

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Acquittal Appeal No.S – 01 of 2011

Appellant/Complainant : Sabzal Korai through
Mr. Ghulam Murtaza Korai, Advocate

Respondent : Haji Ghulam Hyder, Rasheed, Liaquat
and Shoukat through Mr. Noor
Muhammad Memon, Advocate.

The State, through Syed Sardar Ali Shah
Deputy Prosecution General

Date of hearing : 15.11.2019

Date of decision : 15.11.2019

JUDGMENT

AFTAB AHMED GORAR, J.- By filing instant Criminal Acquittal Appeal, the appellant/complainant has impugned judgment dated 29.11.2010, passed by learned 1st Additional Sessions Judge Ghotki, whereby the private respondents have been acquitted of the offence under Sections 395 & 365 PPC arising out of Crime No.163 of 2007 registered at Police Station Ghotki.

2. The facts of the prosecution case are that on 25.5.2007 complainant Sabzal lodged the FIR at Police Station Ghotki, alleging therein that two months prior to lodgment of the FIR, at 6:00 pm at Main Chowk Ghotki, Deh Odharwali the private respondents

along with let off accused Gul Muhammad being armed with weapons committed dacoity of one *Hiace* bearing Registration No.2115 Sukkur, cash of Rs.1610.00 and one Mobile set of Nokia company from the appellant/complainant and PW Mushtaque and also kidnapped them and kept under wrongful confinement for fifteen days, hence the case was challaned, whereas, the co-accused Gul Muhammad was let off by the police during the course of investigation.

3. At trial, the private respondents did not plead guilty to charge and the prosecution to prove it, examined PW-1 appellant/complainant Sabzal; who produced FIR; PW-2 Gul Muhammad; PW-3 mashir Manzoor Ahmed, who produced mashirnama of place of incident; arrest of accused Akhtar and Leemon, recovery of *Hiace*; PW-4 Mushtaque Ahmed; PW-5 Liaquat Ali and then closed the side.

4. The private respondents during the course of their examination u/s 342 Cr.PC denied the prosecutions' allegation by pleading innocence by stating that they have been involved in this case falsely by the appellant/complainant. They did not examine any one in their defence or themselves on oath.

5. The learned trial Court on evaluation of evidence so produced by the prosecution, acquitted the private respondents of the offence for which they were charged by way of impugned judgment, as stated above.

6. It is pertinent to mention here that private respondents 1 and 2 namely Akhtar Ali and Leemon expired during pendency of instant Criminal Acquittal Appeal.

7. Learned counsel for the appellant/complainant contended that the prosecution has been able to prove its case against the private respondents beyond shadow of doubt by producing cogent evidence which has not been considered by learned trial Court without lawful justification; that the version of the complainant has been fully supported by prosecution witnesses, although there are minor contradictions, which were not fatal to the prosecution case for recording the acquittal of the private respondents; that there is recovery of the robbed *Hiace*, therefore, there was sufficient material available on record for convicting the private respondents. He lastly prayed that the impugned judgment is liable to be set-aside and the private respondents may be awarded punishment in accordance with law.

8. Learned D.P.G for the State and learned counsel for the private respondents by supporting the impugned judgment have sought for dismissal of the instant criminal acquittal appeal.

9. I have considered the above arguments and perused the record. The FIR of the incident has been lodged with delay of about two months such delay could not be overruled. In this regard, the reliance is placed upon the case of **In case of *Mehmood Ahmed & others vs. the State & another (1995 SCMR-127)***, it was observed by the Hon'ble Court that;

“Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.

10. Except the complainant who claims to be the owner and one Mushtaque Ahmed who is cleaner of the said vehicle are the eyewitnesses of the alleged incident, whereas, the alleged robbery of the Hiace had taken place at the busy place, whereas, the other vehicle owners, drivers and cleaners always remain available, but

none of them have been cited as eyewitness. In that context, learned trial Court was right to record acquittal of the private respondents by extending them benefit of doubt with the following observation;

“As per evidence brought on record it is an admitted fact that a vehicle belongs to accused persons was snatched by Korai community people and such case was registered against them thus enmity between the parties over vehicle was an admitted fact. The identification of accused persons is doubtful because as per evidence of complainant accused were identified through co-accused Gul Muhammad, as per evidence of complainant and PWs and surety of accused Gul Muhammad, complainant went with accused persons in vehicle; PW Mushtaque Ahmed has clearly deposed in his examination-in-chief that the accused did not disclose their names in his presence. Accused Gul Muhammad during investigation declared innocent and no such investigation was challenged before any forum. Complainant and conductor Mushtaque Ahmed were allegedly remained confined with accused persons for the period of 15 days and during this period, co-sharers of the vehicle, who

was admittedly ASI at Ghotki District so also relatives of complainant an Mushtaque Ahemd were remained silent. After 15 days both complainant and PW Mushtaque Ahmed got themselves released despite of presence of culprits from Landhi makes the case of prosecution highly doubtful. Recovery of vehicle from the possession of accused persons also doubtful as I.O has deposed that on the pointation of accused vehicle was recovered from Lal Pir forest whereas this statement of I.O belied by mashir of recovery of vehicle who deposed that vehicle was lying near village Balach Bullo link road Masheseero. FIR has been delayed for about 2 months, no plausible explanation has been furnished by complainant. Hiace No.2115 Sukkur Model 1992 has been restored to complainant through Court on surety/superdari basis by Sessions Court Ghotki vide order dated 29.8.2007. Therefore, material discrepancies have been brought on record in evidence of complainant, eyewitness Mushtaque Ahmed and Gul Muhammad so also mashir Manzoor Ahmed and Investigating Officer Liaquat Ali Rajput. I am of the considered view slightest doubt if arise in the

prosecution case should go in favour of the accused persons.”

11. In case of **State and others v. Abdul Khaliq and others (P L D 2011 SC-554)**, it has been held by the Hon’ble Apex Court 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 until proved guilty; in other words, the presumption of innocence 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. 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. Judgment of acquittal should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous. The Court of appeal should not interfere simply for the reason that on the reappraisal 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”.

12. In view of the above, no such irregularity or infirmity is found in the impugned judgment calling for interference by this Court hence the instant criminal acquittal appeal is dismissed accordingly.

Judge