

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:

Mr. Justice Aftab Ahmed Gorar

Cr. Acq. Appeal No.127 of 2020

Muhammad Aslam	-----	Appellant
	Versus	
The State & others	-----	Respondents

Date of Hearing: 03.03.2020

Appellant: Through Mr. Muhammad Jiwani, Advocate

State: Through Mr. Muntazir Hussain Mehdi, APG

J U D G M E N T.

AFTAB AHMED GORAR, J.- The appellant being dissatisfied with the order of acquittal dated 06.1.2020, recorded under Section 265-H(i) Cr.P.C. in favor of respondent No.2 by the learned Xth Additional District & Sessions Judge, Karachi (East) passed in Sessions Case No.388/2018 arising out of Crime No.433 /2017 registered at Police Station Aziz Bhatti under Sections 324, 506, 34 PPC has filed this appeal under Section 417(2A) Cr.P.C.C with a prayer to set aside the impugned judgment and convict the accused/respondent No.2.

2. Learned Counsel for the appellant while reiterating the facts and grounds mentioned in the memo of instant appeal, argued that the learned Judge of trial Court while passing the impugned judgment did not go through the evidence. He further argued that the learned trial Court without applying his judicial mind acquitted the respondent, therefore prayed that the impugned judgment may be set aside and respondent No.2 may be convicted. He further submits that it is admitted fact that there is animosity between the parties on record and in this regard several FIRs were also lodged against relatives of respondent No.2 and it is crystal clear from such facts that the

respondent No.2 in order to threaten the appellant has been doing such acts so that the appellant could not come in witness box in other cases and depose against the relatives of respondent No.2.

3. On the other hand, learned Additional Prosecutor General submits that the impugned judgment is well reasoned as well as speaking one and there is hardly any improbability or infirmity in the impugned judgment and it does not warrant any interference by this Court as the trial Court in its reasons has thoroughly thrashed the evidence of prosecution aside and reached at the conclusion that the prosecution has miserably failed to prove the charge against the respondent No.2 beyond any reasonable doubt.

4. I have heard the learned Counsel for the parties, have minutely perused the evidence and have also gone through the record.

5. Perusal of the impugned judgment reveals that after examining the entire evidence adduced by the witnesses as well as documentary evidence in the shape of memo of recovery, it becomes crystal clear that nobody was injured in the alleged incident whereas the complainant claimed that the bullet hit wall of his shop due to firing of respondent No.2. However, the evidence reveals that the 15 Police Madadgar proceeded on spot but they did not secure any live bullet or empty shell at the place of incident. Furthermore the prosecution examined two private witnesses namely Firdous and Rashid Ali before the trial Court. Both the witnesses are set as star witnesses of the case and surprisingly both the witnesses did not identify the accused/respondent No.2 whereas PW Firdous supported the case of respondent No.2 while deposing that after incident 15 Police Madadgar proceeded on spot but they did not secure any live bullet or empty shell from the place of incident.

6. After going through the record with the assistance of the learned Counsel for the parties, I have no hesitation to observe that the impugned judgment is speaking one and elaborate which does not suffer from any illegality, gross irregularity, infirmity whereas the facts discussed above

creates serious doubts in prudent mind and it is settled principle of law that if a simple circumstance creates reasonable doubt in a prudent mind about the guilt of the accused that would entitle the accused such benefit not as a matter of grace and concession but as a matter of right. Reliance in this regard is placed on the cases of **Tariq Pervez v. The State 1995 SCMR 1345**, **Muhammad Saeed vs. The State 2008 P.Cr.L.J 1752**, **Ghulam Mustaza vs. The State 2010 P.Cr.L.J 461** and **Zulfiqar Ali vs. The State 2019 SCMR 1315**.

7. It is not out of context to make here necessary clarification that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from the appeal against the acquittal because presumption of double innocence is attached in the later case. Order of acquittal can only be interfered with, if it is found its face to be capricious, perverse, arbitrary in nature or based on misreading, non-appraisal of evidence or is artificial, arbitrary and lead to gross miscarriage of justice. Mere disregard of technicalities in a criminal trial without resulting injustice is not enough for interference. Suffice to say that an order/judgment of acquittal gives rise to strong presumption of innocence rather double presumption of innocence is attached to such an order. While examining the facts in the order of acquittal, substantial weight should be given to the findings of lower Court whereby accused were exonerated from the commission of crime held by the Apex Court in the cases of **Muhammad Ijaz Ahmad vs. Fahim Afzal (1998 SCMR 1281)**, **Jehangir vs. Aminullah & others (2010 SCMR 491)** and **Khuyrram vs. The State & others (2019 SCMR 1317)**.

8. From the facts discussed above, there is hardly any improbability or infirmity in the impugned judgment of acquittal recorded by the learned trial Court, which being based on sound and cogent reasons does not warrant any interference by this Court. The appellant has miserably failed to establish extra-ordinary reasons and circumstances, whereby the acquittal judgment recorded by the trial Court may be interfered with by this Court.

9. This is a Criminal Acquittal Appeal and I cannot lose sight of the doctrine of double innocence, which is attached to such proceedings. Consequently, the instant Criminal Acquittal Appeal is dismissed.

Karachi.
Dated: 03.3.2020

Judge