

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Cr. Acquittal Appeal No.D-32 of 2017

PRESENT:

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

Date of Hearing: 19.04.2018

Date of Judgment: 19.04.2018

*Appellants / complainants: 1.Mst.Kulsoom Wd/o Mukhtiar Ahmed
2.Mst. Rukiya W/o Khan Muhammad
3.Khan Muhammad S/o Mir Muhammad
4.Yaro S/o Mir Muhammad, through Mr.
Abid Ali Thebo, Advocate.*

Respondents: Jan Muhammad present in person.

*The State: Through Syed Meeral Shah Bukhari,
Additional Prosecutor General, Sindh.*

J U D G M E N T

SHAMSUDDIN ABBASI, J:-

Through this acquittal

appeal, the appellants have assailed the order dated 29.08.2017, passed by the learned District & Sessions Judge, Mirpurkhas, in Sessions Case No.56 of 2017 emanated from Crime No.52 of 2016 of P.S Naukot, under Sections 302, 147, 148, 149, 34 PPC, whereby the respondents / accused No.2 to 5 were acquitted of the charge.

2. The brief facts of the prosecution case are that on 14.12.2016, complainant Yar Muhammad lodged FIR against the

respondents / accused, wherein it is alleged that his nephew namely Mukhtiar S/o Khan Muhammad Khokhar was engaged with Mst. Allah Bachai, who was then abducted by respondent / accused Noor Muhammad Chandio. On the same day at about 07:00 p.m. the complainant alongwith his nephew were going to village. In the meanwhile, Ayoub S/o Pinyal, having pistol, Jan Muhammad S/o Uris, having Gun, Noor Muhammad S/o Pinyal, having pistol, Saleem S/o Uris and one unknown person came near to them and told the complainant that they had bothered them on account of abduction of Mst.Allah Bachai. Thereafter, the respondents / accused Ayoub and Jan Muhammad made straight fires upon the complainant, which hit the complainant's nephew Mukhtikar, who fallen down and succumbed to the injuries, hence the instant FIR.

3. After usual investigation, challan was submitted against the respondents / accused before the competent Court of Law.

4. The learned trial Court framed the charge against the accused at Ex-6. Accused pleaded not guilty and claimed to be tried.

5. The learned trial Court framed amended charge against the accused at Ex-8, in which the accused also pleaded not guilty and claimed to be tried.

6. During the proceedings of the case, the parties entered into compromise by moving the applications under Sections 345(2) and 345(6) Cr.P.C, which were accepted by the learned trial Court.

7. The learned trial Court after hearing the parties and verifying / confirming of the legal heirs of the deceased, vide order dated

29.08.2017, acquitted the respondents / accused of the charge in lieu of compromise arrived at between the parties, hence the instant acquittal appeal.

8. Learned Counsel for the appellants / complainants *inter-alia* contended that the order passed by the learned trial Court is illegal, unlawful and unwarranted against the norms of principle of natural justice. It is submitted that appellant No.1 is widow of deceased Mukhtiar and appellants No.2 and 3 being mother and father of the deceased and it is contended that they were threatened by the relatives of the respondents / accused to enter into the compromise. He also contended that at the time of compromise, the legal heirs of the deceased (appellants / complainants) were brought before the trial Court under the supervision of some unknown armed persons and they were threatened / pressurized by some landlords of the locality outside the Court to make compromise applications in favour of the respondents / accused and on their force the legal heirs of the deceased sworn their affidavits before the Court, therefore, he prays that the order passed by the trial court may be set side.

9. Learned Additional Prosecutor General has supported the order passed by the learned trial Court and further stated that the legal heirs / appellants have willingly entered into compromise with the respondents / accused and the learned trial Court after ascertaining the legal heirs of the deceased has rightly acquitted the respondents / accused of their charge.

10. We have heard the learned Counsel for the appellants as well as learned A.P.G and have carefully gone through the record.

It is an admitted position that the learned trial Court has acquitted the respondents / accused by way of compromise applications moved on behalf of both parties' viz. appellants / complainants/ legal heirs of deceased and respondents / accused. It is pointed out that the trial Court proceeded with the matter of compromise between the parties after confirming / verifying the legal heirs of the deceased (appellants / complainants) by way of publication in the newspaper daily "Kawish" dated 23.08.2017. It is observed that that there are only three legal heirs of the deceased namely Mst. Kulsoom, Khan Muhammad and Mst. Rukiya, wife, father and mother respectively and they have voluntarily entered into compromise with the respondents / accused. It is pertinent to mention here that the learned trial court after entertaining the compromise application called report from concerned Mukhtiarkar and S.H.O concerned regarding legal heirs of deceased Mukhtiar and the learned trial court had also recorded statements of legal heirs, therefore, there was no impediment for the trial Court to refuse such compromise except to proceed with the same, which was then accordingly accepted keeping in view the harmony and good relations between the parties in future. It is further observed that the compromise between the parties was without any pressure or inducement and that the legal heirs of deceased did not claim any Qisas and Diyat against any of the respondents / accused, which appears from the compromise applications filed by them before the trial Court, therefore, the contention of learned Counsel for the appellants to the extent of committing illegality by the trial Court in the order dated 29.08.2017, does not arise in any manner whatsoever. As per learned Counsel, the appellants / complainants were threatened / pressurized by the landlords of the

locality for entering into compromise but none of the legal heirs of the deceased raised such element before the learned trial Court while passing the order. In order to refresh our mind, the relevant portion of the order dated 29.08.2017 is reproduced here-in-below:-

“On inquiry before the Court, complainant Yar Muhammad, Khan Muhammad (father of the deceased), Mst. Rukiya (mother of the deceased) and Mst. Kalsoom (wife of the deceased), stated that; they have pardoned the present applicants / accused in name of Almighty Allah at the intervention of Nek Mards of their community by waving their right of Qisas and Diyat against them and they have got no objection, if they are acquitted of the offence for which they are charged.”

11. In view of the above observation, the trial Court while passing the order has committed no illegality. Counsel for the appellants / complainants has failed to satisfy us that the order passed by the learned trial Court was in violation of the law, which absolutely does not appear to be reversed in a manner taken by the appellants herein. This Court has always taken a lenient view in interfering with the judgment / order of acquittal until and unless there are cogent and confidence inspiring reasons in the appeal of acquittal and the case at hand is hollow of such reasons. At this juncture, reliance is placed on the case of *GHOUS BUX V/S. SALEMM & 03 OTHERS* (2017 P.Cr.L.J 836), wherein it is held as under:-

“It is also settled position of law that the appreciation of evidence in the case of appeal against conviction and appeal against acquittal are entirely different. Additional P.G has rightly relied upon the case of Muhammad Usman and 2 others v. The State 1992 SCMR 489, the principles of considering the acquittal appeal have been laid down by honourable Supreme Court as follows:

It is true that the High Court was considering an acquittal appeal and, therefore, the principles which require consideration to decide such appeal were to be kept in mind. In this regard several authorities have been referred

in the impugned judgment to explain the principles for deciding an acquittal appeal. In the impugned judgment reference has been made to Niaz v. The State PLD 1960 SC (Pak.) 387, which was reconsidered and explained in Nazir and others v. The State PLD 1962 SC 269. Reference was also made to Ghulam Sikandar and another v. Mamaraz Khan and others PLD 1985 SC 11 and Khan and 6 others v. The Crown 1971 SCMR 264. The learned counsel has referred to a recent judgment of this Court in Yar Mohammad and 3 others v. The State in Criminal Appeal No.9-K of 1989, decided on 2nd July, 1991, in which besides referring to the cases of Niaz and Nazir reference has been made to Shoe Swarup v. King-Emperor AIR 1934 Privy Council 227 (1), Ahmed v. The Crown PLD 1951 Federal Court 107, Abdul Majid v. Superintendent of Legal Affairs, Government of Pakistan PLD 1964 SC 426, Ghulam Mohammad v. Mohammad Sharif and another PLD 1969 SC 398, Faizullah Khan v. The State 1972 SCMR 672, Khalid Sahgal v. The State PLD 1962 SC 495, Gul Nawaz v. The State 1968 SCMR 1182, Qazi Rehman Gul v. The State 1970 SCMR 755, Abdul Rasheed v. The State 1971 SCMR 521, Billu alias Inayatullah v. The State PLD 1979 SC 956. The principles of considering the acquittal appeal have been stated in Ghulam Sikandar's case which are as follows:-

"However, notwithstanding the diversity of facts and circumstances of each case, amongst others, some of the important and consistently followed principles can be clearly visualized from the cited and other cases-law on the question of setting aside an acquittal by this Court. They are as follows:-

(1) In an appeal against acquittal the Supreme Court would not on principle ordinarily interfere and instead would give due weight and consideration to the findings of Court acquitting, the accused. This approach is slightly different than that in an appeal against conviction when leave is granted only for the re-appraisal of evidence which then is undertaken so as to see that benefit of every reasonable doubt should be extended to the accused. This difference of approach is mainly conditioned by the fact that the acquittal carries with it the two well accepted presumptions: One initial, that till found guilty, the accused is innocent; and two that again after the trial a Court below confirmed the assumption of innocence.

(2) The acquittal will not carry the second presumption and will also thus lose the first one if on points having conclusive effect on the end result the Court below: (a) disregarded material evidence; (b) misread such evidence;

(c) received such evidence illegally.

(3) In either case the well-known principles of re-appraisal of evidence will have to be kept in view when examining the strength of the views expressed by the Court below. They will not be brushed aside lightly on mere assumptions keeping always in view that a departure from the normal principle must be necessitated by obligatory observances of some higher principle as noted above and, for no other reason.

(4) The Court would not interfere with acquittal merely because on reappraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If, however, the conclusion reached by that Court was such that no reasonable person would conceivably reach the same and was impossible then this Court would interfere in exceptional cases on overwhelming proof resulting in conclusion and irresistible conclusion; and that too with a view only to avoid grave miscarriage of justice and for no other purpose. The important test visualized in these cases, in this behalf was that the finding sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous."

13. *In another case of State/Government of Sindh through Advocate General Sindh, Karachi v. Sobharo (1993 SCMR 585), it is held as follows.*

"14. We are fully satisfied with appraisal of evidence done by the trial Court and we are of the view that while evaluating the evidence, difference is to be maintained in appeal from conviction and acquittal 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."

12. *Reliance is also placed on the case of THE STATE & OTHERS V/S. ABDUL KHALIQ & OTHERS (PLD 2011 S.C 554), wherein it has been held by the Honourable Supreme Court as under:-*

“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."*

13. In view of the above observations, we have come to final decision that there is no merit in this appeal against acquittal, the same is dismissed and consequently the order dated 29.08.2017 is hereby maintained. These are the reasons for our short order dated 19.04.2018 whereby this appeal was dismissed.

JUDGE

JUDGE