

IN THE HIGH COURT OF SINDH, KARACHI

Present:-

Mr. Justice Muhammad Iqbal Kalhoro, J.
Mr. Justice Shamsuddin Abbasi, J.

Crl. Acquittal Appeal No.497 of 2019

Rashid Masood KhanAppellant

Versus

Muhammad Danish,
& othersRespondents

Date of hearing: 08.09.2020

Date of judgment: 08.09.2020

Mr. Nasir Rizwan Khan, advocate for appellant
Mr. Abrar Ali Khichi, Addl: P.G. Sindh

J U D G M E N T

Muhammad Iqbal Kalhoro, J. By impugned judgment dated 13.07.2019, learned trial court has acquitted respondents in Session Case No.50/2017, bearing Crime No.428/2012, u/s 302, 109, 34 PPC, registered at Police Station Gulshan-e-Iqbal, Karachi which appellant has challenged here mainly on the ground that trial court has not properly appreciated the evidence against the respondents.

2. We have heard learned counsel for the appellant and learned Addl: Prosecutor General Sindh, who has supported impugned judgment. Learned defence counsel has submitted that there was sufficient evidence against the respondents, which has been ignored by the trial court against well-established principles for appreciating evidence.

3. Complainant is brother of deceased namely Asif Masood allegedly killed on 20.06.2012 at 2250 hours outside Al-Taimoria Mart, near Maskan Cowrangi, Gulshan-e-Iqbal, by two unknown accused ridding on a motorcycle. He is not the eye witness and was conveyed this information by his sister-in-law, wife of the deceased, namely Qurat-ul-Anieen, who was with the deceased at the time of incident. Initially, the case was disposed of in 'A' class. Subsequently on 05.04.2015 after arrest of respondent Muhammad Danish in Crime No.214/2015, u/s 23-A(i) Sindh Arms Act, 2013 and his admission about involvement in the case to the effect that he committed the offence at the instance of brothers of Mst. Kiran namely Kamran Khan and Adnan Khan, who was with him at the time of offence, investigation of this matter was taken up. That led to identification parade of the said accused and recovery of a crime weapon

from him, which was sent for forensic examination along with crime empty. Respondent, Adnan could not be arrested in the investigation, but latter on through a pre-arrest bail application, subsequently declined, he joined the trial. Accused Kamran Khan was declared proclaim offender.

4. Prosecution case is based on extra-judicial confession of accused Muhammad Danish, his identity through Mst. Sajida alias Quarat-ul-Anineen and PW Sajjad Ali, recovery of a crime weapon from him and matching FSL report. These pieces of evidence have been exhaustively looked at by the trial court and disbelieved on the basis of reasons which are not arbitrary or capricious. The extra judicial confession is not admissible under the law, recovery of a pistol was not proved for want of independent evidence and more so it was sent for forensic examination along with crime empties after 03 years of the incident rendering matching FSL report immaterial and unworthy of reliance. Deposition of Mst. Sajjida claiming identifying accused Adnan next day of the incident when he had visited her house along with his family for funeral but concealing this fact from the police for 03 years has created a serious doubt over veracity of her testimony. Presence of PW-9 Syed Shaadab Ali at the spot identifying accused Muhammad Danish has been disbelieved by the learned trial court because in the first report disposing of his case under 'A' class, his name did not transpire anywhere as an eye witness. He was cited so for the first time only in the charge sheet submitted in the year 2015 after 03 years of the incident, which has put his presence at the spot under the cloud. Further in identification parade no specific role has been attributed by the witnesses to the accused, and this shall divest Id. parade of its evidentiary value. This all coupled with the fact that on 05.07.2013 complainant had recorded his further statement alleging involvement of PW Sajida, first wife of deceased and one Akbar in the murder of his brother has put entire prosecution story in peril. In the circumstances, we are not convinced with the arguments of learned defence counsel that impugned judgment is result of misappreciation or non-appreciation of evidence. This being the position, we do not find any merits in this acquittal appeal and dismiss it accordingly.

JUDGE

JUDGE

Rafiq/P.A.