

**JUDGMENT SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Cr.Acquittal.Appeal.No.D- 68 of 2003

Present:-
Mr. Justice Naimatullah Phulpoto.
Mr. Justice Shamsuddin Abbasi.

Date of hearing: 19.04.2018.
Date of judgment: 23.04.2018.

None present for appellant.
Mr. Shahzado Saleem Nahiyoon, D.P.G. for the State.
Respondents are present.

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Respondents/accused were charged, prosecuted and acquitted by learned Sessions Judge, Mirpurkhas in Sessions Case No.60/1992 vide judgment dated 25.02.2003 for offence u/s 302, 147, 148 PPC. Feeling aggrieved by the aforesaid judgment of acquittal, complainant Wali Muhammad filed Criminal Acquittal Appeal No.D-68/2003.

2. The prosecution case as emerged from the recitals contained in First Information Report and the evidence adduced during the trial is as under:-

3. The complainant Lal Muhammad S/o Ghulam Din lodged F.I.R with Digri police station that he resides with his family members in village Khabar Shah Deh 179. He has three sons namely Imdad Ali,

Liaquat Ali and Shoukat Ali, his son Imdad Ali is serving in police Department at Mirpukhas who reside in Digri Town with his brother Shoukat Ali. In the same village, his nephew namely Khadim Hussain son of Fazaluddin Arain resides with his family and also other relatives. In the village (1) Ramzan son of Nabi Bux Arain, (2) Anwarul alias Jan son of Mohammad Sharif, (3) Anwar son of Ghulam Rasool Arain, (4) Arshad s/o Khalil Ahmed Arain, (5) Sher Mohammad son of Nooruddin, (6) Ibrahim son of Shafi Muhammad, (7) Mohammad Afzal S/o Ghulam Rasool, (8) Abdul Ghaffar son of Mohammad Siddiqui Arain, (9) Khalil Ahmed son of Haji Nooruddin, (10) Zulfiqar Ali alias Papoo son of Ibrahim with whom dispute of plot was pending. It is alleged that on 22.02.1992, IInd Additional District Judge Mirpurkhas decided the matter in favour of complainant in respect of plot. On 13.3.1992, accused Ramzan S/o Nabi Bux having Gun, (2) Anwarul Haque alias Jan s/o Shafi Mohammad having Revolver, (3) Arshad son of Khalil Ahmed Arain having Gun, (4) Anwar son of Ghulam Rasool having Gun, (5) Sher Mohammad s/o Nooruddin having Hatchet, (6) Ibrahim son of Shafi Mohammad having hatchet (7) Mohammad Afzal son of Ghulam Rasool having lathies (8) Abdul Ghaffar son of Mohammad Siddique having hatchet (9) Khalil Ahmed son of Nooruddin having Lathi (10) Zulfiqar alias Papoo son of Ibrahim having hatchet came and tried to take possession of the plot decided in his favour. He tried to restrict them as the case was decided in his favour. On which, it is alleged that Ramzan exchanged hot words at 1730 hours, his nephew Khadim Hussain son of Fazaluddin also came. On arrival of his nephew Khadim Hussain, Ibrahim, Muhammad Afzal, Abdul Ghaffar, Khalil Ahmed, Zulfiqar alias Papoo instigated Ramzan son of Nabi Bux, not to spare Khadim Hussain, on the instigation Ramzan fired with his gun at Khadim Hussain which hit

him at chest and Khadim Hussain fell down other accused namely Anwarul Haque, Anwar, Arshad also made fires in air. It is further alleged that Ibrahim son of Ali Muhammad Arain, (2) Muhammad Younus son of Shafi Muhammad came running and above named accused went towards their houses with their arms. They saw that his nephew Khadim Hussain had expired due to firearm injuries. Then leaving PWs Ibrahim and Younus over dead body of his nephew Khadim Hussain, he went to P.S and lodge report against the above named accused persons. It was recorded vide Crime No.22/1992 at P.S. Digri for offences u/s 302, 147, 148 PPC.

4. After usual investigation challan was submitted against the accused.

5. Trial court framed charge against the accused at Ex.2. Accused pleaded not guilty and claimed to be tried.

6. In order to prove it's case, prosecution examined 11 witnesses. Thereafter the prosecution side was closed.

7. Statement of respondents/accused u/s 342 Cr.P.C. were recorded in which they claimed false implication in this case and denied the prosecution allegations. Accused neither examined themselves on Oath nor they led any evidence in their defence to disprove the prosecution allegations.

8. Trial court after hearing the learned counsel for the parties and on assessment of evidence, vide judgment dated 25.02.2003 acquitted the accused/respondents as stated above hence, this Criminal Acquittal Appeal was filed by complainant on 22.03.2003. Notices were issued to the respondents and they were heard. It was reported by D.P.G. that the

appellant has expired. This acquittal appeal pertains to 2003. We intend to decide it on the basis of evidence available on record. Learned D.P.G. read over the entire evidence and the impugned judgment.

9. Mr. Shahzado Saleem Nahiyoon, learned D.P.G. appearing for the State argued that trial court has assigned sound reasons for acquittal of the accused and acquittal judgment is not manifestly perverse on facts and law. In the interest of justice, we have also perused the Criminal Acquittal.

10. We have examined the judgment of trial court. The relevant portion of the judgment is reproduced hereunder:-

“In support of it’s case, prosecution examined 11 witnesses. The evidence of the P.Ws has been discussed above. Eye witnesses PWs Ibrahim (Ex.13) and Muhammad Younus (Ex.14) have not supported the prosecution case. Therefore, they were declared hostile by the prosecution. The mashir of this case P.W Madad Ali Shah (Ex.19) has also been declared hostile by the prosecution. The declaration of the above-said witnesses & mashir as hostile, made the entire prosecution story doubtful and the prosecution version unbelievable. All the mashirnamas became doubtful due to declaration of mashir Madad Ali Shah (Ex.19) as hostile. P.W Abdul Wahid (Ex.31), who is the Tapedar, deposed in his cross examination that he had not seen a Girls School near the place of vardat and he had not witnessed a water pond near the site of vardat. The co-mashir Shoukat Ali (Ex.36) in his cross-examination has admitted that when he signed the mashirnama, no other persons signed it.

In the statement, recorded u/s 343 Cr.P.C, accused persons denied the allegations levelled by the prosecution against them and claimed their innocence. The material contradictions in the prosecution evidence made the case of prosecution doubtful and it is settled principle of criminal law that the prosecution has to prove it’s case beyond reasonable doubt and if any doubt arose, the benefit of the same must to the accused. I, therefore, decide this point as doubtful.

POINT NO.3:- In view of my above discussion and for the fore-going reasons, it is not a case which warrants conviction. Ultimately, it is a case, which creates doubt in the mind of the court. The charge framed against accused persons has become doubtful and as such

while given benefit of doubt, I acquit all the accused persons. They are present on bail, their bail bonds stands cancelled and sureties discharged.”

11. In the present case, it appears that eye witnesses PWs Ibrahim Ex.13 and Muhammad Yousif Ex.14 did not support the case of prosecution and they were declared hostile by the prosecution. Mashir Madad Ali Shah was also declared hostile. Trial court has rightly observed that prosecution case was doubtful. Trial court had also noticed material contradictions in the prosecution evidence. After perusal of evidence, we have no hesitation to hold that the trial court rightly acquitted the respondents/accused. At the very outset, we would like to mention that we are deciding in appeal against acquittal. It is well settled that that High Court can only interfere in an appeal against acquittal if the view of the learned trial judge is either manifestly perverse on facts or vitiated in law. If the view taken by the trial judge can reasonable be said to be arrived at, this court does not substitute it with its own view as held in the case of *The State v. Abdul Khaliq and others* (PLD 2011 Supreme Court 554). Moreover, principles for appreciation of evidence in appeal against acquittal are different from the appeal against conviction. No case for interference is made out. Aforesaid appeal against the judgment of acquittal is without merit, same is dismissed.

JUDGE

JUDGE