

PESHAWAR HIGH COURT, PESHAWAR.

FORM 'A'
FORM OF ORDER SHEET

Date of order.	Order or other proceedings with the order of the Judge
14.03.2019	<p><u>Cr.A.No.628-P of 2018.</u></p> <p>Present: Mr.Mehboob Ali Khan Dagai, advocate for appellant.</p> <p>-----</p> <p><u>MUHAMMAD NASIR MAHFOOZ, J.-</u> This criminal appeal is directed against the judgment dated 09.06.2018 passed by learned District & Sessions Judge/Judge on Special Task, Katlang delivered in case FIR No.507 dated 03.12.2015 u/s 302 PPC of Police Station Katlang District Mardan, whereby accused/respondent has been acquitted of the charge leveled against him.</p> <p>2. As per contents of FIR, on 03.12.2015, Musarraf Shah SI alongwith other police contingent was on gusht of the area when received information to the effect that a dead body of an unknown female was lying at Gul Mian Kaly near Kandao Pahar. In the wake, he rushed to the spot and found the dead body of a young girl. After a while, complainant Sahib Gul came there and identified the dead body. He reported to the local police, in terms, that the dead body was of his niece Mst.Bano, who was present in her house yesterday at evening time. His house is situated at some distance from the house of deceased. On that day after Fajr prayers he had received information that deceased had left the house in the mid night. While searching for her, he came to know that</p>


Mst.Bano was done to death by some unknown accused through firing with firearms. No one was charged by the complainant for the crime at the time of report. On the basis of murasila Ex.PA/1, FIR Ex.PA was registered against unknown accused. Later on, on 07.12.2015, father of deceased Azam Khan recorded his statement before the Illaqa Judicial Magistrate u/s 164 Cr.P.C., wherein, he charged the accused/respondent for the murder of his daughter having illicit relation with her.

3. After completion of investigation, challan was put in court against the accused, which indicted him for commission of the offence to which he did not plead guilty and claimed trial. Prosecution in order to substantiate its case produced and examined 14 witnesses in all, whereafter statement of the accused was recorded, wherein, he professed his innocence. The learned trial court, after conclusion of the trial, found the appellant not guilty of the charge and acquitted him vide judgment dated 09.06.2018 whereagainst instant appeal has been preferred.

4. Arguments heard and record gone through.

5. In the instant case, FIR has been lodged by Sahib Gul uncle of the deceased on 03.12.2015, wherein, no one was charged for commission of the offence. On 07.12.2015, father of the deceased recorded his 164 Cr.P.C., wherein, he nominated the accused/respondent for the crime. Neither uncle nor father of the deceased has witnessed the crime. Though allegation of illicit relation between the



	<p>deceased and accused/respondent has been leveled but no evidence was produced by the prosecution in this respect. No doubt recovery of mobile phone belonging to brother-in-law of the accused/respondent has been made but his statement has not been recorded by I.O./PW-14. As stated earlier, complainant (PW-9) has stated that he was neither eyewitness to the occurrence nor he could show any person having seen the deceased in the company of accused/respondent prior to the occurrence, during the occurrence and after the occurrence. Moreover, PW-14 admitted that he had not brought the conversation between the accused/respondent and deceased on file in support of CDR Ex.PW14/9. Again SIM No.0348-9243618 allegedly recovered from the dead body of deceased stands registered in the name of Wazir Badshah whereas SIM No.0343-2548128 recovered from the accused/respondent has been registered in the name of Ameer Zada. Similarly, SIM No.0348-2610507 is registered in the name of accused/respondent but it is not ascertainable as to from where the same was recovered because of non-availability of recovery memo thereof. On the basis of three SIMs and CDR record, it cannot be said with certainty that accused/respondent was responsible for the murder of deceased.</p> <p>6. In addition, neither weapon of offence nor any other incriminating recovery has been made from the accused/respondent or on his pointation. Furthermore, the motive has not been established through evidence.</p>
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7. The learned trial court after proper appreciation of the available case evidence has rightly granted acquittal to the accused/respondent as his participation in the crime could not be proved by the prosecution beyond reasonable doubts. While reaching to its conclusion qua acquittal of the accused/respondent, the learned trial court has not committed any illegality or irregularity, therefore, no exception could be taken by this court to the judgment of the learned trial court. Furthermore, it is well settled principle of law that once an accused is acquitted, then he earns double presumption of his innocence, which cannot be taken away from him unless it is shown that the judgment of acquittal is arbitrary or contrary to the case evidence, which is not the case in hand.

8. For the aforementioned reasons, this appeal has no substance, which is hereby dismissed in limine.


CHIEF JUSTICE


JUDGE