

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Appeal No.48-L of 2016

*(Against the judgment dated 15.02.2002
passed by the Lahore High Court, Lahore
in Criminal Appeal No.2101 of 2002).*

Muhammad Shafi alias Kuddoo

...Appellant(s)

VERSUS

The State, etc.

...Respondent(s)

For the Appellant(s)	: Mr. Shahid Azeem, ASC
Respondent No.2	: In person
For the State	: Mr. Mazhar Sher Awan, Additional Prosecutor General
Date of Hearing	: 07.05.2019

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Muhammad Shafi *alias* Kuddoo, appellant herein, was tried along side Abdul Razzaq and Sakina Bibi, co-accused for committing *qatl-e-amd* of Khalil Ahmed at *fajarwela* on 15.2.2002 within the remit of Police Station Chunian, District Kasur. According to the complainant, on the fateful day, after offering *fajar* prayer, he was on way back home with Khalil Ahmed deceased a head of witnesses; as the deceased went past house of Sakina Bibi accused he was intercepted by the appellant as well as Abdul Razzaq. Upon exhortation, the appellant and Abdul Razzaq co-accused gave *sota* blows to the deceased; motive for crime is cited as alienation of immovable property by the deceased in favour of Sakina Bibi co-accused, his second wife as well as the appellant, a transaction that he attempted to revoke in the wake of differences with his better half.

2. The accused were indicted before the Additional Sessions Judge, who proceeded to acquit them *vide* judgment dated 30.10.2002 *vires* whereof were challenged through appeal

admitted to the extent of present appellant and finally allowed *vide* impugned judgment dated 15.2.2016 whereby the appellant stand convicted under clause (b) of Section 302 of Pakistan Penal Code, 1860; sentenced to imprisonment for life, he is directed to pay compensation in the sum of Rs. 200,000/- or to undergo six months S.I. with benefit of Section 382-B of Code of Criminal Procedure.

3. Learned counsel for the appellant contends that there was no occasion for the learned High Court to reverse the appellant's acquittal that too after dissecting his case from identically placed co-accused, extended benefit of doubt. It is next argued that view taken by the learned trial Court being a possible view compatible with the evidence brought on the record was not open to any legitimate exception; the bottom line is that the impugned reasoning formulated by the learned High Court to convert appellant's acquittal into conviction being in conflict with settled norms of safe administration of criminal justice and judicial principles applicable to reversal of acquittal warrants interference by this Court.

4. A variety of reasons weighed with the learned trial Judge to acquit the accused from the charge; inordinate delay in recourse to law being foremost, these include improbability of witnesses' presence; their enmity with the accused, as well as, contradictions in their depositions and thus he found it unsafe to return a guilty verdict. None of the reasons cited by the learned trial Judge has been found by us as artificial or unrealistic. Even otherwise on an independent analysis, genesis of prosecution case does not appear to be free from doubt. Deceased was 70 years of age and in a chilled winter morning his presence at the crime scene within the view of witnesses, admittedly inimical towards the accused, available per chance and with formidable past has rightly been viewed with caution by the learned trial Judge. Ocular account is in conflict with medical evidence inasmuch as according to the crime report both the appellant, as well as, Abdul Razzaq, co-accused, are assigned one blow each to the deceased, whereas according to the initial medical examination, Medical Officer noted

solitary injury on the head, its impact on the eye has been utilized by the witnesses to array the latter in the crime. Deputation of Sakina Bibi to monitor deceased's arrival so as to inform her son about deceased's arrival is also an aspect of the case that requires a pinch of salt. Certainly there was no occasion for the learned High Court to convert appellant's acquittal into conviction after it had itself disbelieved prosecution evidence *qua* two out of three accused, one with an identical role.

It is by now well settled that acquittal carries with it double presumption of innocence; it is reversed only when found blatantly perverse, resting upon fringes of impossibility and resulting into miscarriage of justice. It cannot be set aside merely on the possibility of a contra view. The High Court has derogated from settled principles of law and thus departure does not commend itself with approval. Resultantly, Criminal appeal is allowed, impugned judgment dated 15.2.2016 is set aside. The appellant is acquitted from the charge and shall be set at liberty forthwith, if not required in any other case. Above are the reasons of our short order of even date which is reproduced as under:

"For detailed reasons to follow, the instant criminal appeal is allowed. The conviction and sentence of the appellant Muhammad Shafi alias Kuddoo are set aside. He is acquitted of the charge framed against him. He shall be released forthwith, if not required to be detained in any other criminal case."

JUDGE

JUDGE

JUDGE

Lahore, the
07th of May, 2019
Ghulam Raza/*