

**IN THE HIGH COURT OF SINDH  
CIRCUIT COURT HYDERABAD**

Criminal Acquittal Appeal No.D- 26 of 2016

**Present:**

Mr. Justice Abdul Maalik Gaddi.  
Mr. Justice Khadim Hussain Tunio.

For hearing of case.

Date of hearing  
& judgment: 04.03.2020.

Mr. Muhammad Jameel Ahmed, Advocate for appellant.

Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Respondents Ghulam Hussain, Ghulam Hyder, Moazam alias  
Mazan, Wahid Bux and Aquib are present in person.

**J U D G M E N T**

**Abdul Maalik Gaddi, J:** - This criminal acquittal appeal has been filed by appellant / complainant Dr. Sarfraz Ameer, challenging the judgment dated 25.10.2016 passed by learned Judge, Anti Terrorism Court, Hyderabad in ATC Case No.24/2012 (The State v. Nooruddin Burdi and others) arising out of crime No.20/2012 of P.S Tando Ghulam Ali for offence u/s 365-A PPC and ATC Case No.24/2015 (The State v. Nooruddin Burdi and others) arising out of crime No.9/2012 of P.S Chamber for offence u/s 324, 353, 34 PPC, whereby the learned trial court after full dressed trial and after hearing the learned counsel for the parties, acquitted the accused / respondents u/s 265-H(i) Cr.P.C. from the charge by extending benefit of doubt to them.

2. The facts of crime No. 20/2012 of PS Tando Ghulam Ali are that on 8/02/2012 at 9.00 am the present accused / respondents alongwith proclaimed offenders in furtherance of their common intention had kidnapped for ransom Dr. Sarfraz Aain from his Cuore Car No. AVW 911 from Village PP Taj.

3. Another FIR No.9/2012 was registered at P.S Chamber on the report of ASI Abdul Khaliq Jarwar who disclosed that on 12/02/2012 at about 1120 hours at Sanjar Chang Mori chowk, accused Nooruddin, Muazzam, Aquib and Allah Wassayo duly armed with pistols made fires upon police party and caused firearm injuries to PC Gulab and P.W Haji Karim Bux and they prevented the police party from discharging their lawful duties as public servant and during encounter accused Allah Wassayo had been killed.

4. It may be mentioned here that during pendency of ATC Case No. 24/2012 (Crime No.20/2012 of P.S Tando Ghulam Ali) before this Court and prior to the transfer of ATC Case No. 24/2015 (Crime No. 9/2015 of P.S Chamber), P.W-1 SIP Haji Muhammad Pitafi, author of Crime No. 20/2012 was examined as Ex. 21, who produced FIR. P.W:2 ASIP Khuda Bux was examined as Ex. 32, who on 13/02/2012 arrested accused Nooruddin and recovered 30 bore pistol and six live bullets prepared mashirnama and registered such FIR. He has produced memo of arrest and recovery as Ex. 22 and copy of FIR as Ex. 22-B. P.W 3 LNK Muhammad Shoaib, mashir of arrest of accused Nooruddin and recovery is examined as Ex. 23. P.W-4 PC Anwar Ali is examined as Ex. 49. PW-5 Haji Rasool Bux Arain, the Complainant is examined as Ex.52. He has admitted his signature on his FIR already produced. P.W 6 Dr. Sarfraz Ahmed Arain, the abductee of the case is examined as Ex. 53. He has produced his 164 Cr.P.C statement as Ex. 53-A. PW 7 Haji Karim Bux Arain is examined as Ex. 54. P.W-8 Rabdino Junejo is examined as Ex. 55. He is mashir of place of vardat and recovery of the car of abductee and produced such mashirnama as Ex. 55-A and 55-B. P.W-8 ASIP Abdul Khaliq Jarwar is complainant of crime No. 9/2012 of P.S Chambar and is examined as Ex. 56. He has produced departure and arrival entries as Ex. 56-A and 56-B and copy of FIR of Crime No. 9/2015 of P.S Chambar as Ex. 56-. After examining these witnesses an application u/s 21-M of Anti-Terrorism Act, 1997 was filed by learned counsel for joint trial of above cases which was allowed by my learned Predecessor vide order dated 13/04/2015 and amended charge as Ex. 60 was framed against present accused to which they pleaded not guilty vide their Pleas recorded as Ex. 61 to 67. Evidence already recorded in ATC case No. 24/2012 was adopted by consent of parties counsel vide order dt. 17/X/2015 passed by my learned Predecessor and then remaining following witnesses were examined. P.W-10 Jan Muhammad Pitaffi SIP is examined as Ex. 69. He is mashir of

arrest of accused Muazzam and produced mashirnama of arrest as Ex. 69-A. PW-11 SIP Gulsher was examined as Ex. 70. P.W 12 PC Javed Ahmed mashir of arrest of accused Wahid Bux is examined as Ex. 71 who has produced memo of arrest as Ex. 71-A. P.W-13 SIP Salahuddin was examined as Ex. 74, he has recovered the car used in commission of offence. He has produced such memo of recovery of car as Ex.74-A. P.W 14 ASIP Muharram Ali is examined as Ex. 75. He has produced FIR of Crime No. 9/2012 of P.S Chambar as Ex.75, mashirnama of recovery of pistol with magazine loaded with five bullets from deceased accused Allah Wassayo as Ex.75-B, two letters written to the MLO for treatment of injured Haji Karim Bux and injured PC Gulab as Ex. 75-C/1 and 75-C/2, he has also produced mashirnama of injury of both injured as Ex.75-D, mashirnama of place of encounter and recovery of dead body as Ex.75-E, Lash chakash and inquest form of deceased accused as Ex.75-F and 75-G and so also letter of post mortem addressed to MLO as Ex.75-H. He has also produced two receipts of dead body as Ex.75-I, and Ex.75-J. He has also produced mashirnama of arrest of accused Nooruddin from Matli Lock up as Ex.75-K, mashirnama of clothes of deceased accused as Ex.75-L, letter written to Chemical Analyser as Ex.75-M, Chemical Analyzer's report as Ex.75-N and letter written to Mukhtiarkar for sketch of vardat as Ex.75-O. PW 14 Abdul Raheem Khaskheli Inspector was examined as Ex.78. He is LO of crime No. 20/2012 of P.S Tando Ghulam Ali. He has produced Order of SSP Badin assigning investigation of this case to him as Ex. 78-A, two roznamcha entries one for investigation was entrusted to him as Ex.78-B and second he proceeded to P.S for scrutiny of the investigation as Ex.78-C. He has also produced receipt on which the car was handed over to complainant Rasool Bux as Ex.78-D, photocopy of the ownership documents of car No. AVW 911 as Ex.78-E, FSL Report as Ex.78-F, Criminal record against accused Nooruddin and deceased accused Allah wassayo as Ex.78-G, Criminal record against accused Hyder Junejo, and absconding accused Nawaz Junejo as Ex.78-H and accused Zaman as Ex.78-I so also criminal record of accused Wahid Bux and Ghulam Nabi as Ex.78-J alongwith photocopies of seven FIRs from Ex.78-K to 78-Q and finally photocopy of Judgment whereby accused Nooruddin, was convicted as Ex.78-R. PW-15 SIP Khuda Bux Panhwar, who partly investigated the case and has got recorded 164 Cr.P.C statement of P.Ws was examined as Ex.79. He has produced letter written to the Civil Judge and FCM Tando Bago for recording 164 Cr.P.C

statement of P.W Muhammad Juman as Ex.79-A, attested copy of 164 Cr.P.C statement of P.W Muhammad Juman as Ex.79-B, Mashirnama of recovery of abductee as Ex.79-C and letter written 'to Civil Judge Tando Bago for recording 164 Cr.P.C statement of abductee as Ex.79-D. P.W 16 Asghar Khan SHO was examined as Ex.80. P.W 16 Muhammad Hanif, Professor of Medicine was examined as Ex.81, who produced letter of MS about constitution of Special Medical Board in respect of injured Haji Karim Bux Arain as Ex.81-A alongwith copy of order and findings of Medical Officers. P.W-17 Muzaffar Ali Rajput Civil Judge was examined as Ex.83, he has produced letter of police and statements of P.Ws recorded u/s 164 Cr.P.C from Ex. 83-A to 83-C. Finally P.W-18 Dr. Manzoor Ahmed was examined as Ex.84, he has produced letter addressed to MLO Taluka Hospital Matiari as Ex. 84-A and 84-B and also another letter as Ex.187C, post mortem report of deceased accused Allah wassayo as Ex.- 84-D, provisional and final medico legal certificate of injured Haji Karim Bux as Ex.84-E and 84-F provisional medico legal certificate of injured PC Gulab as Ex.84-G and letter addressed to MS Rural Health Centre Chambar for medical report of injured Gulab as Ex. 84-H. Learned DDPP then by statement Ex.85 closed the prosecution side.

5. Thereafter statements of all above seven accused persons were recorded under Section 342 Cr.P.C at Ex.86 to 92, wherein they denied the allegations of prosecution and pleaded false implication on account of enmity and claimed to be innocent. The accused have neither opted to be examined on Oath nor led defence.

6. Mr. Muhammad Jameel Ahmed, learned counsel appearing on behalf of appellant mainly contended that judgment passed by learned trial court is perverse and the reasons are artificial viz-a-viz the evidence on record; that the grounds on which the trial court proceeded to acquit the accused persons are not supported from the documents and evidence on record. He further submitted that accused have directly been charged and the discrepancies in the statements of witnesses are not so material on the basis of which accused could be acquitted. He contended that accused / respondents are involved in a case which carries capital punishment. He also contended that material questions were not put to accused in the statements recorded u/s 342 Cr.P.C and submits that case may be remanded to the trial court; however, he concedes that its benefit shall be

given to the accused persons. He further contended that learned trial court has based the findings of acquittal mainly on the basis of minor contradictions on non-vital points of the statements of prosecution witnesses and that the prosecution evidence has not been properly appreciated therefore, under these circumstances, he was of the view that this appeal may be allowed and the accused involved in this case may be given exemplary punishment. In support of his contentions, he has placed reliance on the cases reported as Farooq Khan v. The State (2008 SCMR 917), The State v. Muhammad Yasin Memon alias Yasin Memon and another (2011 SCMR 401), Ghazanfar Abbas and others v. The State and others (2002 SCMR 1403) and Haji Bismillah v. Abdul Ali and another (2000 P.Cr.L.J 495).

7. On the other hand, Ms. Rameshan Oad, learned A.P.G. appearing for the State has supported the impugned judgment by arguing that the impugned judgment passed by the learned trial court is perfect in law and on facts; that no direct evidence is available against the respondents to connect them in the commission of offence and even their names have not been mentioned in the FIR; that no CDR data has been produced by the prosecution witnesses during the evidence; that whole case of the prosecution is based upon surmises and conjunctures, therefore, no reliance could be safely placed for conviction of the respondents.

8. Arguments heard. Record perused.

9. After scanning the evidence of prosecution witnesses, we have come to the conclusion that prosecution has miserably failed to establish its case beyond any reasonable shadow of doubt. From perusal of the impugned judgment, it reveals that the trial court has recorded the findings of acquittal in favour of the respondents with sound and significant reasoning. Admittedly, the alleged incident took place on 08.02.2012 whereas FIR of the same was lodged on 11.02.2012 after the delay of about 03 days for which no plausibly explanation has been furnished by the complainant even complainant himself has stated that he has not given any reason for delay in lodging the FIR. Names of the accused / respondents do not appear in the FIR. It is also alleged that people informed the complainant that five armed persons present at the time of incident with one car and one motorcycle had kidnapped his son and said persons were only the eye witnesses of the incident and most important witnesses but complainant neither in his FIR nor in his statement disclosed

the names of those persons even I.O. who visited the place of incident did not bother to record their statements. Even the motorcycle involved in the case was not recovered. It has also come on record that abductee deposed in his examination in chief that he know accused Muhammad Nawaz and Hyder Junejo being his neighbourers but complainant categorically stated that he does not know the accused. It is also noted that after the arrest of the respondents no identification test was held in this case and the abductee was not recovered from the possession of respondents. The father of the abudctee / complainant was not the eye witness of incident. It is further noted that abductee was released on 13.04.2012 from Mehrabpur however, his 164 Cr.P.C. statement was recorded on 18.04.2012 after the delay of about 4/5 days. No explanation of such delay has been explained either in evidence or in 164 Cr.P.C. statement therefore, on this ground also false implication of the present respondents in this case with due deliberation and consultation could not be ruled out. The question also arises that why the culprits who were arrested were not put to identification parade. The accused and complainant were allegedly in conversation on mobile phones with regard to ransom amount for release of the abductee but no any CDR data has been produced before the trial court during evidence. No ransom whatsoever is alleged to have been paid by the complainant party. Per learned counsel for the appellant, 342 Cr.P.C. statements of the accused / respondents were not recorded in accordance with law and in our view if there are any lecnas or infirmities in the statements recorded u/s 342 Cr.P.C, its benefit must be extended in favour of the accused / respondents. There are also material contradictions, infirmities and inconsistencies in the evidence of prosecution witnesses who seems to be interested witnesses and related to complainant hence their evidence is not confidence inspiring. No independent witness of the locality has been examined by prosecution. All these aspects have been highlighted by the learned Presiding Officer of the trial court in its judgment. The case law cited by learned counsel for the appellant / complainant seems to be distinguishable from the facts of the case in hand.

10. We have also perused the impugned judgment and come to the conclusion that the learned trial Court has dealt with all aspect of the matter quite comprehensively in light of all the relevant laws dealing with the matter and now before us the appellant is unable to demonstrate that the impugned judgment by any means suffers from any illegality or

miscomprehension or non-appreciation of evidence by way of documents and evidence available on record. The respondents were acquitted by the trial court on the above mentioned grounds after full dressed trial and the appellant has not been able to satisfy this court on either of the ground to interfere in the impugned judgment.

11. In view of the above, this Criminal Acquittal Appeal being bereft of merits, is hereby dismissed.

JUDGE

JUDGE

Tufail