conversely, the learned A.P.G. while supporting the impugned judgment argued that respondents are innocent and have falsely been implicated in an un-witnessed incident.

9. We have heard the learned counsel for the parties and have gone through the evidence as well as impugned judgment with their able assistance.

10. Learned counsel for the appellant as well as learned A.P.G have agreed that the criteria of interference in the judgment against acquittal, is not the same as against the cases involving a conviction. The scope of interference in appeal against acquittal is narrow and limited for the reasons that in an acquittal, the presumption of innocence is significantly added to the cardinal rule of Criminal Jurisprudence that an accused shall be presumed to be innocent until proved guilty. In other words, the presumption of innocence is doubled.

11. The case of prosecution is that on 23.03.2010 between 06.00 a.m. to 06.30 a.m. some unknown persons have murdered Teekam Das along with his three minor daughters namely Parvati, Aarti and Kiran by using 'Chhuri'. In order to support its case, the prosecution has examined complainant Mol Chand, who in his evidence deposed that *"At about 6.00 a.m. I woke up and saw that my BHABHI came down for taking milk of buffalo. My brother Teekam Das also came down. After some time my brother Teekam Das and Bhabhi went to first floor. After passing of 30 minutes or 45 minutes I went to first floor to get Parsad. I opened the door and saw that the bodies of my three nieces were lying there without their heads while the heads of all three nieces were lying in small swing."* He further deposed that *"during funeral ceremony Aalachand told me that on the night of incident he has seen Keshumal and Hiralal while coming down from the first floor of the house where deceased Teekam was residing."* In his cross-examination, he has admitted that *"It is correct to suggest that the names of accused are not mentioned in FIR. It is correct to suggest that Shr. Bhavi also tried to suicide after looking the dead bodies with same crime weapon"*

which were used in the murders of the minors and Teekam.” The complainant disclosed in his evidence that the name of accused persons were disclosed by one Aalachand, hence, in order to support his version, said Aalachand was examined by the prosecution, who in his deposition deposed that *“On the night of incident at about 03.00 a.m. or 4.00 a.m. I woke up in order to go Bathroom, they saw that accused Keshulal and Hiralal were coming out from the room of Teekam Das and were coming down from staircase.”* In cross-examination, he admitted that *“It is correct to suggest that I have not seen the commission of murder at the hands of the accused.”* The Investigating Officer recovered ‘Chhuri’ from the place of incident and in this case only the eye witness of the incident was Shr: Bhavi. Her statement was recorded under section 364 Cr.P.C. before learned Judicial Magistrate wherein she has stated that she found the heads of her three children and husband cut and after witnessing said incident she became unconscious; subsequently, she was directed by her family members to confess and record her statement otherwise, all the family members would be involved in this case.

12. Undoubtedly, the time of incident as shown by the complainant is 06.00 or 06.30 p.m. whereas, PW Aalachand who has lastly seen the accused / respondents at about 03.00 a.m. or 04.00 a.m. while they were coming down from the room of deceased Teekam Das. The complainant Mol Chand also admits the time to be at about 06.00 a.m. when he saw his Bhabhi came down for taking milk of buffalo as well his brother also came down and thereafter both went to up stair. If these pieces of evidence are kept in juxtaposition, it would clear that PW Aalachand saw the accused / respondents before coming down by deceased Teekam Das and Bhabhi of complainant for taking milk of buffalo from the room, hence, at the time of witnessing respondents / accused by said PW Aalachand, the deceased was alive.

13. Furthermore, it transpires from the record as well as statement recorded under section 164 Cr.P.C. of the mother of

all the three children and wife of deceased Teekam Das that her husband / deceased Teekam Das directed her giving the milk to his mother for preparing tea, as such, after giving milk to her mother-in-law, she saw that her all children were murdered by cutting their necks, hence, nothing has been brought on record to believe that the respondents / accused have committed the offence. Furthermore, while recording the FIR at police station, Mol Chand has not disclosed the names of respondents / accused for committing offence even only one eye witness of the incident was Shr: Bhavi. She has also not implicated the respondents No.3 to 5 in the present offence.

14. We are fully satisfied with appraisal of evidence done by the learned trial Court and we are of the view that while evaluating the evidence, the difference is to be maintained in appeal from conviction and acquittal appeal and in the latter case, interference is to be made only when there is gross misreading of evidence resulting in miscarriage of justice. Learned counsel for the appellant failed to disclose any misreading and non-reading of evidence. In the case of **Muhammad Zafar and another v. Rustam and others (2017 SCMR 1639)**, the Hon'ble Supreme Court of Pakistan has held that:-

“We have examined the record and the reasons recorded by the learned appellate court for acquittal of respondent No.2 and for not interfering with the acquittal of respondents No.3 to 5 are borne out from the record. No misreading of evidence could be pointed out by the learned counsel for the complainant/appellant and learned Additional prosecutor General for the State, which would have resulted into grave miscarriage of justice. The learned courts below have given valid and convincing reasons for the acquittal of respondents Nos. 2 to 5 which reasons have not been found by us to be arbitrary, capricious or fanciful warranting interference by this Court. Even otherwise this Court is always slow in interfering in the acquittal of accused because it is well settled law that in criminal trial every person is innocent unless proven

guilty and upon acquittal by a court of competent jurisdiction such presumption doubles. As a sequel of the above discussion, this appeal is without any merit and the same is hereby dismissed”

15. The sequel of the above discussion is that we are satisfied with the appreciation of evidence evaluated by the learned trial Court while recording acquittal of the respondents/accused persons by extending the benefit of the doubt, which does not call for any interference by this Court. Consequently, the instant appeal merits no consideration and is dismissed accordingly.

JUDGE

JUDGE

Abdullah Channa/PS
Hyderabad dated 05.08.2019.