

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Cr. Acq Appeal No. 157/2011

Ahmed

V

Muhammad Saleem and others

Date of hearing	07.06.2017
Date of judgment	07.06.2016
Appellant	Counsel for appellant called absent
Respondent No.1&2	Counsel for respondents called absent. Respondents present in person.
The State	Through Mr. Zafar Ahmed Khan, Addl.P.G.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The Respondents were acquitted vide judgment dated 17.02.2011 by the learned VIIIth Judicial Magistrate, Karachi South in crime No.117/2008 under section 337-A(iii)/34 PPC lodged at P.S. Baloch Colony, Karachi South, tried in Criminal Case No.1825/2008 (the impugned judgment).

2. The appellant Ahmed son of Hayat being dissatisfied with the impugned judgment has challenged the same through this instant appeal against acquittal.

3. In brief the allegations against the Respondents according to the contents of the FIR are that on 20.04.2008 the appellant got a house on rent and when he along with his family entered into the said house suddenly 4/5 persons including (1) Muhammad Saleem son of Muhammad Shareef (2) Muhammad Anwar son of Muhammad Shareef and (3) Azhar Ahmed son of Mushtaq Ahmed have come and asked the appellant why he has entered this house as they have not given the said house on rent whereas the

appellant replied that this house has been taken by him on rent from landlord Umer Hayat and he has given Rs.50,000/- as an advance and Rs.4,000/- has been fixed as monthly rent but the accused persons were not ready to hear anything and became annoyed and started to beat the appellant with kicks and fists. That Saleem and Anwar have attacked him with some heavy thing due to which bleeding started to ooze from his right leg and he became injured, hence the appellant lodged the aforesaid FIR against the Respondents under section 337-A (iii)/34 PPC.

4. The appellant in this appeal against acquittal has mainly contended that the trial Court has acquitted the Respondents without appreciating the evidence in accordance with the settled principles of law, that there has been a misreading and non reading of evidence, that the contradictions were only minor in nature, that the medical evidence was not treated in its proper perspective and as such the impugned judgment should be set aside by this court. On the other hand learned counsel for the State has submitted that the impugned judgement is in accordance with law and that there are no legal infirmities which justify it being interfered with.

5. Heard arguments, examined the entire evidence available on record and the impugned judgment with the able assistance of learned State counsel and considered the relevant case law.

6. It appears that the trial Court through the impugned judgment has mainly acquitted the Respondents for the following reasons as set out in the impugned judgment below;

"Whereas perusal of record transpire that incident took place on 20.04.2008 at 1730 hours whereas instant FIR was lodged on 07.05.2008 and as per provisional certificate issued at 2125 hours and final certificate was issued on 06.05.2008 and the such delay has not been explained and anyway even otherwise the complainant failed to disclose

such fact that he ever appeared before the duty Officer and obtained latter for Medical Treatment as he remained silent in examination in chief whereas as per his deposition he deposed that he deposited Ten Thousand in advance and four thousand rent to the landlord whereas as per FIR it is written that 50,000/- paid as advance money so much so as per rent agreement executed between complainant and landlord Exh.06/D the rent agreement which disclosed that 50,000/- was paid as advance money but from careful perusal of relevant para 3 it reveals that there is over writing and words and figure are changed from Ten Thousand to Fifty thousand which also cast serious doubt to the case of prosecution beside that as per FIR two PW Arif and Nadeem Banga are cited as eye witnesses have not been brought by the prosecution for the reason best known to the prosecution and amounts to withholding the evidence and adverse inference which goes in favour of the accused so much so the case reveals that complainant claim to be lenient whereas no documentary proof respect of landlord by the complainant as well as landlord PW Malik Omer Hayat.

It is worth mentioning that as per FIR the complainant alleged that Saleem and Anwar struck him with some heavy thing on his left leg due to which he got injured and blood started to ooze whereas as per Medical Report no severe injury is alleged on the leg of the accused so much so during examination of the complainant he deposed that he received injury on his body and failed to disclose that what part of body he received injury whereas as per FIR injury caused on the right leg whereas as per Medical Report the complainant received as many as four injury but the complainant failed to disclose such fact in his FIR and deposition before Court which caused serious doubt and so much so he further belied the version by deposing that complainant was taken to hospital by his son Waris and one Hashim son of Malik Omer but both the PWs names are missing in the FIR and he further deposed that he was examined by the Medical Officer who issued certificate which he produced before P.S. hence, instant FIR was lodged bearing No.117/2008 which depicts that the complainant tried to prove that as soon as he received injury he lodged instant case F.I.R.

That from perusal of evidence of the complainant he deposed that accused Muhammad Anwar was already available inside the house and was fixing the ceiling fan and suddenly co-accused Muhammad Saleem and Azhar with two unknown persons entered into the room of the complainant which is quite contradictory as per contents of FIR as it is mentioned therein that accused Muhammad Saleem and Muhammad Anwar and Azhar suddenly appeared in his room whereas as per deposition the complainant deposed that two more person/accused entered inside the room which amounts to exaggeration and create doubt and the PW-2 Ghulam Rasool examined as Exh.07 he belied the version of prosecution case which deposed that accused parties attacked upon complainant with Danda/Stick, hammer, and iron rod which is not available in case file and name of their PW do not transpire in FIR and even well as the complainant failed to disclose his name in examination in chief to be eye witness which appear to be tamed witness.

It is a matter of fact that Civil litigation is pending between the parties and the same are still subjudice and it is admitted by the complainant that he is driver by profession whereas the landlord of the complainant PW- as Ex.08 Malik Omer Hayat admitted that complainant doing job as driver with him now a days which shows that the instant case is filed with ulterior motives to driving the accused in this case.

Whereas in these cases Supreme Court time and again held which are reputed cases reported in 1995 SCMR 1345 and 1996 P.Cr.L.J. 181, that for giving the benefit of doubt to an accused it is not necessary that there would be many circumstances creating doubt, if a simple circumstance creates doubt in a prudent mind about the guilt of accused then he shall be entitled for such benefit not as a matter of grace or concession but as a matter of right. In absence of any material or corroboration evidence the prosecution is unable to prove the case beyond any reasonable doubt."

7. It is settled law that judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous as held by the Honorable Supreme Court in the case of **The State v. Abdul Khaliq and others** (PLD 2011 Supreme Court 554). Moreover, the scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of the innocence is significantly added to the cardinal rule of criminal jurisprudence as the accused shall be presumed to be innocent until proved guilty. **In other words, the presumption of innocence is doubled** as held by the Honourable Supreme Court of Pakistan in the above referred judgment. The relevant para is reproduced hereunder:-

"16. We have heard this case at a considerable length stretching on quite a number of dates, and with the able assistance of the learned counsel for the parties, have thoroughly scanned every material piece of evidence available on the record; an exercise primarily necessitated with reference to the conviction appeal, and also to ascertain if the conclusions of the Courts below are against the evidence on the record and/or in violation of the law. In any event, before embarking upon scrutiny of the various pleas of law and fact raised from both the sides, it may be mentioned that both the learned counsel agreed that the criteria of interference in the judgment against acquittal is not the same, as against cases involving a conviction. In this behalf, it shall be relevant to mention that the following precedents provide a fair, settled and consistent view of the

superior Courts about the rules which should be followed in such cases; the dicta are:

Bashir Ahmed v. Fida Hussain and 3 others (2010 SCMR 495), Noor Mali Khan v. Mir Shah Jehan and another (2005 PCr.LJ 352), Imtiaz Asad v. Zain-ul-Abidin and another (2005 PCr.LJ 393), Rashid Ahmed v. Muhammad Nawaz and others (2006 SCMR 1152), Barkat Ali v. Shaukat Ali and others (2004 SCMR 249), Mulazim Hussain v. The State and another (2010 PCr.LJ 926), Muhammad Tasweer v. Hafiz Zulkarnain and 02 others (PLD 2009 SC 53), Farhat Azeem v. Asmat Ullah and 6 others (2008 SCMR 1285), Rehmat Shah and 2 others v. Amir Gul and 3 others (1995 SCMR 139), The State v. Muhammad Sharif and 3 others (1995 SCMR 635), Ayaz Ahmed and another v. Dr. Nazir Ahmed and another (2003 PCr. LJ 1935), Muhammad Aslam v. Muhammad Zafar and 2 others (PLD 1992 SC 1), Allah Bakhsh and another v. Ghulam Rasool and 4 others (1999 SCMR 223), Najaf Saleem v. Lady Dr. Tasneem and others (2004 YLR 407), Agha Wazir Abbas and others v. The State and others (2005 SCMR 1175), Mukhtar Ahmed v. The State (1994 SCMR 2311), Rahimullah Jan v. Kashif and another (PLD 2008 SC 298), 2004 SCMR 249, Khan v. Sajjad and 2 others (2004 SCMR 215), Shafique Ahmad v. Muhammad Ramzan and another (1995 SCMR 855), The State v. Abdul Ghaffar (1996 SCMR 678) and Mst. Saira Bibi v. Muhammad Asif and others (2009 SCMR 946).

From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced 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 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. It has been categorically held in a plethora of judgments that 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. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the re-appraisal 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. It is averred in *The State v. Muhammad Sharif* (1995 SCMR 635) and *Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others* (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals." (bold and italics added)

8. Having gone through the evidence and the impugned judgment I find that there has been no misreading or non reading of the evidence and that such evidence has been appreciated by the learned trial court in its proper perspective, that the impugned judgment is based on sound reasons and there is no question of the findings in the impugned judgment being perverse arbitrary, foolish, artificial, speculative and ridiculous especially as it is a well established principle of law that the accused is always entitled to the benefit of the doubt in criminal cases and as was held in the case of **Tariq Pervez V/s. The State** (1995 SCMR 1345), where the Honourable Supreme Court has observed as follows:-

"It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right."

9. As such in my view there is no merit in the instant appeal against acquittal. The Acquittal recorded by trial Court in favour of the Respondents is based upon sound reasons, which require no interference at all. As such, the instant appeal against acquittal is dismissed.

10. These are the reasons for my short order of even date.