IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Cr. Acquittal Appeal. No.D- 117 of 2007.

Present:-
Mr. Justice Naimatullah Phulpoto.
Mr. Justice Muhammad Karim Khan Agha.

Date of hearing: 25.05.2017.

Date of judgment: 25.05.2017.

The State: Through Syed Meeral Shah, Addl.P.G. for the State.

Respondent:
(1) Yaroo s/o Miandad Panhwar.
(2) Khan s/o Miandad Panhwar.
(3) Liaquat s/o Abbass Panhwar.
(4) Mehmood s/o Pathan Panhwar. (called absent).

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Respondents Yaroo, Khan, Liaquat and Mehmood were tried by Special Judge/Special Court S.T.A. Hyderabad in Special Case No.12 of 2000 for offences under sections 302, 324, 147, 148, 149 PPC. Trial court after full dressed trial by judgment dated 18th day of January, 2007 acquitted the respondents / accused. State through Advocate General Sindh filed the instant criminal acquittal appeal No.D-117/2007 against the judgment dated 18.01.2007 passed by the trial court.

2. Brief facts leading to the filing of the appeal against acquittal are that on 19.04.1992 respondents Yaroo, Khan, Liaquat and Mehmood in prosecution of their common object committed qatl-e-amd of one Amin and Mst. Beebal and caused injuries to P.W. Qaim with intention to cause his qatl-e-amd. On the conclusion of the trial, learned trial court acquitted the respondents / accused for the following reasons:-

> POINTS NO.03 & 04.
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> 17. On the above points, there is oral testimony of the complainant Faiz Muhammad Ex.12, P.Ws Muhammad Moosa Ex.13, Qaim Ex.14, Karim Bux Ex.15, Abdul Rehman Ex.19 and Behawal Ex.34. They all are claiming to be the eye-witnesses of the incident, but their evidence is altogether different from the facts of the prosecution's case as set out in the F.I.R. therefore to be examined with very care and caution as they are interested and inimical towards the accused and no corroboration is available from any independent witness. There is no recovery of any crime weapon and none of the accused was arrested at the place of the incident.
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> 18. As per case of the prosecution as mentioned in the F.I.R, the incident was outcome of some enmity between the parties over matrimonial affairs and the complainant had been threatened in this regard for the dire consequences including his murder. The accused Moharram, Yaroo and Khan alias Nachoo are the real brothers being son of Miandad Panhwar and accused Mehmood appears to be not related, therefore, all the witnesses have completely exonerated all the accused except accused Mehmood although their names were mentioned in the F.I.R. and two deceased persons namely Sher Panhwar and Jummo Panhwar. These witnesses have deposed that the accused Mehmood Panhwar was only one along with the deceased accused, who had entered in the house and fired on the persons including witnesses Faiz Muhammad (the complainant), Muhammad Moosa, Qaim, deceased Amin and deceased Mst. Beebal, out of them, the two i.e. Amin and Mst. Beebal died at the spot and Qaim received injuries and none else was injured. Since, the witnesses except Qaim were not injured, therefore, it is improbable to believe their presence at the spot on account of their remaining unhurt although heavy firing was made by the culprits as evident from the statement of PW ASI Muhammad Yousuf Ex.23, that 65 empties of Kalashin Kove, 16 empties of 7 MM rifle and 10 empties of 12 bore were secured from the place of the incident. The injury sustained by PW Qaim was also of hard and blunt substance and not fire arm as discussed earlier although it was deposed by all the witnesses including Qaim himself that he received bullet shot injuries, therefore, his presence at the spot cannot be believed. There

is no explanation as to how the said injured received simple injury with blunt weapon when none of the culprits used any lathi or danda or any other blunt substance at the time of the commission of the murder of these two deceased. Hence creation of sham witness cannot be ruled out therefore, he too, cannot be believed.

19. As mentioned above, neither any of the crime weapon was secured from the place of incident nor from the accused, therefore, his participation in the commission of the offence could not be proved. Coming to the statements of other witnesses. First is PW Allahdino, who resides in the nearby house at a distance of 50-00 paces and attracted immediately at the place of the incident but did not see any of the accused. Whereas PW Karim Bux, who has deposed against only accused Mehmood but he is the relative of the complainant party residing in the adjoining house and said to have seen the accused from a window in between his house and the house of the deceased and identified the accused Mehmood in the light of electric bulb, therefore, his identification is not beyond doubt especially keeping in view the close relations between him and the complainant party. Similar is the case of PW Behawal, who is also relative of PW Karim Bux and seeing the accused Mehmood firing on the deceased from a door affixed in between his house and the house where the incident took place, but he too cannot be believed on the point of identity without any corroborative piece of evidence on account of close relation with the complainant party and enmity with the accused persons.

20. In view of the above discussion, it is clear that the prosecution has failed to prove both the points through any credible witness. The evidence produced by it in the shape of oral testimony of interested and inimical is not sufficient to decide both the points in it's favour, therefore, they are decided in negative."

4. Syed Meeral Shah appearing on behalf of the State argued that impugned judgment is liable to be set-aside as the same has been passed due to non-reading and misreading of evidence. It is submitted that impugned judgment has been passed in disregard to established norms of appreciation of evidence. It is also submitted that impugned judgment of acquittal is perverse and based upon surmises and conjectures. Despite notices issued to the respondents / accused none appeared on their behalf.

5. We have perused the entire evidence with the assistance of learned Additional P.G. and have also gone through the impugned

judgment. Learned Judge Special Court STA Hyderabad, has rightly observed that prosecution witnesses were closely related to the deceased and on inimical terms with the accused and their evidence was lacking the independent corroboration. It has also been observed that there was no recovery of crime weapon from the accused. It has also been rightly observed by the trial court that there was no explanation as to how the injured witness received simple injury with hard blunt substance when none of the culprits used any lathi or danda or any other blunt substance at the time of the commission of murder of two deceased persons.

6. The judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous as held by the Honourable 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 of the same 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 Ahmad 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 2 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 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. 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."

7. For the above stated reasons, there is no merit in the appeal against acquittal. Finding of the innocence recorded against the respondents / accused by the trial Court are based upon sound reasons which require no interference at all. As such, the appeal against acquittal is without merits and the same is dismissed.

JUDGE

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