

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Cr. Acquittal Appeal No.D-14 of 2008

P R E S E N T:

*Mr. Justice Naimatullah Phulpoto
Mr. Justice Shamsuddin Abbasi*

Date of Hearing: 11.04.2018

Date of Judgment: 11.04.2018

*Appellant/Complainant: Muhammad Uris S/o Peroze Khan.
Through Syed Tariuqe Ahmed Shah,
Advocate.*

*Respondents No.1 to 5: Through Syed Madad Ali Shah,
Advocate.*

*The State: Through Shahzado Saleem Nahiyoon,
Assistant Prosecutor General, Sindh.*

J U D G M E N T

NAIMATULLAH PHULPOTO, J:- Respondents / accused

(i) Lal Muhammad (ii) Muhammad Anwar (iii) Hanif (iv) Sabhago and (v) Dhani Bux were charged and prosecuted by learned Additional Sessions Judge, Umerkot in Sessions Case No.35 of 1997 arising out of Crime No.38 of 1997 registered at P.S Kunri under Sections 302, 324, 147, 148, 149 PPC. On the conclusion of the trial, vide judgment dated 31.01.2008, the respondents / accused were acquitted of the charge.

2. Brief facts of the prosecution case are that complainant Muhammad Uris lodged the aforesaid FIR at P.S Kunri, wherein he has stated that his eight brothers reside in village near Dadhro. Muhammad

Hanif, respondent / accused resides in village Abdullah Rajput and used to pass daily from complainant's village to work in lands situated near the house of complainant. Prior to incident of this case, the complainant's bitch barked at Muhammad Hanif, who gave blows to bitch. On the barking of bitch, the complainant and his brothers came out of their house and saw that accused Hanif was beating to bitch, on which the complainant restrained the accused, on which accused Hanif was annoyed. On the day of incident, the complainant, his brothers Muhammad Ibrahim, Khan Muhammad and Yousif were going to Kunri in the morning time to leave the girls of Muhammad Yousif to the school and then for purchase of commodities. At about 8:00 a.m., when they reached at the path of village Abdullah Rajput, they saw all the five accused armed with hatchets and asked complainant party as to why they were passing from there. Thereafter, it is alleged that accused Muhammad Hanif instigated other accused persons not to spare the complainant party, on which accused Dhani Bux caused hatchet blows on the head of Muhammad Yousif with intention to kill him and Muhammad Yousif due to hatchet blows fell down. Accused Anwar and Sabhago caused hatchet blows to PW Ibrahim on his head and other parts of body and accused Hanif and Lal Muhammad caused hatched blows to Khan Muhammad on his head. Accused Dhani Bux and Sabhago also received injuries and then the accused party went away. Muhammad Yousif due to injuries went unconscious. The complainant and the P.Ws took the injured Khan Muhammad, Muhammad Ibrahim and Muhammad Yousif to the Hospital. The incident was witnessed by Muhammad Khan and Muhammad Arshad. Thereafter, Muhammad Yousif succumbed to injuries. FIR was lodged by the complainant against the accused.

3. After usual investigation, challan was submitted against the respondents / accused under above referred sections.
4. Learned trial Court framed the charge against the respondents / accused at Ex-2. Respondents / accused pleaded not guilty and claimed to be tried.
5. In order to prove it's case, prosecution examined nine witnesses. Thereafter, prosecution side was closed.
6. Statements of the accused were recorded under Section 342 Cr.P.C, in which the accused denied the prosecution allegations and claimed false implication in this case. Accused have raised plea that the complainant party had infact caused injuries to Sabhago, Dhani Bux and Mst. Adan. Accused did not lead any evidence in their defence and declined to examine themselves on oath in disproof of the prosecution allegations.
7. Learned trial Court after hearing the learned Counsel for the parties and examination of the evidence available on the record by judgment dated 31.01.2008, acquitted the respondents / accused of the charge, hence this acquittal appeal has been filed. Respondents / accused Lal Muhammad and Muhammad Anwar expired during the pendency of appeal.
8. Syed Tariq Ahmed Shah, learned Counsel for the appellant / complainant has mainly contended that it was daytime incident. The ocular evidence was corroborated by the medical evidence. Counsel for the appellant has further argued that the trial Court acquitted the accused on minor contradictions. Lastly, it is submitted that the judgment of the trial

Court was speculative and ridiculous and the same is liable to be set-aside.

9. Syed Madad Ali Shah, learned Counsel for the respondents / accused argued that according to the case of the prosecution, deceased Muhammad Yousif was going with two daughters for leaving them to the school but his daughters were also not produced before the trial Court for their evidence. It is further contended that the incident was witnessed by two independent persons namely Muhammad Khan and Muhammad Arshad but they were not examined during the investigation as well as before the trial Court. It is further contended that eye witnesses were closely related to the deceased, who were on inimical terms with the accused. They were chance witnesses but they could not explain their presence at the place of incident. It is further argued that the principles for appreciation of evidence in the case of appeal against acquittal are different from the principles of appeal against conviction. Lastly, it is argued that after acquittal, the accused have earned presumption of double innocence.

10. Mr. Shahzado Saleem Nahiyoan, Assistant P.G has argued that the judgment of the trial Court is based upon sound reasons and the evidence has been appreciated according to the settled principles of law. He supported the judgment of the trial Court and stated that acquittal appeal merits no consideration.

11. After hearing the learned Counsel for the parties, we have scanned the entire evidence. In order to properly appreciate the contentions of the learned Counsel for the parties, the relevant portions of the judgment of the trial Court dated 31.01.2008 are reproduced as under:-

“During course of arguments, learned defence counsel has pointed out that complainant and P.Ws have suppressed the facts of case, as such they had also caused injuries to accused Dhani Bux and Sabhago so also Mst. Adhan, mother of accused persons, as such she was working in the field alongwith their sons namely accused Sabhago and Dhani Bux. He further pointed out that two different crimes viz. Crime No.38/1997 registered by complainant against accused persons while the other viz. Crime No.39/1997 was got registered by accused Lal Muhammad against the complainant party, thus both FIRs were registered in which Section 324, 147, 148, 149 were applied but aft eth death fo injured Muhammad Yousif, Section 302 PPC was added in Crime No.38/1997 of P.S Kunri, which is against present accused persons. He pointed out that I.O ASI Muhammad Hassan Dal has deposed that P.Ws Khan Muhammad and Ibrahim were lying unconscious being injured, while deceased Muhammad Yousif was in quite sense and his statement was recorded by him U/S. 161 Cr.P.C, whereas, Mashir Muhammad Qasim has contradicted I.O by deposing that deceased Muhammad Yousif was in injured condition and lying at place of incident, when police came there. According to him, as per case of prosecution, there is joint mashirnama of recoveries of hatchets, recovered from each accused, whereas, I.O ASI Muhammad Hassan Dal has deposed that all five hatches were produced by accused Lal Muhammad, who is complainant of crime No.39/1997. Hence, he prayed that it was free fight between both parties, which was advanced by complainant party, who had come to the place of incident viz. cultivated land of accused being armed with hatchet and caused injuries to Mst. Adhan, the mother of complainant Lal Muhammad so also accused Sabhago and Dhani Bux, whereas in free fight (in defence) the complaint party had also received injuries.

Admittedly, the tongue of war between the parties was started on the barking of bitch of accused Muhammad Hanif and such faisla was held by nekmard Muhammad Soomar Kapri, of both parties, was not examined by the prosecution. Besides this, it has come in the evidence that complainant party was residing 3 miles away from the place of incident. On the other hand, accused persons are residing 05 acres away from the place of incident and the said fact strikes in mind that complainant party being armed with hatchets came at the place of incident and flared up the incident. The injuries on the person of injured Sabhago and Dhani Bux so also their mother Mst. Adhan, indicates that complainant party had also showered the hatchets on the vital parts of body of accused persons. While touching deep roots of prosecution story, the important role is also assigned to school going girls namely Shehlagul and Shazmia, who were present at the spot alongwith complainant party while going to get education from Kunri town. Both these students are not examined by prosecution. Prosecution side is silent regarding non-examination of these school going girls. The prosecution story suggests that residence of complainant party is 08 K.Ms away from Kunri town, in which both girls were getting

education. If, these girls were minors, is humanly impossible that minor girls would undertake the distance of 08 K.Ms from their houses by foot while going to Kunri, for getting their education, leaving several schools in adjoining villages. Apart from that, main factor in the case of prosecution is that place of incident, which is completely under clouds in this case. Complainant Muhammad Uris has deposed in his evidence that the incident was occurred at Abdullah Rajput road, whereas, P.W Khan Muhammad, who is eye witness of the incident, has contradicted the place of incident, by deposing that the incident was occurred at the lands of Abdullah Rajput. P.W Muhammad Ibrahim has given different view regarding place of incident and has deposed that incident was occurred near the lands of Abdullah Rajput. Mashir Muhammad Qasim, who had attested mashirnama of incident, prepared by the I.O, has falsified the evidence of complainant, P.Ws Muhammad Khan and Muhammad Ibrahim, by deposing that incident was occurred in the loosan crop by the side of road going towards Kunri town. Tapedar Haji Allah Rakhio, who is independent prosecution witness, has given totally different version regarding place of incident, by deposing that incident was occurred in Block No.242/3 of Deh Goraho. Thus, even the place of incident is under the clouds, which does not perfectly suggest that where incident was occurred? Besides, this complainant Muhammad Uris has deposed that after incident, he went to arrange vehicle Datsun pickup from Kunri, thereafter, he went to lodge report of the incident. The very version of complainant Muhammad Uris is contradicted by P.W Muhammad Ibrahim by deposing that complainant Uris proceeded to PS Kunri, where he lodged report of incident thereafter, brought the injured at RHC Kunri. Mashir Muhammad Qasim has falsified the evidenced of complainant and P.Ws by deposing that when he came at the place of incident alongwith police by 11-00 AM, the injured namely Muhammad Yousif, Lal Muhammad and Khan Muhammad were lying at the place of incident. It means, till arrival of police at the place of incident, the injured were lying at the place of incident and they were not admitted in the RHC Kunri. Thus, the preparation of mashirnama of injuries of injured at RHC Kunri, as stated by I.O is false and fabricated. Another aspect of the case is that as per evidence of I.O ASI Muhammad Hassan Dal, he was present at PS Kunri, when the complainant of crime No.39/1997 namely Lal Muhammad, came at PS for reporting the incident (counter case), when he was arrested at PS Kunri. Complainant Muhammad Uris has falsified the version of I.O by deposing that accused Lal Muhammad was immediately arrested from Kunri town. The incriminative articles viz. hatchets allegedly used in the commission of offence, have also lost their evidentiary value, on the score that I.O has admitted that complainant of counter case namely Lal Muhammad had produced the all five hatchets from his house, which were recovered under mashirnama. On the other hand, he himself has falsified his own version by admitting that mashirnama of recovery of hatchets viz. at Ex-15/H, indicates that mashirnama of recovery of hatchets contains the detail of recovery of hatchets from each accused individually. Thus, recovery of

hatchets lost its legal sanctity coupled with material contradiction in the evidence of P.Ws. The complainant and P.Ws have suppressed the facts in the case of prosecution to the extent that complainant party had caused hatchet injuries to Mst. Adhan, when she was cutting the grass in field alongwith accused Sabhago and Dhani Bux. Complainant and all P.Ws have admitted that accused person are haries on the lands of their zamindar Abdullah and Nasrullah Rajput. The material facts which were thrashed out during cross examination is that accused person are residing 08 acres away from the place of incident and it is also admitted by complainant and P.Ws that within the distance of 08 acres (upto place of incident) there are 03 villages of different communities viz. Rajput, Kolhis and other persons. It means that within the distance of 02 acres, each village is situated between the house of accused and place of incident, but nobody was cited as witness nor any independent person from these villages came to place of incident, which has also coasted doubt on the prosecution story and suggest that incident was not occurred in the mode and manner as stated in the FIR.

It is admitted by complainant and P.Ws that both parties have received injuries. Muhammad Soomar, who is nekmard of both communities, is not examined, so in my humble view, the prosecution has been failed to establish motive of the incident. In this respect, I have been fortified by the law reported in the case of Nazeer and two others in PLD-1989-Karachi-466. Besides this, both parties have received injuries, it is proved that complainant party had come from the far distance at the place of incident and during incident, accused had also received sharp side hatchet injuries so, my attention goes to the decision reported in PLD-1986-SC-342-D. On the point of plea of self defence that complainant party appears aggressor while deciding the accusation and innocence in the case in hand, I have accrossed through the reported in P.Cr.L.J-1996-Lahore-2052, in which Honourable High court has acquitted the accused on the ground of right of private defence. Whereas, in the present case, if put the version of complainant and accused persons in juxtaposition, it renders the prosecution story doubtful and unbelievable. I have already submitted that there are counter versions of one and same incident, one version extended by complainant party and another put forth by accused in the shape of registration of crime No.39/1997. My lord Mr. Justice Tariq Mehmood and Ahmed Khan Lashari, have held as under:-

“S.302---Appreciation of evidence---Case of two versions--- Principle---Where the prosecution has put its own version and the accused has a different story to tell regarding the same incident, the version which is more plausible and nearer to realities and common sense is to be accepted and if the version for accused is possible, then the same may be accepted.”

Thus, in the light of above facts, circumstances and law cited by learned defence counsel so also halfhearted arguments of learned counsel for the state, I have come to the conclusion that prosecution has been miserably failed to prove the motive of incident, the place of incident is also under the clouds, major contradictions in the evidence of complainant and eye witnesses, dishonest investigation of I.O, interested and inimical evidence of prosecution witnesses, has lead me to hold that case of prosecution is doubtful as such no independent evidence has come on record which saddled the accused persons with the commission of murder of deceased Yousif and causing injuries to injured namely Khan Muhammad and Muhammad Ibrahim. Hence, point No.2 is decided as not proved.

POINT No.3.

In view of the above discussion, the prosecution has been failed to prove its case against the accused persons. Hence, I acquit the accused persons named above U/S. 265-H Cr.P.C. The accused are present on bail, their bail bonds stands cancelled and surety discharged.

12. We have examined the evidence of the prosecution witnesses and came to the conclusion that the prosecution had failed to prove its case against the respondents / accused for the reasons that eye witnesses namely Muhammad Khan and Muhammad Arshad were chance witnesses and closely related to the deceased, they were also on inimical terms with the accused / respondents and their evidence required independent corroboration, it was lacking in the case. It has come on record that independent persons namely Muhammad Khan and Muhammad Arshad were present at the time of incident but they were not produced before the trial Court for evidence for the reasons best known to the prosecution. According to the case of the prosecution, deceased was going with his two daughters for leaving them to the school but those school going girls were not examined before the trial Court. Rightly, it has been argued that the best evidence was withheld by the prosecution, it's benefit would go to accused / respondent. Complainant party had suppressed injuries caused to accused including Mst. Adhan. Findings of the trial Court were neither speculative nor ridiculous. It is settled principle of law that appreciation of

evidence in an appeal against conviction is different from the appreciation of the evidence in an appeal against acquittal.

13. The scope of interference in appeal against acquittal is also narrow and limited because in an acquittal the presumption of the 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 the innocence is doubled. This Court is always slow in interfering with the acquittal judgment. Counsel for the appellant / complainant has failed to satisfy us that the judgment has been passed by the trial Court in violation of the law or it suffer from error of grave misreading or non-reading of the evidence. Rightly reliance has been placed on the cases of Ghaus Bux v. Saleem and 03 others (2017 P.Cr.L.J 836) and The State v. Abdul Khalique and others (PLD 2011 Supreme Court 554). We may respectfully point out that this ratio has been reiterated by the Supreme Court in subsequent decisions and is good law even today.

14. For the above stated reasons, there is no merit in the appeal against acquittal, the same is confirmed. In the result, appeal is dismissed. We are informed that respondents are on bail. Their bail bonds shall stand cancelled and sureties discharged.

15. These are the reasons for our short order dated 11.04.2018.

JUDGE

JUDGE