

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

Cr. Acq. Appeal No. D- 30 of 2018

Present

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Zulfiqar Ali Sangi

Appellant / Complainant : Habibullah

Versus

Respondents : Akbar and another

Date of Hearing & Decision: 08.10.2019

Mian Taj Muhammad Keerio, Advocate for appellant
Ms. Sana Memon, A.P.G.

J U D G M E N T

ZULFIQAR ALI SANGI, J.- Through the instant acquittal appeal, appellant / complainant has assailed the judgment dated 28.9.2018 passed by learned Additional Sessions Judge, Khipro in S.C. No. 34 of 2015 (New) re-The State v. Lakhmir and others corresponding to Crime No. 107 of 2012 registered at police station Khipro district Sanghar for offence under Section 302, 324, 114, 337-A(i), 337-F(i) & 34 PPC wherein learned trial court acquitted the respondent No.1 by extending him benefit of doubt.

2. The incident took place on 4.7.2012 at 4.30 p.m. and the FIR was registered on the same day at 2300 hours. Allegation against the respondent No.1 as per FIR was that during scuffle he caused lathi blows to Ghulam Mustafa, Gul Muhammad and Sultan.

3. After completing necessary formalities charge was framed and evidence of prosecution witnesses was recorded. After recording statement under Section 342 Cr.P.C. and hearing the parties trial court passed the judgment by acquitting the respondent No.1

4. Learned counsel for appellant submits that sufficient evidence was available with the trial court in shape of ocular and medical but the trial court disbelieved the

same; that prosecution witnesses supported the case during their evidence; that respondent No.1 shared his common intention with co-accused who has been convicted by the trial court.

5. Learned A.P.G. submits that evidence so produced by the prosecution to the extent of respondent No.1 before the Trial court was not of the level to base conviction. She submits that the trial court has properly appreciated the evidence to the extent of respondent No.1 and has rightly passed the judgment of acquittal. Lastly she supported the judgment of trial court and prayed for dismissal of this acquittal appeal.

6. We have learned the arguments of learned counsel(s) and gone through the material available on record.

7. On careful scrutiny of evidence we did not find any evidence which could establish that respondent No.1 caused any injury to deceased or shared his common intention for committing the murder of deceased. In FIR it was stated that Akbar caused lathi blows to Ghulam Mustafa, Gul Muhammad and Sultan whereas Ghulam Mustafa stated in his examination-in-chief that ***“then we raised cries and intervened then accused Ramzan and Akbar also caused hatchet blows and lathi blows to us”*** he generalized the role of Akbar (respondent No.1). Same was the position of P.W Gul Muhammad who also in his examination-in-chief stated in line with P.W Ghulam Mustafa; whereas P.W Muhammad Sultan in his examination-in-chief stated that accused Akbar caused lathi blows to me, brother Habibullah, Ghulam Mustafa and Gul Muhammad which is also contradictory as there was no allegation against Akbar for causing injuries to Habibullah.

8. The version of prosecution witnesses is also not supported by medical evidence which creates very serious doubt in the prosecution case in respect of role of respondent No.1 as the doctor Ghouri Shankar during cross-examination stated that ***“it is correct to suggest that injuries of injured could be self suffered”***.

9. It is well settled principles of law that burden of proving the case is always upon the shoulders of prosecution and prosecution is bound to prove the case beyond shadow of reasonable doubt, and if a single circumstantial doubt come in the case of prosecution it goes in favour of accused not as a matter of grace but as a matter of right as laid down by Honourable Supreme Court of Pakistan in case of ***Tariq Pervaiz v. The State (1995 SCMR 1345)***, ***Muhammad Akram v. The State (2009 SCMR 230)*** and in case of ***Muhammad Zafar and another v. Rustam and others (2017 SCMR 1639)***.

10. Further it is well settled principle of law that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from appeal against acquittal, because presumption of double innocence is attached in the latter case. An order of acquittal can only be interfered with when it is found on the face of it as capricious, perverse, arbitrary or foolish in nature, which are lacking in this case. Reliance is placed on *Inayat Ullah Butt v. Muhammad Javed etc.* (PLD 2003 SC 563), *Mst. Anwar Begum v. Akhtar Hussain alias Kaka and 2 others* (2017 SCMR 1710).

11. Whatever stated above, we reached at the conclusion that the acquittal of respondent No.1 does not suffer from any illegality so as to call for our interference with the impugned judgment only to the extent of acquittal of respondent No.1, hence the acquittal appeal is dismissed.

JUDGE

JUDGE