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

Cr. Acquittal Appeal. No.D- 115 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.13 of 2000 for offence under section 302, 324, 147, 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-115/2007 against the judgment dated 18.01.2007 passed by the trial court.

2. Brief facts of the case of the prosecution are that on above mentioned date at about 09.15 p.m. HC Abdul Sattar of PS Satellite Town lodged the above mentioned F.I.R. to the effect that he along with the above deceased and the injured as well as other police constables were on patrolling in the jurisdiction of the Police Station and when reached near Muhammadi Flour Mill near T&T Colony, they heard bullet shot reports and reached at the spot. They saw that culprits were firing in a house infront of the said Mill. They reached there and saw in the headlights of the vehicle as well as bulb that four persons namely Jummo, Yaroo, Soomar alias Sher and Mehmood were firing with their Kalashnikov and seeing the police party, they also fired on the police party and bullet hit to the SHO Aqeel Hussain, driver Muhammad Iqbal and injured Lakhadino. The remaining police personnel after taking position started firing on the culprits. Their other five accomplices also arrived there, out of them, one was identified as Miandad whereas the other could not be identified. The said Miandad was armed with a gun whereas the remaining four were armed with rifles and guns. The firing continued for half an hour and thereafter, the culprits ran away taking advantage of the darkness. On account of the injuries, SIP Aqeel Hussain and driver Muhammad Iqbal died at the spot. Other contingent police staff also reached there including SSP and DSP and they came to know that the culprits were initially firing in the house of Muhammad Moosa where they had killed a man and a woman and injured a boy. ASI Muhammad Yousuf of PS Satellite Town recorded the F.I.R.

3. After the usual investigation, the accused were challaned. Accused Miandad died during the pendency of the case on

27.03.2003 and proceedings against him were abated vide order dated 24.04.2003 Ex.37.

4. The accused denied the charge against them and the prosecution examined as many as eleven witnesses including the complainant and the Medical Officer, however, Investigation Officer was not examined.

5. The accused were examined U/S 342 Cr.P.C. in which they denied the evidence against them and pleaded their false implication in the case. Neither they examined themselves on Oath nor any witness in their defence, therefore, the learned counsel for the accused and the learned SPP for the State were heard.

6. On the conclusion of the trial learned trial court after hearing the learned counsel for the parties acquitted the respondents / accused mainly for the following reasons:-

> **"POINT NO.3.**
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> 13. On the above point, there is only evidence of the police officials, who were members of the police party headed by SHO deceased Aqeel Hussain.
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> 14. The first is PC Ghulam Rasool Ex.12. His evidence is to the effect that he was one of the members of the police party when it reached at the place from where the bullet shot reports were coming. It was night time and all of sudden, the culprits fired on the vehicle and thereafter, he along with the other police officials get down from the police vehicle. The distance between the culprits and them was about 100 Yards and on account of the firing, the vehicle was damaged and the culprits started running towards garden side. They followed them, but they ran away. He identified them as dacoits Jumma Panhwar, Soomar alias Sher Panhwar, Mehmood Panhwar and Yaroo and when they again came to their vehicle, they saw four other dacoits standing near to it and firing. They also fired on them, but they fled

away. All were having their faces muffled. After the firing, they found SHO Aqeel Hussain dead on account of bullet injuries so also driver Muhammad Iqbal, but at that time, he was unconscious whereas PC Lakhadino sustained injuries on account of counter firing.

15. The above statement of the witness clearly indicates that the SHO and the driver Iqbal had received the injuries while they were sitting in the Police Mobile and the above witness must be sitting in the back portion of the Mobile van, therefore, it was not possible for him to identify the culprits as named by him especially in the headlights of the police van and the bulb from a distance of 100 feet. Similar is the statement of the complainant Abdul Sattar and injured witness Lakhadino Ex.14, which evidence is also not reliable for the similar reason especially in the circumstances that there is no evidence on record that the said culprits accused were previously known to them. The other evidence is only on the point of preparation of the place of incident and removing the injured and the dead bodies to the hospital, which is of no consequence as far as this point is concerned.

16. In view of the above discussion, it is clear that the prosecution has failed to prove the above point through some tangible evidence and therefore, the same is decided in negative.

POINT NO.04.

17. On account of the findings on Point No.3, I hold that the prosecution has failed to prove it's case against the accused beyond reasonable doubt, therefore, I hold that no offence has been proved against them."

4. Syed Meeral Shah appearing on behalf of the State in support of his appeal against acquittal argued that judgment of the acquittal is perverse and is based upon surmises and conjectures. He has further argued that trial court has not considered the

evidence of eleven prosecution witnesses who had fully supported the prosecution case. It is argued that there was one injured witness in the case but his evidence was not appreciated by the trial court according to the settled principle of the law. 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 trial court in para Nos14 to 16 have assigned cogent reasons for disbelieving the prosecution evidence and has rightly recorded acquittal in the favour of the respondents. Findings of the trial court are neither perverse nor speculative.

6. The judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculating 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

JUDGE

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