

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Acquittal Appeal No.S – 97 of 2018

Crl. Acquittal Appeal No.S – 108 of 2018

Appellant/complainant : Altaf Hussain, through Ms. Rizwana Jabeen Siddiqui
Advocate

Private respondents : Ashraf alias Ishoo, Khadim Hussain, Abdul Sattar, Ali Gul
and Azam, through M/s Achar Khan Gabole and Zulfiqar Ali
Panhwar, Advocates

The State, through Mr. Aftab Ahmed Shar, Additional PG

Date of hearing; 04.11.2019

Date of decision; 04.11.2019

J U D G M E N T

Aftab Ahmed Gorar, J.- The appellant/complainant by way of instant Criminal Acquittal Appeals has impugned two judgments dated 30.5.2018 and 29.06.2018 respectively, passed by learned Sessions Judge Naushahro Feroze in Sessions Case No.131/2018 arising out of Crime No.06/2018 registered at police station Naushahro Feroze, 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 06.01.2018 in respect of the alleged incident took place on 11.12.2017 at 0200 hours, stating therein that on the fateful night seven armed persons intruded into his house, who got up the complainant and on the light of bulb, they identified the accused to be Abdul Sattar Mari, Ali Gul Mashori having Kalashnikovs, Ashraf alias Ashoo Khushikh with Repeater/shotgun, Khadim Khoso, Azam Khoso and one unknown person armed with pistols in their hands. The accused persons on the force of weapons made them hostage in a room of his house and then robbed one pair of gold Leelum worth Rs.40000-00, cash of Rs.10000-00, 15 Suits of ladies clothes worth Rs.15000-00, Six Mobile phone sets of China company and one Super Power motorcycle model 2017 worth Rs.36000-00 and then all the accused persons escaped away. Then complainant came out of the room and narrated the facts to his relatives through hphone and called

them, who came and saw the place of incident and then complainant accompanied his witnesses and approached the accused Abdul Sattar and his relatives, who admitted their guilt and promised to return the robbed articles and kept him on hollow hopes and ultimately the relatives of accused Abdul Sattar refused to return the robbed property. Thereafter the complainant went to Police station and lodged the FIR.

3. At trial, the private respondents did not plead guilty to charge and the prosecution to prove it, examined PW-1 complainant Altaf Hussain Detho; PW-2 Aijaz Ahmed Detho; PW-3/mashir Rajib Ali Solangi; PW-4 HC Muhammad Haroon Rajput; PW-5 I.O/SIP Hakimuddin Sahito 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 complainant party due to their personal grudge. 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. 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; that though there is delay in lodgment of the FIR, but the appellant/complainant has explained such delay by stating that he visiting the private respondent for return of the robbed articles ultimately on refusal he lodged the FIR. She lastly prayed that the impugned judgment is liable to be set-aside and the private respondents may be convicted in accordance with law. In support of her arguments, she

has relied upon the case of ***Sajid Hussain and others vs. The State (2002 P Cr. L J 1111)*** [Lahore].

7. Learned counsel appearing for the private respondents and learned Additional PG for the State sought for dismissal of the instant Criminal Acquittal Appeal by contending that their involvement in the case is not free from doubt; that there is inordinate and unexplained delay of 25 days in lodgment of the FIR; that the crime weapons have been foisted upon the private respondents Ashraf and Abdul Sattar, in which they have been acquitted by the learned trial Court; that there are contradictions in the evidence of the prosecution witnesses.

8. I have considered the above arguments and perused the record. The incident has allegedly taken place in the night hours and the identification of the private respondents on the bulb light is a weak piece of evidence. The complainant Altaf Hussain is the only eyewitness of the incident, whereas, the PWs Aijaz and Ayaz are the relatives of the complainant who were not present at the time of occurrence, but later they were called through mobile phone hence they came at the place of incident at 4:30 am (night). The complainant in his evidence has not disclosed the features of the unknown accused neither the sim numbers of the robbed mobile sets nor the receipt of the gold from where he has arranged or purchased the same. The complainant has further stated that police also reached at the place of incident at 4:30 am and enquired about the incident from the neighbourers who were present there with him and also tracked the footprints in the morning which led upto the shine of Maafi Faqeer. The complainant has admitted in his cross-examination that private respondent Abdul Sattar to whom he has approached for return of the robbed articles was already arrested by the police on 11.10.2017. PWs Aijaz Hussain has admitted in his cross-examination that he was present on his duty and has signed the mashirnama in his office. PW Ayaz has contradicted the complainant by deposing that none from the neighbourers has come at the place of incident and further admitted that no robbery was committed from him. 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 25 days, 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.

9. 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”.

10. The alleged robbed property has been recovered by the police but no proof is brought on record by the complainant which may prove his ownership over the property allegedly taken away by the private respondents. The complainant has failed to produce neither the Sim numbers of the mobile sets nor the receipt of the gold ornaments. In that situation, it would be unsafe to award conviction and sentence against the private respondents on the basis of sole evidence of the complainant which is found to be doubtful in its character.

11. 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.

12. 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 judgments are not calling for any interference by this Court by way of instant criminal acquittal appeals. Consequently, both the appeal are dismissed accordingly.

14. The case-law relied upon by learned counsel for the appellant is on distinguishable facts and circumstances of the case in hand.

Judge

ARBROHI