

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

Mr. Justice Abdul Maalik Gaddi

Mr. Justice Mohammad Karim Khan Agha

Cr. Acq. Appeal No.D-10 of 2014.

Muharram

Vs.

Yaqoob and others

Appellant Muharram :	Through Mr. Wali Muhammad Khoso, Advocate
Basar and Nizamuddin, respondents No.2 & 4, respectively, present in person :	Through Mr. Fazal Hussain Jamali, Advocate
Respondent No.1 Yaqoob is absent whereas respondent No.3 Wahid Bux alias Bhogi has died his natural death	
Respondent No.5 : The State	Syed Meeral Shah Bukhari, Additional Prosecutor General
Date of hearing :	26.09.2018
Date of judgment :	26.09.2018

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.- This criminal acquittal appeal has been filed by appellant Muharram against the judgment dated 06.05.2014, passed by the learned IInd Additional Sessions Judge, Dadu in Sessions Case No.270 of 2010 (re-The State Vs. Yaqoob and others) under Crime No.62 of 2010, registered at P.S Johi under sections 302, 504, 34 PPC, whereby the learned trial court after full dressed trial acquitted the private respondents by giving them the benefit of the doubt.

2. The brief facts of the case of the prosecution as stated in the FIR are that on 17.05.2010, at 1430 hours, complainant Muharram Alkhani lodged his FIR at P.S. Johi, wherein he had alleged that, he is labourer. About 6/7 years back Ghulam Hussain Alkhani was murdered and brotherly faisla was conducted between them in which 7 lacs were imposed upon the complainant party and the hand of one girl was to be given as fine, but Yakoob and others

and complainant party are not on talking terms. On 16.05.2010, early in the morning the complainant alongwith his brother Khair Muhammad aged about 50 years, Gulab and son Mehboob Ali Alkhani, were sitting on the top of bus bearing registration No.P-0057 from village Khair Muhammad Alkhani and were going to Dadu, it was about 08:00 am when the bus reached at Johi road, they saw accused Yakoob armed with country made pistol 2) **Basar armed with DBBL gun** 3) **Nizam armed with revolver** 4) Wahid Bux @ Bhogi armed with SBBL gun came there. Out of them, accused Basar and Wahid Bux stood down by pointing their weapons while accused Yakoob and Nizam came on the top of bus. Accused Yakoob abused and disclosed that, earlier they committed murder of his nephew Ghulam Hussain and they will commit their murder, saying so, **accused Yakoob fired from his pistol at brother of complainant namely Khair Muhammad which hit at his back who on sustaining fire arm injury fell down on the tool of bus.** Thereafter, passengers and children present in bus entreated the names of Almighty Allah to accused and then accused fled away by abusing. The complainant party found his brother Khair Muhammad having injury on left side "Phanee" and was lying dead. Complainant party took the dead body to Taluka Hospital Johi, and informed police, who came and conducted necessary formalities, then handed over dead body for funeral. Thereafter, complainant lodged the FIR as stated above.

3. After usual investigation, challan of the case was submitted before the concerned court. At trial, learned trial court framed charge against the accused named above as Ex.02 to which they pleaded not guilty and claimed to be tried.

4. The prosecution in order to prove its case against the accused persons examined as many as 09 witnesses. Then prosecution side was closed.

5. Thereafter, statements of the accused persons were recorded under section 342 Cr.P.C. wherein they claimed their innocence and false implication in this case. However, they did not lead any evidence in their defense.

6. The trial court after hearing the learned counsel for the parties and assessing the evidence available on record, by the impugned judgment acquitted the accused / private respondents as stated in concluding para of the impugned judgment. Hence, this acquittal appeal has been filed by the appellant.

7. Learned Counsel for appellant contended that the judgment passed by the learned trial court is perverse and the reasons for acquitting the respondents are artificial, vis-à-vis the evidence on record; that the grounds on which the trial court proceeded to acquit the private respondents are not supportable from the evidence on record. He submitted that the respondents have been directly charged with the commission of the offence and that the discrepancies in the statements of witnesses are not so material on the basis of which respondents could be acquitted. He further contended that the learned trial court has based its findings of acquittal merely on the basis of minor contradictions on non-vital points in the statements of prosecution witnesses and that the prosecution evidence has not been properly appreciated. Therefore, under the circumstances, he was of the view that this criminal acquittal appeal may be allowed as prayed.

8. On the other hand learned counsel for private respondents No.2 and 4 as well as the learned Additional Prosecutor General Sindh have supported the impugned judgment passed by learned trial court by arguing that the impugned judgment has been passed after due appreciation of evidence on record. They further argued that the incident was allegedly committed early on 16.05.2010 at 08:00 a.m. whereas it was reported at police station on 17.05.2010 at 1430 hours after a delay of about 30 hours for which no satisfactory explanation has been furnished, as such, according to them, false implication of the private respondents with due deliberation and consultation on this ground alone cannot be ruled out. They further argued that in this case there is no direct evidence available on record connecting the respondents in this crime. During course of arguments they have read the entire evidence of the prosecution witnesses including evidence of Dr./Senior Medical Officer Muhammad Juman Bahoto, who has not supported the prosecution case and the learned trial court while rendering the acquittal judgment has attended to all the aspects involved in this case. In support of his contentions, learned counsel for the private respondents No.2 and 4 relied upon the case of **Abdul Malik V Hazrat Ali** (2017 PCr.LJ 1061).

9. We have heard the learned counsel for the parties and perused the evidence so brought on record alongwith impugned judgment with the able assistance of the parties.

10. At this point it is pertinent to note that Respondent Wahid Bux and has died and Respondent Yakoob has apparently absconded to Saudi Arabia and

as such this acquittal appeal only concerns respondents Bashar (Respondent No.2) and Nizamuddin (Respondent No.4).

11. It is settled law that the grounds on which a criminal acquittal appeal will succeed are very narrow. A presumption of double innocence attaches to the respondents and even then for the appeal to succeed this court must be satisfied on the evidence that the impugned Judgment was arbitrary, capricious or against the principles of natural justice. The respondent is also entitled to any benefit of doubt which may have arisen in the prosecution case.

12. After considering the arguments and perusing the record, we are of the opinion that the prosecution has failed to prove its case against the private respondents beyond a reasonable doubt for the following main reasons; that there were 3 eye witnesses and only two of them being father and son gave evidence whilst the 3rd eye witness who was the brother of the deceased was given up by the prosecution and thus we can draw the inference that this eye witness would not have supported the prosecution's case; that the two eye witnesses were not only closely related but they contradicted themselves many times in material respects in their evidence as set out in the impugned judgment as such there evidence cannot in our view be considered as trustworthy and safe to rely upon; that the incident occurred during day light on a packed bus yet none of the passengers who were independent witnesses were cited as prosecution witness instead only relatives of the deceased were used as witnesses and mashirs which gives weight to the contention that this was a cooked up story especially as there was a 30 hour unexplained delay in registering the F.I.R. despite the place of the incident and the PS being very close which gave plenty of opportunity for the appellant to consult, consider and cook up this story; that admittedly there was enmity between the respondents and the appellants and the appellants side therefore had a motive for making false allegations against the respondents in order to fix them; that even otherwise the respondents 2 and 4 did not fire any shot and were only allegedly present at the time of the incident; that the oral evidence was not supported by the medical evidence as was set out in the impugned judgment in the following terms;

"The Medical Officer in his deposition at Ex.5 has deposed that deceased had two wounds of entrance and two wounds of exit, total 4 wounds and he deposed in his cross-examination that deceased died due to injury No.1 but the mashirnama of dead body shows one injury

on front side of chest and three wounds of exit, the Danistnama at Ex.6/B shows one injury as per column No.9. Mashir Bhai Khan in his examination-in-Chief deposed that he found one injury towards left side on the ribs and three fire shot holes on front side of the chest from where blood was oozing, whereas he in his cross-examination deposed that injured had received one injury, thus there is material contradiction over number of injuries and seat of injury. This contradiction has created serious doubts."

13. Thus from the perusal of evidence recorded by trial court as well as the impugned judgment, it appears that the impugned judgment of the trial court is based upon sound reasons and the trial court has rightly acquitted the respondents / accused through the impugned judgment by giving them the benefit of doubt, which is neither perverse nor arbitrary. So far as the appeal against the acquittal is concerned, after acquittal the respondents / accused have acquired double presumption of innocence and this court would interfere only if the judgment / order was arbitrary, capricious or against the record. But in this case, there were no legal infirmities in the impugned judgment which in our view also did not suffer from any misreading and non-reading of documents and evidence on record. As regard to the consideration warranting the interference in the appeal against acquittal and appeal against conviction, principle has been laid down by the Hon'ble Supreme Court in various judgments. In case of **State/Government of Sindh through Advocate General Sindh, Karachi versus Sobharo** reported as **1993 SCMR 585**, Hon'ble Supreme Court has laid down the principle that in the case of appeal against acquittal while evaluating the evidence distinction is to be made in appeal against conviction and appeal against acquittal. Interference in the latter case is to be made when there is only gross misreading of evidence, resulting in miscarriage of justice. Relevant portion is reproduced as under:-

" We are fully satisfied with appraisal of evidence done by the trial Court and we are of the view that evaluating the evidence, difference is to be maintained in appeal from conviction and acquittal appeal and in the latter case interference is to be made only when there is gross misreading of evidence resulting in miscarriage of justice. Reference can be made to the case of Yar Muhammad and others v. The State (1992 SCMR 96). In consequence this appeal has no merits and is dismissed."

14. For what has been discussed above, we are of the considered view that the impugned judgment is based upon valid and sound reasons and is entirely in consonance with the law laid down by the Honourable Supreme Court of Pakistan and as such does not require interference. Resultantly this

Criminal Acquittal Appeal is without merits and the same was dismissed in open Court today by a short order and we have set out above the reasons for our short order which reads as under:-

"Respondent No.1 Yaqoob is absent; whereas respondent No.3 Wahid Bux alias Bhogi has died his natural death.

Parties' Advocates have been heard at length. They have concluded their arguments. For the reasons to be recorded later on, the instant criminal acquittal appeal is dismissed."