

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Acquittal Appeal No.233 of 2012

Present:

Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Khadim Hussain Tunio

Appellant/Complainant	Muhammad Umar S/o Imtiaz Hussain through Mr. Zaheeruddin Mujahid, Advocate
Respondent No.1	The State through Mr. Ali Haider Saleem, Additional Prosecutor General Sindh.
Respondent No.2 & 3	Syed Muhammad Asif S/o Syed Hamid Ali and Syed Hamid Ali S/o Syed Ahmed Ali through M/s. Muhammad Faheem Zia and Sawan, Advocates
Date of Hearing	29.03.2023
Date of Order	29.03.2023

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The accused/Respondents Syed Muhammad Asif and Syed Hamid Ali were tried in the Court of Vth Additional Sessions Judge, Karachi Central in S.C. No.594/2011 under FIR No.551/2011 U/s 302/34 PPC at PS Taimoria and vide judgment dated 05.07.2012, the accused/Respondents were acquitted of the charge. Hence, the appellant/complainant has filed this appeal against acquittal of the accused/respondents. At the very outset, it is noted that accused/Respondent No.2 Syed Hamid Ali has expired, as such, this judgment only deals with remaining accused/Respondent No.1 Syed Muhammad Asif.

2. The Brief facts of the case are that FIR of this case was lodged on 01.10.2011 by the complainant Muhammad Umer S/o Imtiaz Hussain on the basis of his statement record U/s 154 Cr.P.C. wherein he has stated that on 01.10.2011, he was in his office when brother of his brother-in-law Syed Muhammad Asif informed him on telephone that mother is calling



and to come home. He reached at their home and saw the dead body of his sister Tooba wife of Syed Muhammad Asif was lying on bed. About two years ago Nikah of his sister was solemnized with his brother-in-law and Rukhsati was taken place about nine months back. His brother-in-law was working in USA and it was settled that after marriage he would take his wife with him to America. After three months back he had come from America and he was extending threats to his sister for committing her murder if she insisted him to take her to America. Father and mother of his brother-in-law were also extending threats to her. His sister made visit to their house off and on and usually her husband Muhammad Asif came at their home and took with him his wife Tooba but again he started extending threats to her for committing her murder. They have also snatched golden ornaments, cash and mobile phone from his sister and such matter was reported at PS Taimoria. His sister was also pregnant by 7/8 months and about three days back she was turned out from the home and her brother-in-law Tauseef had dropped her at their house but yesterday on 30.09.2011 her husband Syed Muhammad Asif had come at their house and took her with him. He claimed that Syed Hamid Ali S/o Syed Ahmed Ali and Syed Muhammad Asif S/o Syed Hamid Ali have committed the murder of his sister by firing, hence the instant FIR.

3. After usual investigation, police submitted the charge sheet against the accused, who pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined 08 Prosecution Witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied the allegations levelled against him and claimed false implication by the police. However, the appellant did not give evidence on oath but produced three DWs in support of their defence.

5. After hearing the parties and appreciating the evidence on record, the trial court acquitted the accused/respondents. Hence, the appellant/complainant has filed this appeal against their acquittal. The learned trial Court in the impugned judgment in its operative para while acquitting the accused/respondents has found as under:

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"Case of the prosecution is that on 1.10.2011, at about 1430 hours, at House No.R-1144, Sector 15-B, Buffer Zone, Karachi, both the accused in furtherance of their common intention have committed the murder of the deceased Tooba by firing but there are serious doubt in the prosecution case.

Admittedly there is no eye witness of the incident as none of the P.W. who have been examined has seen the occurrence.

It appears further that complainant Muhammad Umer in his 154 Cr.P.C. statement has stated that accused Asif was working in USA and it was settled at the time of marriage that after marriage he would take his wife (deceased Tooba) with him to America and after three months back when he came from USA he started extending threats to his sister (deceased Tooba) for committing her murder if she would insist him to take her to USA (America) but complainant has never deposed this fact in his evidence. The claim of the complainant party is that deceased was murdered by the accused as deceased was pregnant and on ultra sound report it was found that a female baby is to be born upon which accused got annoyed and subsequently committed the murder of the deceased but no such ultra sound report of the deceased has been brought on record and this fact Investigation Officer himself admitted in his evidence. Even otherwise this claim of the complainant party having no substance for the reason that first baby from the wedlock of the accused Asif and deceased was to be born and how it is possible that a man would commit the murder of his wife on the birth of first female child when there was no other female child.

It appears further that accused Asif has himself informed to his inlaws about the incident and called her mother and brother-in-law through his brother and accused Hamid Ali himself went to P.S. and brought the police at the place of incident and if infact accused have committed the murder of the deceased then why they have called the complainant party and why they have brought the police at their home (at the place of incident).

It appears further that no finger prints were taken from the place of incident so also neither from the pistol used in the offence nor from the dead body and this fact admitted by the Investigation

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*Officer in his evidence and he also admitted that he has no knowledge as to how the finger prints to be collected and preserved.*

*Accused Asif in his statement recorded U/S 342 Cr.P.C. has stated that on the day of incident he was present at the shop of his friend Adeel and remained there till Zohar prayer and he left the shop of his friend at about 2.30 p.m. and went to his home and when he went to the room of his wife for calling her for lunch then he saw the dead body of the deceased lying on bed and D.W. Adeel has corroborated this version of accused Asif in his evidence. similarly accused Hamid Ali in his statement recorded U/S 342 Cr.P.C. has stated that he himself has informed to police about the incident and such entry was made at P.S. which he produced as Ex.13/A."*

6. Learned counsel for the appellant/complainant conceded that there was no eye-witness to the murder; however, he stated that the case of the prosecution was based on circumstantial evidence which links the accused/respondents to the murder of the deceased. His main contention was that deceased was found murdered in her husband's house by a gunshot wound as confirmed by the medical evidence and that the pistol and magazine was lying with her bloodstained body and the pistol belong to the Respondent which however was licensed. He has also drawn our attention to the fact that according to the PWs, Respondent and deceased did not have a happy married life however when confronted by the Court, he was not able to point to any other evidence on record which could link the respondent to murder of the deceased.

7. It is well settled law that an acquittal appeal stands on a different footing than an appeal against conviction. In acquittal appeal, the Superior Courts generally do not interfere with the same unless there has been a clear misreading and non-reading of evidence. In this case, the learned trial court has given valid and convincing reasons for the acquittal of the accused/respondent 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. Even if the appellate Court could

have come to a different conclusion this could not lead to the acquittal being set aside.

8. In view of the arguments raised by learned counsel for the appellant and the reasons reproduced earlier in this judgment by the learned trial Court for acquitting the appellant, we find that the learned counsel for the appellant has not been able to point out any legal infirmity in respect of the findings in the impugned judgment. This being the case, the impugned judgment is maintained and the instant appeal against acquittal is dismissed.