

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Cr. Acq Appeal No. 296/2013

Noor Ahmed

V

Asadullah and another

Date of hearing	06.06.2017
Date of judgment	06.06.2016
Appellant	Through Mr. Shahzad Qamar Abbas, advocate
Asadullah, Respondent No.1	Through Mr. Hakim Ali Khan, Advocate
The State	Through Mr. Zafar Ahmed Khan, Addl. P. G.

JUDGMENT

MUHAMMAD KARIM KHAN AGHA, J:- Initially the accused/Respondent Asadullah son of Ghulam Farooq (the Respondent) was convicted by the learned Ist Judicial Magistrate, Karachi East vide judgment dated 25.02.2012 in respect of offenses under section 489 (F), 448, 506 (B) PPC. Thereafter, the accused/Respondent preferred criminal appeal No.7/2012 against the aforesaid judgment before the learned Sessions Judge, Karachi East, who after hearing the parties had allowed the appeal and the conviction and sentence recorded against the Respondent was set aside and he was acquitted from the charge by Judgment dated 19-09-2013 (the impugned judgment) by extending the benefit of the doubt.

2. The appellant Noor Ahmed son of Haji Khair Muhammed being dissatisfied with the impugned judgment has challenged the same through this instant appeal against acquittal.

3. The brief facts of the prosecution case as per contents of the FIR are that there were business terms between the Respondent and the appellant and they were running business in the name of Zamzama Hotel and Zamzama Bakery and had also purchased certain properties jointly being partners. The Respondent was tenant in respect of his shop No.1 situated on Plot No.N-3685, Metrovil Block-III, Scheme No.33 and was under obligation to have paid an amount of Rs.2,34,000/- out of which Rs.40,000/- have been paid by him but remaining amount of Rs.2,32,000/- has not been paid and on demand he used to abuse the appellant with filthy language and in pursuance of the said rent the Respondent issued cheques which were bounced. The Respondent was not paying the electricity bills, therefore, he was served notice for his ejection but he also occupied the adjacent shop owned by the appellant. The Respondent also collected money for publishing of Tafseer Quran, which was taken by the Respondent on the pretext of payment of certain profit but he failed to fulfill his commitment to the appellant hence the appellant lodged the aforesaid FIR against him under section 489 (F), 448, 506 (B) PPC.

4. The appellant in this appeal against acquittal has mainly contended that the trial Court has acquitted the Respondent/accused without appreciating the evidence in accordance with the settled principles of law and that there has been a misreading and non reading of evidence which requires the impugned judgment to be set aside by this court. On the other hand the Respondent has submitted that the impugned judgement is in accordance with law and that there are no legal infirmities which justify it being interfered with. Learned counsel for the State supported the arguments of the Respondent.

5. I have heard learned counsel for the appellant, Respondent, Addl. Prosecutor General, examined the entire evidence available on record and the impugned judgment with the able assistance of learned counsel for the parties and have considered the relevant case law.

6. It appears that the trial Court through the impugned judgment has mainly acquitted the respondent for the following reasons as set out in the impugned judgment below;

Now the point remains only for consideration of bounce of alleged cheque passed on to the complainant by the appellant. The complainant Noor Ahmed in his statement before the trial Court has not disputed about the partnership in between complainant and appellant and running of joint business as well as purchase of property jointly. The said admission of the complainant in his statement before the learned trial Court is of much significance and relevant to the present case as such it has been born out from the record that there was partnership and business transaction between them and P.W. Noor Ahmed in his statement has candidly admitted to have received Rs.40,000/- from the appellant. He has also admitted that accused had given two cheques amounting to Rs.13,000/- and Rs.16,000/- and in his last line of the examination in chief he has also admitted that accused had returned an amount of Rs.40,000/-. He has also admitted the partnership in P.C.O. namely Noor Customer and Zam Zam Bakery and Zam Zam Hotel which is of very important nature under the circumstances of the case.

He has also admitted to have purchased two shops from his previous owner Muhammad Iqbal Soomro and the appellant have paid half payment of Rs.33,40,000/- to the seller in respect of two shops. **He further admitted in cross examination that accused had given him 3 cheques and has paid an amount of Rs.11,000/- to him and he had returned the said bounced cheque of Rs.11,000/- to him. He has further admitted in cross examination that the total amount of 3 cheques comes to Rs.40,000/- and that the said amount of Rs.40,000/- has been paid to him by the accused as per first part of his examination in chief. He further admitted in cross examination that he has not served any letter on the appellant for return of the loan amount nor filed suit for recovery of the said amount. He further admitted in cross examination that he lodged the FIR after quarrel took place in between him and accused in respect of the property which admission also shows that the dispute arose in between them on the point of certain properties owned by both of them. The statement of the complainant is therefore full of discrepancies which shows that there was rivalry in between him and accused because of dispute over the properties which they had purchased during the course**

of partnership business. Admittedly the complainant Noor Ahmed charged the appellant regarding dishonor of two cheques amounting to Rs.13,000/- and Rs.16,000/- and third cheque of Rs.11,000/- according to him he had returned to the appellant on receipt of cash of Rs.11,000/-. The aggregate amount of all these cheques comes to Rs.40,000/- which he had already received as per his evidence as discussed above, as such registration of FIR is very meaningful and seems to have been registered for some ulterior motive. The witness examined by the complainant has also admitted the payment of aggregate amount of Rs.40,000/- by D.W. Ali Ahmed to Muhammad Siddiq son of complainant and P.W. Muhammad Siddiq has also been examined by the complainant and he also admitted to have received Rs.40,000/- from the appellant. The appellant in his statement on oath has also well worded about payment of Rs.40,000/- against said 3 cheques by deposing that he had given 3 cheques to the tenant of the complainant for handing over the same to the complainant and also informed him that he had no money in his account and had also requested him not to present the cheque in bank and later on he had given cheque amount of Rs.40,000/- to Ali Ahmed and complainant received the said amount. **The same assertion has been made by him on statement on oath which has not been controverted in cross examination. He has also examined D.W. 2 Ali Ahmed who has also made the similar assertion regarding payment made to the complainant by the appellant.**

D.W. Ali Ahmed has been cited by the prosecution as witness but he has not been examined by the prosecution and has been given up vide statement Ex.9 being formal witness and the appellant has examined him as **D.W. 2 who has not supported the case of the prosecution** which also adversely reflect on the case of the prosecution. **All the said evidence has not been considered in its true perspective by the learned trial Court while recording conviction and sentence against the appellant.**

From the discussion of the evidence it has therefore emerged out that there was a partnership between the parties which culminated in dispute over transfer of the properties which has been admitted by the complainant Noor Ahmed in his statement, therefore, false implication of the appellant could not be ruled out specially when the complainant has admitted the receipt of proceed of alleged bounced cheque without any protest. Therefore, in my humble opinion the complainant has failed to establish his case beyond any reasonable doubt as such the findings of the learned trial Court could not be sustained. (bold added)

7. It is settled law that judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous as held by the Honorable Supreme Court in the case of **The State v. Abdul Khaliq and others** (PLD

2011 Supreme Court 554). Moreover, the scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of the innocence is significantly added to the cardinal rule of criminal jurisprudence as the accused shall be presumed to be innocent until proved guilty. **In other words, the presumption of innocence is doubled** as held by the Honourable Supreme Court of Pakistan in the above referred judgment. The relevant para is reproduced hereunder:-

“16. We have heard this case at a considerable length stretching on quite a number of dates, and with the able assistance of the learned counsel for the parties, have thoroughly scanned every material piece of evidence available on the record; an exercise primarily necessitated with reference to the conviction appeal, and also to ascertain if the conclusions of the Courts below are against the evidence on the record and/or in violation of the law. In any event, before embarking upon scrutiny of the various pleas of law and fact raised from both the sides, it may be mentioned that both the learned counsel agreed that the criteria of interference in the judgment against acquittal is not the same, as against cases involving a conviction. In this behalf, it shall be relevant to mention that the following precedents provide a fair, settled and consistent view of the superior Courts about the rules which should be followed in such cases; the dicta are:

Bashir Ahmed v. Fida Hussain and 3 others (2010 SCMR 495), Noor Mali Khan v. Mir Shah Jehan and another (2005 PCr.LJ 352), Imtiaz Asad v. Zain-ul-Abidin and another (2005 PCr.LJ 393), Rashid Ahmed v. Muhammad Nawaz and others (2006 SCMR 1152), Barkat Ali v. Shaukat Ali and others (2004 SCMR 249), Mulazim Hussain v. The State and another (2010 PCr.LJ 926), Muhammad Tasweer v. Hafiz Zulkarnain and 02 others (PLD 2009 SC 53), Farhat Azeem v. Asmat Ullah and 6 others (2008 SCMR 1285), Rehmat Shah and 2 others v. Amir Gul and 3 others (1995 SCMR 139), The State v. Muhammad Sharif and 3 others (1995 SCMR 635), Ayaz Ahmed and another v. Dr. Nazir Ahmed and another (2003 PCr. LJ 1935), Muhammad Aslam v. Muhammad Zafar and 2 others (PLD 1992 SC 1), Allah Bakhsh and another v. Ghulam Rasool and 4 others (1999 SCMR 223), Najaf Saleem v. Lady Dr. Tasneem and others (2004 YLR 407), Agha Wazir Abbas and others v. The State and others (2005 SCMR 1175), Mukhtar Ahmed v. The State (1994 SCMR 2311), Rahimullah Jan v. Kashif and another (PLD 2008 SC 298), 2004 SCMR 249, Khan v. Sajjad and 2 others (2004 SCMR 215), Shafique Ahmad v. Muhammad Ramzan and another (1995 SCMR 855), The State v. Abdul Ghaffar (1996

SCMR 678) and Mst. Saira Bibi v. Muhammad Asif and others (2009 SCMR 946).

From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced that the scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. It has been categorically held in a plethora of judgments that interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. *Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied).* The Court of appeal should not interfere simply for the reason that on the re-appraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities. It is averred in *The State v. Muhammad Sharif* (1995 SCMR 635) and *Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others* (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals." (bold and italics added)

8. Having gone through the evidence and the impugned judgment I find that there has been no misreading or non reading of evidence, that the impugned judgment is based on sound reasons and there is no question of the findings in the impugned judgment being perverse arbitrary, foolish, artificial, speculative and ridiculous especially as it is a well established principle of law that the accused is always entitled to the benefit of the doubt in criminal cases and as was held in the case of **Tariq Pervez V/s.**

The State (1995 SCMR 1345), where the Honourable Supreme Court has observed as follows:-

"It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right."

9. As such in my view there is no merit in the instant appeal against acquittal. The Acquittal recorded by trial Court in favour of Respondent is based upon sound reasons, which require no interference at all. As such, the instant appeal against acquittal is dismissed.

10. These are the reasons for my short order of even date.