

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

Criminal Acquittal Appeal No.D-06 of 2020
Criminal Acquittal Appeal No.D-07 of 2020
Criminal Acquittal Appeal No.D-08 of 2020

PRESENT:

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

Appellant: The State / A.N.F through Mr. Muhammad Ayoub Qasar, Special Prosecutor ANF.

Respondents: None present.

Date of hearing: 16.01.2020.

Date of judgment: 16.01.2020.

JUDGMENT

Khadim Hussain Tunio, J.- Since the impugned judgments passed by the trial Court are emanating from one and the same mashirnama of arrest and recovery as well as F.I.R; therefore, the same are being disposed of by this common judgment. The State / A.N.F has impugned the judgments dated 26.09.2019 in Crime No.D040400418 registered at P.S ANF Hyderabad under Section 9(c) of CNS Act, 1997, passed in Special Cases Nos.99, 100 and 101 of 2018 respectively, whereby the respondents, namely Ajab Gul, Ghulam Muhammad @ Guloo and Ajeeb were acquitted of the charges.

2. It is alleged that respondents were apprehended by the A.N.F officials on 19.05.2018 and secured a black colored shopper containing three pieces and a big piece of chars total 1800 grams from the possession of respondent/accused Ajab Gul, a black colored shopper containing a piece of chars weighing 500 grams from the possession of respondent/accused Ghulam Muhammad alias Guloo and a piece of chars weighing 200 grams was recovered from the possession of respondent/accused Ajeeb Gul, for which F.I.R was registered at P.S A.N.F Hyderabad.

3. After providing necessary documents, formal charge was framed separately against the respondents / accused, in which they denied prosecution allegations and claimed to be tried.

4. In order to substantiate the charge against the accused/respondents, the prosecution examined as many as three witnesses, namely SHO Abdul Rasheed, HC Muhammad Ibrahim and Constable Shoukat Ali, who produced numerous documents in their evidence.

5. Statement of accused was recorded under Section 342 Cr.P.C separately, in which they denied the allegations made against them by the prosecution. However, neither they examined themselves on oath nor adduced any defence evidence.

6. After hearing the respective parties, learned trial Court acquitted the respondents / accused by extending them benefit of doubt; hence, these acquittal appeals have been preferred against the said acquittal.

7. Learned Special Prosecutor A.N.F has contended that the learned trial Court has passed the judgment in hasty manner without applying judicious mind; that prosecution has proved its case against the respondents / accused beyond reasonable shadow of doubt; that the learned trial Court has committed illegalities and irregularities while acquitting the respondents / accused; that all the prosecution witnesses have supported the case of the complainant and that there is no contradiction in the evidence of the prosecution witnesses, but the learned trial Court has committed misreading and non-reading of the evidence; that the learned trial Court has given undue weight to the minor discrepancies if any came in the evidence of the prosecution witnesses; therefore, he prays that acquittal of the respondents / accused may be set aside and they may be convicted in accordance with law.

8. We have heard learned Special Prosecutor ANF and perused the record minutely.

9. From the perusal of impugned judgment, it reveals that the learned trial Court has recorded the acquittal in favour of the respondents with significant and sound reasoning. It is noted that appellant has failed to associate any private person who is stated to have present at the time of commission of the alleged incident, despite the alleged incident took place near the shopping center as per evidence of the prosecution witnesses. Moreover, there is delay of two days in sending the contraband to the chemical examiner for its analysis. The recovery of the chars has been made from the respondents under a joint memo and no denomination numbers of the currency notes alleged to have been recovered has been disclosed in the memo of arrest and recovery; hence, such discrepancies in the prosecution story made the case against the respondents doubtful; therefore, the learned trial Court has rightly acquitted the respondents in accordance with law. Further, the PWs are A.N.F officials and none from the public has been examined so as to confirm the authenticity of the alleged recovery. Learned Special Prosecutor A.N.F during course of arguments has failed to point out any illegality and irregularity committed by the trial Court while recording impugned judgment. Moreover, the alleged incident does not appear to have taken place in a manner as alleged by the complainant, therefore, the prosecution case having so many dents and is full of doubts/confusions. In this view of the matter, it cannot safely be said that the conclusion arrived at by the learned trial Court was such that no reasonable person would conclusively reach the same.

10. It may be observed here that an accused is presumed to be innocent in law and if after regular trial he is acquitted of the charge, he earns double presumption of innocence and there is heavy onus on the prosecution to rebut the said presumption. In view of the discrepant and inconsistent evidence led, the guilt of accused is not free from doubt, therefore, this Court is of view that the prosecution failed to discharge the onus and the finding of acquittal recorded by the learned trial court is neither arbitrary nor capricious to warrant interference. More so, when an accused is

acquitted from the charge by court of competent jurisdiction, then it is well established principle of law that double presumption of innocence will remain attached with the judgment of acquittal, therefore, such judgment cannot be interfered with unless it is proved that same is arbitrary, shocking capricious, fanciful and against the settled principles of criminal administration of justice. In this respect, reliance may respectfully be placed on the cases of ***Yar Muhammad and 3 others v. The State (1992 SCMR 96, State/Government of Sindh through Advocate General, Sindh Karachi v. Sobharo (1993 SCMR 585), The State & others v. Abdul Khaliq& others (PLD 2011 SC 554), Muhammad Zafar and another v. Rustam Ali and others (2017 SCMR 1639), Zulfiqar Ali v. Imtiaz and others (2019 SCMR 1315).***

11. It is settled principle of law that whenever there creates some reasonable doubts about the guilt of an accused, the benefit of which is to be extended to the accused as a matter of right but not as a matter of grace or concession as held by the Hon'ble Apex Court in numerous cases. No any fresh or cogent reason has been assigned to this Court by learned Special Prosecutor ANF, whereby their appeals may be dealt with against the impugned judgments which have rightly been delivered by the learned trial Court; therefore, under these circumstances, the appellant(s) has failed to make out any case against the respondents/accused, who have rightly been acquitted by the trial Court and such acquittal in absence of the evidence on part of the complainant cannot be interfered. Accordingly, these acquittal appeals were dismissed and consequently, the impugned judgments dated 26.09.2019 were maintained by a short order announced in open Court today i.e. 16.01.2020. These are the reasons for the said short order.

JUDGE

JUDGE