1072

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr.Justice Mohammad Karim Khan Agha

Cr. Acq Appeal No. 429/2011

Nawab Ferozuddin S/o Rafiuddin

V

The State and another

Date of hearing	15.06.2017
Date of judgment	15.06.2017
Appellant	Through: Syed Nadeem ul Haq, Advocate
Respondent No.1	Through: Muhammad Ashraf Kazi, Advocate.
The State	Through Mr.Zahoor Shah A.P.G.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- This is an appeal against acquittal filed by the appellant/complainant being dis-satisfied with the judgment dated 16.9.2011 passed in Private Complaint No.127/2006 by learned IInd Additional Sessions Judge, Karachi South, whereby the Respondent No.1 has been acquitted by the trial court under section 265-H(i) Cr.P.C (the impugned judgment).

2. Briefly stated by the complainant in his complaint that FIR No.494/2005 u/s 392/109/34 PPC against the above named accused was lodged on 26.9.2005 at PS Preedy as per order dated 06.9.2005 passed by the learned Additional Sessions Judge, Karachi South in Crl. Misc. Application No.439/2005 the contents of the FIR are that he received cash of Rs. 100,000/- from Bank Al-Habib, M.A. Jinnah Road, Karachi and left the bank and collected his motorcycle along with his partner Shoaib Bhai to go to Jama Cloth, when he reached at Eid Gah Signal two boys on motorcycle Yamaha came and asked him on gunpoint to "give money which he

1073

has drawn from the bank, otherwise they will Kill him". He gave them money and he reported the matter to Police Eid Gah and also moved an application with the request to lodge his FIR. Thereafter he directly reached at the said bank and asked them to show him the movie, when he saw the movie he identified one accused and even he saw both accused persons in bank and met with the bank officials for return of his money but the money was not returned.

3. After usual investigation the matter was challoned and the accused were sent up for trial.

4. Trial court framed charge against accused at Ex.1 to which, accused pleaded not guilty and claimed to be tried vide Ex.2. At the trial Complainant examined himself at Ex.3, and produced copy of FIR No.494/2005 as Ex.3/A and certain other documents at Ex.3/B to Ex.3/L respectively. In support of his version he also examined PW-2 Shoaib Hatim at Ex.6.The Respondent No.1 gave statement under S.342 but did not examine himself on oath or call any witnesses in his defense

5. Learned trial court Judge after hearing the learned counsel for the parties and examining the evidence available on record acquitted the respondent No.1 as stated above through the impugned judgment. Hence this appeal.

6. The evidence of the PW's has been discussed in the impugned judgment and as such in order to avoid unnecessary repetition there is no need to set out the same in this judgment

7. The appellant in this appeal against acquittal has mainly contended that the trial Court has acquitted the Respondent No.1 without appreciating the evidence in accordance with the settled principles of law, that there has been a misreading and non

1074

reading of evidence, that the contradictions in the evidence of the PW's were only minor in nature, that the video recording of the accused at the bank was not played in court despite the Hon'ble Supreme Court in effect ordering the trial court to consider the same and as such the impugned judgment should be set aside by this court. On the other hand, learned counsel for the Respondent No.1 has fully supported the impugned judgment and prayed for dismissal of the appeal. Learned State counsel has submitted that the impugned judgement is in accordance with law and that there are no legal infirmities which justify it being interfered with.

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

9. It appears that the trial Court through the impugned judgment has mainly acquitted the Respondent No.1 for the following reasons as set out in the impugned judgment below;

> "The appraisal of evidence emerged from the above witnesses is failing to give any incriminating role to accused Fernandez. I am doubtful if any incident of robbery, indeed was occurred, however in case, if I should proceed to analyze the evidence that there was an incident of the robbery, but it should not be skipped from mind that this had happened at the signal of Eidgah far outside the vicinity of bank where the accused was performing the duty as a General Manager. In order to link the accused with the crime of robbery by two unknown accused persons the complainant emphasized on the video clip that he saw one accused in it and thereafter he saw those two accused persons sitting in the chamber of the bank manager (accused) and when he informed these facts to the accused he made them run away. His testimony is however silent the date where he saw the clips and the accused persons sitting in the chamber. It should not be forgotten that after the disposal of the FIR of the incident the complaint is filed after about four years of the incident. Though such statement of the complainant has not been corroborated, yet again, for the sake of arguments, if the accused persons were seen in the branch of the bank, it does not warrant any criminal liability against the bank official being accused. In cross examination the complainant admitted that accused Fernandez, did not appear in

1075

the contents of his application at Exh.3/B to 3/H. He admitted that, he did not send legal notice (Exh.3/K) to accused Fernandez. He denied that he is blackmailing the accused. About CCTV footage it may be submitted that at the first time in the case the complainant moved such application on 09.06.2008 and subsequently it was dismissed on 17.6.2008 as not pressed. On 01.04.2010 at verge of the judgment such application was again moved and is dismissed on 28.8.2010 and the revision application was also dismissed by the Hon'ble High Court as mentioned earlier on. In compliance of the order of Hon'ble Supreme Court, I humbly re-evaluate my order dated 28.8.2010. I must say that accused cannot be forced or compelled to give or produce evidence against himself, further that such CCTV footage was not available to the bank due to lapse of time. Even otherwise the evidence from such device is corroboratory in nature and could have been helpful, if the robbers were arrested and that would be incriminating against the robber not against the accused. There is no iota of evidence which could have established the link between the accused as an abettor and the unknown robbers. The point No.1 is answered accordingly and before leaving it apart I would prefer to re-quote the observation of the Hon'ble High Court against the complainant in the same case, in the case reported in 2009 MLD 94, as under:-

> "It is not understandable as to what benefit he (complainant) wants to get from proceeding both viz. FIR and private complaint though the conduct of the applicant suggests that only just wants to put pressure upon the high-ups of the bank in order to recover his robbed money from them nothing else."

10. 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:-

1076

"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

1077

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, expect 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)

11. Having gone through the evidence and the impugned judgment I find that there has been no misreading or non reading of the evidence, that such evidence has been appreciated by the learned trial court in its proper perspective, that the video recording could not be played in court as its contents had long been deleted and in any event the complainant's application in this regard was so belated that he must have known that the recording would have been deleted; 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."

12. 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 Respondent No.1 is based upon sound reasons, which require no interference at all. As such, the instant appeal against acquittal is dismissed.

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