

Judgment Sheet
PESHAWAR HIGH COURT, PESHAWAR
Judicial Department

Cr. A. No.144-P/2022

Juma Khan...Vs...The State & another

JUDGMENT

Date of Hearing: **19.09.2022**

Appellant(s) by: Mr. Mubarak Zeb Advocate .

State by: Malik Akhtar Hussain AAG

SHAKEEL AHMAD, J.- The complainant being aggrieved by the judgment dated 06th March 2019 of the learned Sessions Judge, Charsadda in Sessions Case No.134/SC, whereby the accused/respondent was acquitted under Section 265-K Cr.P.C, has preferred this appeal, on the following facts and grounds;

02. The complainant, who is father of the deceased namely Muhammad Ayaz lodged a report to Sajeed Gul Khan ASI on the crime scene, alleging that his son Muhammad Ayaz had been brought in custody from District Jail, Mardan for producing him in the Court of Tehsil Tangi. He and his son Yousaf had come there to see him. The police took him out of judicial lock of the Courts in their presence and were taking him to the Judicial Magistrate, when they reached to the spot, in the meanwhile, accused Aziz-ur-Rehman S/o Ghani-ur-Rehman took out his pistol and fired at him due to which he was hit and died on the spot. The accused Aziz-ur-Rehman was arrested by the police alongwith weapon of offence, on the spot. It was alleged by him

that accused Aziz-ur-Rehman has committed murder of his son at the behest of Nawaz S/o Gulab r/o Sra Shah and Zareef S/o Imtiaz Khan r/o Berlin. The motive as set out in the crime report is that sister of accused Aziz-ur-Rehman had come after his deceased son to contract marriage with him. Besides him, the occurrence was witnessed by his son namely Yousaf and police party present on the spot, hence, the ibid FIR.

03. After arrest, the accused/respondent was put to trial. He was acquitted under section 265-K Cr.P.C by the learned trial court vide impugned judgment dated 15.12.2021. Being aggrieved of the same, the appellant/complainant has preferred the instant appeal.

04. It was argued by the learned counsel for the appellant that the accused has been acquitted under section 265-K Cr.P.C before framing of the charge that too without affording the complainant party to prove its case through evidence. He next contended that the principal accused was acquitted on the basis of compromise between the parties and not on merit, therefore, the benefit of the said judgment cannot be extended to him, and concluded his arguments by saying that acquittal order of the accused/respondent was pre-mature and liable to be set aside and case be remanded back to the court below for decision afresh after recording pro and contra evidence.

05. We have heard arguments of learned counsel for the appellant/complainant and perused the record appended with the appeal.

06. Having gone through the record, we find that the crime report was lodged at the instance of Juma Khan, it was alleged by him that murder of his son was committed by the accused Aziz-ur-Rehman at the behest of his co-accused Nawaz and Zareef. On the face of the record, we find that the prosecution has not placed on record any evidence to prove or show that the accused/respondent, who was not present on the crime scene, aided, abetted or facilitated the principal accused Aziz-ur-Rehman in his act of committing the crime, except, the oral allegation of the compliant party, however, this allegation is not based on legal evidence, but, is based upon presumption. It is the duty of the prosecution to bring on record some tangible material to connect the accused/respondent reasonably with the offence of abetment, law does not allow to presume anything in favour of the prosecution in the absence of any legal and conclusive evidence in support of the charge leveled against him. Section 109 PPC contemplates offence of abetment and the word abetment is defined therein in the explanation to mean as under;

"An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation or in pursuance of the conspiracy, or with the aid, which constitutes the abetment."

07. It is, therefore, clear that abetment can be committed only when there is positive evidence of either instigation or conspiracy or intentional aid. If none of these three elements stated above is available, then abetment does not stand proven. In the instant case, mere bald allegation is not sufficient evidence

to prove the fact that the accused/respondent either abetted or conspired or intentionally aided in the crime.

08. For the discussion made hereinabove, we are of the view, that elements of abetment or instigation as contemplated in section 109 PPC is lacking.

09. Adverting to other questions, it appears from perusal of section 265-K Cr.PC that the court has got ample power to acquit the accused even if witnesses are not examined. Provisions of section 265-K Cr.PC are meant to prevent the rigour of a protracted trial, when it is apparent from the record that there is no probability of the accused being convicted of the offence and further proceedings if allowed to continue would be an abuse of the process of the court.

10. Even otherwise, the principal accused who is charged for committing murder of the son of the complainant has already been acquitted on the basis of compromise, and as discussed in the preceding paras nothing would be achieved, if accused/respondent is put to a full dressed trial.

11. Since it is an appeal against acquittal, we have kept in our minds, the principles that govern the scope of interference by this Court. Acquittal are not lightly displaced, and this Court will have to see, whether acquittal is passed on wrong assumption of facts, or proceed on a perverse process of reasoning.

12. We have gone through the impugned judgment and found no illegality, irregularity or jurisdictional defect in it, calling for interference.

13. For what has been discussed hereinabove, this appeal, being bereft of merits, is hereby dismissed in *limine*.

Announced:
19.09.2022


JUDGE


JUDGE

(Shahid Nawaz, Steno)

(DB)

Hon'ble Mr. Justice Abdul Shakoor
Hon'ble Mr. Justice Shakeel Ahmad