JUDGMENT SHEET

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

Cr.Acquittal.Appeal.No.D- 209 of 2007

Present:-
Mr. Justice Naimatullah Phulpoto.
Mr. Justice Mohammad Karim Khan Aga.

Date of hearing: 25.05.2017.
Date of judgment: 25.05.2017.

Syed Meeral Shah, Addl:P.G. for the appellant / State.
None present for respondent.

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Respondent/accused Anwar Ali s/o Gul Muhammad by caste Sheikh was tried by the learned Special Judge for CNS, Hyderabad in Special Case No.14 of 2005 for the offence u/s 9 (c) of CNS Act, 1997. By judgment dated 20.08.2007, the respondent/accused was acquitted of the charge by extending him benefit of doubt. Hence the instant Criminal Acquittal Appeal filed by the State.

2. Notices as well as BWs were issued to the respondent but despite issuance notices and BWs, none appeared.

3. We have heard Syed Meeral Shah, Additional Prosecutor General Sindh and examined the entire evidence available on record.

4. Learned A.P.G. appearing on behalf of the State argued that the trial court has acquitted the respondent / accused on minor contradictions and did not appreciate the evidence in accordance with the settled principles of law.

5. We have perused the prosecution evidence and impugned judgment passed by the trial court dated 20.08.2007. The relevant portion whereof is reproduced hereunder:-

> ***"<u>POINT NO.1.</u>***
> ***11. On the above point as mentioned above, the 2 official witnesses named above were examined. Their evidence is almost on material points i.e. on arrest and recovery of the incriminating substance from each of 20 slabs. The contradictions in their statement is on the scriber of the FIR and the mashirnama. However, this contradiction is not of vital nature and of no effect. Notwithstanding this, the material lacuna in the case of the prosecution is that no evidence was brought on the point that the 20 samples which were said to have been separated from the incriminating substance allegedly recovered from the hand bag of the accused, were sent to the Chemical Examiner and the report Ex.7-C is in respect thereof. The best evidence in this regard could be the wrappers in which these samples were wrapped and sealed which were said to have been signed by the complainant and the 2 witnesses before sending to the Chemical Examiner, therefore after examination of these samples by the Chemical Examiner, the must have been sent to back to the SHO concerned who was bound to produce the same before this Court and to depose that these were the same wrappers which were signed by him and the mashirs. In that case, only the Court could held that the same contents which were separated from the incriminating substance recovered from the bag of the accused were examined by the Chemical Examiner. No explanation for that default has been submitted by the prosecution, therefore, this Court is unable t o decide that the incriminating substance recovered from the bag of the accused was narcotic/charas. Mere fact that the report EX.7-E shows that 20 samples were sent to the Chemical Examiner bearing No.1/1 to 5/4 does not ipsofacto proves this, until and unless the wrappers in which the contents were found are brought before the Court, therefore, the evidence produced by the prosecution is not sufficient to hold that the accused was found in possession of the narcotic.***
>
> ***It is the settled principle in criminal dispensation of justice that if a reasonable doubt appears in the mind of the Court, the benefit of that doubt must go to the accused not as a matter of grace but as a matter of right and in this regard, such rule laid down by the Honourable Supreme Court in case of Tarique Pervez Vs. the State reported in 1995 SCMR-1345 can be referred and the relevant observation of the Honourable Supreme Court is reproduced hereunder:-***
>
> ***"For giving benefit of doubt to an accused it is not necessary that there should be many circumstances***

creating doubts. If a simple circumstance creates doubt in a prudent mind about the guilt of accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right."

12. The upshot of the above discussion is that the prosecution has failed to prove that the accused was found in possession of the narcotic, therefore this point is decided in negative.

<u>POINT NO.2.</u>

13. On account of the findings on point No.1 I hold that the prosecution has failed to prove that the accused has committed any offence and therefore, this point is also decided accordingly.

14. The upshot of the above discussion is that the prosecution has miserably failed to prove case against the accused, therefore, he is entitled to be acquitted U/S 265-H(i) Cr.P.C. Order accordingly. The accused is present in custody, he should be released forthwith in this case."

6. We have come to the conclusion that trial court has assigned sound reasons while acquitting the accused. Learned A.P.G. could not satisfy the court about the safe custody of narcotics at Malkhana so also the safe transit. He also could not explain the discrepancies with regard to the sample sent by the police to the chemical examiner. In this regard reference can be made to the case of *IKRAMULLAH & OTHERS V/S. THE STATE (2015 SCMR 1002), the relevant portion is reproduced hereunder:-*

> *"*5. In the case in hand not only the report submitted by the Chemical Examiner was legally laconic but safe custody of the recovered substance as well as safe transmission of the separated samples to the office of the Chemical Examiner had also not been established by the prosecution. It is not disputed that the investigating officer appearing before the learned trial court had failed to even to mention the name of the police official who had taken the samples to the office of the Chemical Examiner and admittedly no such police official had been produced before the learned trial Court to depose about safe custody of the samples entrusted to him for being deposited in the office of the Chemical Examiner. In this view of the matter the prosecution had not been able to establish that after the alleged recovery the substance so recovered was either kept in safe custody or that the samples taken from the recovered substance had safely been transmitted to the office of the Chemical Examiner

without the same being tampered with or replaced while in transit."

7. It is settled law that judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous as held by the Honourable Supreme Court in the case of The State v. Abdul Khaliq and others (PLD 2011 Supreme Court 554). Moreover, the scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of the innocence is significantly added to the cordinal rule of criminal jurisprudence as the accused shall be presumed to be innocent until proved guilty. In other words, the presumption of innocence is doubled as held by the Honourable Supreme Court of Pakistan in the above referred judgment. The relevant para is reproduced hereunder:-

"16. We have heard this case at a considerable length stretching on quite a number of dates, and with the able assistance of the learned counsel for the parties, have thoroughly scanned every material piece of evidence available on the record; an exercise primarily necessitated with reference to the conviction appeal, and also to ascertain if the conclusions of the Courts below are against the evidence on the record and/or in violation of the law. In any event, before embarking upon scrutiny of the various pleas of law and fact raised from both the sides, it may be mentioned that both the learned counsel agreed that the criteria of interference in the judgment against ' acquittal is not the same, as against cases involving a conviction. In this behalf, it shall be relevant to mention that the following precedents provide a fair, settled and consistent view of the superior Courts about the rules which should be followed in such cases; the dicta are:

Bashir Ahmad v. Fida Hussain and 3 others (2010 SCMR 495), Noor Mali Khan v. Mir Shah Jehan and another (2005 PCr.LJ 352), Imtiaz Asad v. Zain-ul-Abidin and another (2005 PCr.LJ 393), Rashid Ahmed v. Muhammad Nawaz and others (2006 SCMR 1152), Barkat Ali v. Shaukat Ali and others (2004 SCMR 249), Mulazim Hussain v. The State and another (2010 PCr.LJ 926), Muhammad Tasweer v. Hafiz Zulkarnain and 2 others (PLD 2009 SC 53), Farhat Azeem v. Asmat ullah and 6 others (2008 SCMR 1285), Rehmat Shah and 2 others v. Amir Gul and 3 others (1995 SCMR 139), The State v. Muhammad Sharif and 3 others (1995 SCMR 635), Ayaz Ahmed and another v. Dr. Nazir Ahmed and another (2003 PCr.LJ 1935), Muhammad Aslam v. Muhammad Zafar and 2 others (PLD 1992 SC 1), Allah Bakhsh and another v. Ghulam Rasool and 4 others (1999 SCMR 223), Najaf Saleem v. Lady Dr. Tasneem and others (2004 YLR 407), Agha Wazir Abbas and others v. The State and others (2005 SCMR 1175), Mukhtar Ahmed v. The State (1994 SCMR 2311), Rahimullah Jan v. Kashif and another (PLD 2008 SC 298),

2004 SCMR 249, Khan v. Sajjad and 2 others (2004 SCMR 215), Shafique Ahmad v. Muhammad Ramzan and another (1995 SCMR 855), The State v. Abdul Ghaffar (1996 SCMR 678) and Mst. Saira Bibi v. Muhammad Asif and others (2009 SCMR 946).

From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced that the scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. It has been categorically held in a plethora of judgments that interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the re-appraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities. It is averred in The State v. Muhammad Sharif (1995 SCMR 635) and Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals."

8. For the above stated reasons, there is no merit in the appeal against acquittal. Acquittal recorded by trial Court in favour of respondent/accused is based upon sound reasons, which require no interference at all. As such, the appeal against acquittal is without merit and the same is dismissed.

JUDGE

JUDGE