

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Acquittal Appeal No. S – 77 of 2019

Appellant/Complainant : Atta Hussain Jagirani, through Mr. Miran Bux Shar Advocate

Private respondents : None present.
: The State, through Mr. Aftab Ahmed Shar, Additional Prosecution General

Date of hearing : 21.10.2019
Date of decision : 21.10.2019

ORDER

AFTAB AHMED GORAR, J.- Through instant Criminal Acquittal Appeal, the appellant/complainant has impugned Order dated 13.04.2019, passed by learned Additional Sessions Judge Gambat, whereby the private respondents have been acquitted under Section 265-K Cr.P.C of the offence u/s 302 PPC arising out of FIR Crime No.48/2017 registered at Police Station Gambat.

2. The facts of the prosecution case in respect of the incident alleged to have taken place on 18.1.2017 an FIR was lodged on 28.2.2017 at Police Station Gambat by complainant Atta Hussain, stating therein that on the day of incident, he along with his brother Sabzal Khan, Rehmat Ali were available in the house of his son Sadam Hussain, when all of a sudden, some accused persons having weapons intruded into the house, on which his son Sadam Hussain resisted, the accused namely Moula Bux made direct fire upon his son Sadam Hussain, which hit on his forehead, accused Sikander made aerial firing and then both the accused persons made their escape good. Thereafter, he shifted his son to Gambat Institute of Medical Science, where the doctors declared that his son has died and such certificate was issued and after postmortem, he took the dead body to his house for interment. Thereafter, he (complainant) approached SHO P.S Gambat, but his FIR was not registered, as such, he filed an application before Ex-Officio Justice of Peace and after obtaining such order, again he approached the concerned Police Station and lodged the FIR as stated above. After registration of the FIR and usual investigation, the private respondents were challaned to face their trial before the Court of Law.

3. The private respondents were facing the trial, the charge against them was framed and during trial the private respondents filed an application

under Section 265-K, Cr.P.C for their acquittal, which has been allowed vide impugned order dated 13.4.2019, hence this criminal acquittal appeal.

4. Learned counsel for the appellant/complainant contended that the private respondents are nominated in the FIR with specific role that they duly armed with weapons intruded into the house of the deceased with an intention to commit dacoity and on resistance, the private respondent No.1 Moula Bux made direct pistol shot upon him which hit the deceased Saddam Hussain on his forehead, whereas, the private respondent No.2 has also made aerial firing. It is further contended that the offence with which the private respondents have been charged entails capital punishment and there is every likelihood that they would be convicted for such an offence, if the evidence of the prosecution witnesses is record. He lastly contended that it will be in the interest of justice to set-aside the impugned order dated 13.4.2019 and case may be remanded to trial Court for trial and passing speaking judgment. He relied upon the case of “***The State through Advocate General Sindh vs. Raja Abdul Rehman reported as (2005 SCMR 1544)***” .

5. Learned Additional PG appearing for the State has supported the impugned judgment by stating that the incident has alleged to have taken place in the night hours, whereas, there is no source of identity has been shown in the FIR. There is delay of about 40 days in lodgment of the FIR, without any plausible explanation; there is no post-mortem report of the deceased, if trial is conducted mere ocular testimony would not be sufficient to base the conviction of the private respondents.

6. I have heard the learned counsel for the appellant/complainant as well as learned Additional Prosecutor General and gone through the record. The perusal of the record reveals that as per contents of the FIR there is delay of 40 days in lodgment of the FIR without any plausible explanation, which cannot be ruled out. In case of **Mehmood Ahmed & others vs. the State & another (1995 SCMR-127)**, it was observed by the Hon’ble Apex Court that the “*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*”.

7. Furthermore, during investigation the 161 Cr.P.C statement of *Mst. Saima*, the wife of the deceased *Sadam Hussain* was recorded by the Investigating Officer, wherein she has stated that her husband has committed suicide, whereas statement of father-in-law of the deceased as well as other vicinity people have been recorded, who have given the same version as stated by *Mst. Saima*, hence on such statements the Investigating Officer recommended the case for disposal under 'C' cancelled class. There is no postmortem report. In such circumstances, if the case is proceeded and evidence of prosecution witnesses is recorded, even then there would have been no probability for awarding the conviction against the private respondents. The learned trial Court has rightly recorded the acquittal of private respondents. In this respect, the reliance is placed in the case of ***State and others vs. Abdul Khaliq and others (PLD 2011 SC-554)***, wherein the Honourable Supreme Court has been pleased to held 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”.

8. The case-law referred to above relied upon by learned counsel for the appellant/complainant is on distinguishable facts and are not attracting the facts of the present case, therefore, the same cannot be relied. In view of the above circumstances, the instant criminal acquittal appeal fails and is dismissed in limine.

Judge

ARBROHI