IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Acquittal Appeal No.S – 32 of 2014
Crl. Acquittal Appeal No.S – 56 of 2014

Appellant/complainant	:	Abdul Wahab Gurgej, through Mr. Dareshani Ali Hyder 'Ada' Advocate
Respondent	:	The State, through Mr. Aftab Ahmed Shar, Additional PG
Date of hearing;		11.11.2019
Date of decision;		11.11.2019

J U D G M E N T

Aftab Ahmed Gorar, J.- The appellant/complainant by way of instant Criminal Acquittal Appeals has impugned judgment dated 26.3.2014 and Order dated 19.06.2014 respectively, passed by learned 2nd Additional Sessions Judge Ghtoki in Sessions Case No.520/2011 arising out of Crime No.39/2011 registered at police station Wasti Jiwan Shah, District Ghotki, whereby the private respondents have been acquitted of the offence, for which they were charged.

2. The facts of the prosecution case, in brief are that the appellant/complainant lodged his FIR on 11.5.2011 alleging therein that he along with his brothers Abdul Jabbar and Abdul Sattar were grazing cattle in the land, when at about 1200 Noon, there came accused Shah Muhammad with kalashnikov, Shah Nawaz with gun, Altaf with rifle, Safdar with repeater, Jehan with kalashnikov, Saindad with gun, Asif with kalashnikov, Bahadur with kalashnikov, Noor Hassan with gun, Anwer with gun, Soonharo with rifle, Illiumuddin Mari with gun, Qutub with gun and Farman with rifle and on the force of weapons robbed two buffaloes and one Hi-buffalo. On resistance of the complainant party, accused Shah Muhammad, Jahan, Anwar and Bahadur caused Butt blows to P.W Abdul Sattar. Thereafter the accused persons escaped away from the place of incident along with the robbed cattle. Then complainant went to Police station and lodged the FIR.

3. In the first round of trial, the private respondents Shah Muhammad, Jahan Khan, Saindad, Quttub Khan, Noor Hassan, Shah Nawaz, Illimuddin, Soonharo and Anwer were facing the trial, whereas, private respondents Asif and Bahadur were absconding. At trial, the private respondents did not plead guilty to charge and the prosecution to prove it, examined PW-1 Medical Officer Dr. Liaquat Ali Bhutto, who produced police letter, provisional medical certificate and final medical certificate of injured; PW-2 complainant Abdul Wahab, who produced FIR; PW-3 Injured Abdul Sattar and PW-4 Inspector/I.O Muhammad Pannah Mahar, who produced mashirnama of place of incident, arrest of private respondents and mashirnama of injuries of injured and enquiry report, PW-5 mashir Abdul Ghaffar and then closed the side.

4. The private respondents Shah Muhammad, Jahan Khan, Saindad, Quttub Khan, Noor Hassan, Shah Nawaz, Illimuddin, Soonharo and Anwer 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 complainant party. 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, as stated above.

6. Thereafter the private respondents Asif and Bahadur also joined the trial and by moved an application u/s 265-K, Cr.P.C, as such their application was allowed and they were also acquitted of the charge. Since both these acquittal appeals arising out of the same crime, therefore, the same are being disposed of by this common judgment.

7. Learned counsel for the appellant/complainant contended that the learned trial Court has acquitted the private respondents and has brushed aside the evidence produced by the prosecution; that there was sufficient material available on record to convict the private respondents, but the learned trial Court has not considered the material aspects of the case; that the evidence of the prosecution witnesses is in line

with each other. He lastly prayed that the impugned judgment is liable to be set-aside and the private respondents may be convicted in accordance with law.

8. Learned Additional PG for the State sought for dismissal of the instant Criminal Acquittal Appeals by contending that the learned trial Court has considered all the material placed before him and has rightly acquitted the private respondents, as there was deficient material on record.

9. I have considered the above arguments and perused the record. The incident has allegedly taken place in the broad hours of the day in the lands, where almost the people of the vicinity always remain present while working and grazing their cattle, but even then not a single witness has been cited by the complainant except his brothers namely Abdul Jabbar and Abdul Sattar, hence they all being related inter se, their evidence cannot be believed as trustworthy and confidence inspiring. In such circumstances, there could be made no denial to the fact that the FIR of the incident which was lodged by the complainant with the police was with delay of 6 ½ hours, such delay could not be overlooked and ignored, as it reflects consultation and deliberation and it has made the version of the complainant to be doubtful one.

10. In case of **Mehmood Ahmed & others vs. The State & another (1995 SCMR-127),** it has been observed by Hon'ble Apex 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".*

11. In these circumstances, learned trial Court was right to record acquittal of the private respondents by extending them benefit of doubt with the following observation;

> *"Allegation against accused is that; they robbed three cattle from complainant and caused butt blows of weapons to PW*

Abdul Sattar. Offence alleged to have taken place on 11.5.2011 but injured Abdul Sattar had appeared before I.O on 17.5.2011 viz. after delay of six days, without explanation. I.O/Inspector Muhammad Pannah in his cross examination deposed that; he noted injuries of injured on the saying of complainant. This does mean that; I.O did not see the injuries on person of injured. Per FIR PW Abdul Sattar received injuries on 11.5.2011. Though he was issued letter for medical treatment on 17.5.2011 but he appeared before Medical Officer on 18.5.2011, as such he remained unattended for 6/7 days. This fact has been admitted by PW/injured Abdul Sattar in his cross-examination. He deposed that he did not get medical treatment of his injuries from 11.5.2011 to 17.5.2011. Per medical certificate, out of six alleged injuries, five have been shown as other hurts and one as Ghyr Jaifah Damiyah, meaning thereby all injuries simple in nature, which too attended after one week from its sustained, therefore they may be disappear and dislocate at the time of its examination. That may be reason that I.O admitted that, per mashirnama, he noted injuries of injured on the saying of complainant. Thus injuries on person of PW Abdul Sattar appear to be doubtful. The next allegation against present accused is that; they robbed three cattle from complainant on gun point. But fact remains there that both parties viz. complainant and accused are residing in same village / vicinity and are relatives inter se. There is old enmity in between parties. Accused in their statements have placed on record three FIRs lodged by present complainant Hafiz Abdul Wahab against them almost on same state of allegations. Complainant Hafiz Abdul Wahab in his cross-examination has categorically deposed that he had lodged false FIRs against accused except present one FIR. It means that complainant is habitual in lodging of FIRs against present accused, perhaps to justify is admitted enmity with them. Coming to the evidence brought on record. PW Abdul Sattar, the brother of complainant has admitted that accused have filed civil cases over landed dispute against them. There was dispute in between them and accused over a matter of bridge. Mashir Abdul Ghaffar deposed that; mashirnama of place of vardat and injuries of injured was prepared by SIP Muhammad Pannah Mahar himself. But SIP Muhammad Pannah Mahar, I.O of this case deposed that; mashirnama of place of vardhat was prepared by Munshi Anwar and mashirnama of injuries was prepared by Munshi, Kosh by caste. Incident alleged to have taken place in broad day time on 12:00 hours of noon which too within the populated area but complainant has examined

> *only his brother Abdul Sattar to be witness. Not a single independent witness has been cited in this case. I.O failed to place on record copy of entry of PS, suggesting if he proceeded to place of vardhat. Complainant has implicated 14 accused of one and same family in this case. Present accused are facing the agony of their trial since about three years and have already suffer a lot. Besides this, I find inconsistencies and contradictions in deposition of PWs as well admitted enmity between parties, rendering the case of prosecution against present accused doubtful. It is well-settled principle of law that even slightest possible doubt in prosecution, if any, benefit of same should go in favour of accused".*

12. The conclusion which could be drawn of the above discussion would be that the prosecution has not been able to prove its case against the private respondents beyond shadow of doubt. In this regard, reliance is placed upon the case of **State and others vs. Abdul Khaliq and others (P L D 2011 SC-554),** wherein it has been held by the Hon'ble Supreme 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".*

13. In view of the facts and reasons discussed above, it could be concluded safely that the impugned judgment dated 26.3.2014 and order dated 19.6.2014 are not calling for any interference by this Court by way of instant criminal acquittal appeals. Consequently, both the appeal are dismissed accordingly.

Judge

ARBROHI