

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

Cr. Acquittal Appeal No.S- 80 of 2014

Date of Hearing: 11.09.2020
Date of Judgment: 11.09.2020

Appellant: Ameeruddin s/o Ghazi Khan Chandio
through Mr. Mian Taj Muhammad
Keerio, Advocate.

Respondents No.1&2: Rehan Hussain and Riaz Hussain
through Syed Shafique Hussain
Shah, Advocate.

The STATE: Through Mr. Shahid Shaikh, D.P.G
Sindh.

J U D G M E N T

NAIMATULLAH PHULPOTO, J.- Through this Criminal Acquittal Appeal, appellant / complainant has impugned the judgment dated 10.05.2014 passed by learned Illrd Additional Sessions Judge, Hyderabad in Sessions Case No.742 of 2012 arising out of Crime No.180 of 2012 registered under Sections 324, 337-F(iii), 34 PPC at P.S Market, Hyderabad . On the conclusion of trial, vide judgment dated 10.05.2014, respondents No.1 and 2 / accused namely Rehan Hussain and Riaz Hussain were acquitted of the charge.

2. Brief facts of the prosecution case as disclosed in the impugned judgment are as under:-

“On 24.09.2012 complainant Dr. Ameeruddin lodged report, stating therein that he is an employee in Central Prison, Hyderabad as Health Doctor. He further stated that Kazi Rehan was extended threats to his younger brother Inayatullah that to sell out the house to him. He further stated that on 23.09.2012 at about 2030 hours, he alongwith his younger brother Inayatullah Chandio and nephew Asadullah were sitting outside the house and were chat chatting and in meanwhile Kazi Rehan and his father Kazi Riaz came out from their house, Kazi Rehan was armed with mouser, while his father was having repeater and started abusing complainant party, the complainant party restrained them not to use filthy language and on this, accused became annoyed and started direct firing upon complainant party, but luckily complainant and his nephew were saved, while on the firing of Rehan, the bullet hit to the brother of complainant namely Inayatullah on his right leg due to this he became injured and fell down and then the above named accused made their escape good. Complainant further stated that on the hue and cries, complainant’s another brother Naimatullah Chandio came there and took the injured on motorcycle to police station Market, obtained letter for medical treatment and took injured to Civil Hospital, Hyderabad and got admitted the injured and came at police station, lodged the FIR.”

3. On the conclusion of the investigation, challan was submitted against the accused under Sections 324, 337-F(iii), 34 PPC.
4. Learned Trial Court framed charge against the accused. Accused pleaded not guilty and claimed to be tried.
5. At the trial, prosecution in order to establish its` case examined in all 07 PWs. Thereafter, prosecution side was closed.
6. Statements of accused were recorded under Section 342 Cr.P.C at Ex-12 and 13, in which accused claimed false implication in this case and denied the prosecution’s allegations.

7. Learned trial Court after hearing learned counsel for the parties and assessment of the evidence vide judgment dated 10th May 2014 acquitted the accused / respondents hence this Criminal Acquittal Appeal.

9. Learned Counsel for the appellant / complainant has mainly contended that impugned judgment of the trial Court is based on misreading and non-reading of evidence. It is also argued that the trial Court has disbelieved strong evidence without assigning sound reasons, and prayed for converting the acquittal of accused to the conviction.

10. Learned counsel for the respondents No.1 and 2 as well as learned D.P.G. supported the impugned judgment.

11. It is settled law that ordinary scope of acquittal appeal is considerably narrow and limited and obvious approach for dealing with the appeal against the conviction would be different and should be distinguished from the appeal against acquittal because presumption of double innocence of accused is attached to the order of acquittal. In the case of **Zaheer Din v. The State (1993 SCMR 1628)**, following guiding principles have been laid down for deciding an acquittal appeal in a criminal case:-

“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:--

(2) The acquittal will not carry the second

presumption and will also thus lose the first one if on pints 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 reappraisal of evidence will have to be kept in view while 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 observations 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.”

12. In the present case, incident took place on 23.09.2012 at 2030 hours whereas FIR was registered on the next day viz. 24.09.2012 at 1500 hours. Delay in lodging of the FIR has not been explained. Admittedly, there was litigation between the parties and record was produced before the trial Court which has been discussed by trial Court in impugned judgment in Para-13. Findings of the trial Court that prosecution case was doubtful are based upon sound reasons. For the sake of convenience, it would be conducive to reproduce Para-13 of the impugned judgment which reads as under:-

“It is pertinent to note that the incident took place on 23.9.2012 at about 2030 hours, whereas the FIR was registered on the next day viz. 24.9.2012 at about 1500 hours. The complainant himself stated that after the incident he immediately took the injured to police station and obtained letter for examination and medical certificate. The time of issuing letter for medical treatment is shown as 2240 hours, whereas the time of occurrence is shown as 2030 hours and as per statement of complainant that after the incident he immediately took the injured at police station and the distance from the place of incident and the police station is one and a half kilometer and ordinary the distance could be covered on motorcycle within 5/10 minutes. Apart from this the complainant has also admitted that he has dispute with the accused persons over the settling of the house. The accused has also brought on record the Photostat copy of the FIR bearing No.185/2012 lodged against the complainant, so also the copy of CP filed by the accused persons against the complainant party. The complainant says that both the accused persons were making straight firing upon them, whereas injured Inayatullah says that accused Kazi Rehan open fire which hit him on his leg. As per Doctor`s opinion the FIR could of rifle, while in the FIR and the statement of PWs, accused Kazi Rehan was armed with mouser. No incriminating articles were recovered by the police, nor any empties were collected from the place of incident, the prosecution has also failed to cite the independent witnesses who were available according to the complainant and the PWs were present; thus there appears doubt in prosecution case and it is settled principle of law that multiple circumstances are not necessary to create doubt and if a single circumstance creating doubt, the benefit be extended in favour of accused, this point is answered as doubtful.”

13. In an appeal against acquittal this 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 appeal is admitted for re-appraisal of evidence 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.

14. Learned Counsel for the appellant / complainant has not been able to point out any serious flaw or infirmity in the impugned judgment. The view taken by the learned trial Court is a possible view, structured in evidence available on the record and as such is not open to any legitimate exception. It is by now well settled that acquittal once granted to an accused cannot be recalled merely on the possibility of a contra view. Unless, impugned view is found on fringes of impossibility, resulting into miscarriage of justice, freedom cannot be recalled.

15. For the above stated reasons, this Criminal Acquittal Appeal is without merit and the same is dismissed.

JUDGE

Tufail