

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

1. Cr.Acquittal.Appeal.No.D- 147 of 2003
2. Cr.Acquittal.Appeal.No.D- 148 of 2003
3. Cr.Acquittal.Appeal.No.D- 149 of 2003
4. Cr.Acquittal.Appeal.No.D- 150 of 2003
5. Cr.Acquittal.Appeal.No.D- 151 of 2003
6. Cr.Acquittal.Appeal.No.D- 152 of 2003
7. Cr.Acquittal.Appeal.No.D- 33 of 2004
8. Cr.Acquittal.Appeal.No.D- 34 of 2004
9. Cr.Acquittal.Appeal.No.D- 35 of 2004
10. Cr.Acquittal.Appeal.No.D- 36 of 2004
11. Cr.Acquittal.Appeal.No.D- 37 of 2004
12. Cr.Acquittal.Appeal.No.D- 38 of 2004

Present:-

Mr. Justice Naimatullah Phulpoto.

Mr. Justice Mohammad Karim Khan Aga.

Date of hearing: 17.05.2017.
Date of judgment: 17.05.2017.

Syed Meeral Shah, D.P.G. for the appellant / State.
M/s Hidayatullah Abbasi and Ayaz Hussain Tunio,
Advocates for respondents.

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Respondents/accused 1. Dr. Qadir Bux Mangsi, 2.Gulab Khan @ Madad Ali, 3.Dr. Muhammad Dawood, 4.Bashir Ahmed, 5.Ahmed Khan, 6.Ghulam Hyder, 7.Dr. Qadeer, 8.Gul Hassan, 9.Dr. Ghulam Muhammad, 10.Hidayatullah, 11.Dr. Hamayoon, 12.Ghulam Sarwar, 13.Abdullah s/o Habibullah Memon, 14.Mehboob Ali, 15.Karim Bux Leghari, 16.Abdul Hameed, 17.Muhammad Qassim, 18.Hassan Chandio, 19.Mazhar Ali, 20.Nawab, 21.Dr. Abdul Azeem, 22.Shaman, 23.Abdullahs/o Muhammad Bilal Memon, 24.Ahsan Ali, 25.Muhammad Hashim, 26.Noor Jan, 27.Amir Bux, 28. Jan Muhammad, 29.Ghulam Rasool, 30. Shafi Muhammad, 31.Sahib Khan, 32.Dadan,

33.Laiq, 34.Mastoo, 35.Hakim, 36.Ali Gohar, 37.Munawar Ali, 38.Asif, 39.Deedar, 40.Khadim, and 41.Ashique were tried by the learned Vth Additional Sessions Judge Hyderabad in Sessions Cases No. 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 278, 248, 249, 250 and 251 of 2000 for offences u/s 302, 307, 148, 149, 120-B, 114, 201, 202, 216-A, 436, 427, 220, 109 PPC. During pendency of cases, application u/s 265-K Cr.P.C. was moved on behalf of accused persons for pre-mature acquittal. Trial Court heard learned counsel for the parties. By order dated 25.07.2003, the respondents/accused were acquitted u/s 265-K Cr.P.C. while holding that there was no probability of the conviction of the accused.

2. Appeals against acquittal were filed by the State through their Advocate General Sindh Hyderabad Sindh and the Public Prosecutor. The notices were issued to the respondents by this court vide order dated 04.09.2013. It appears that on 05.09.2007 the Assistant A.G. requested for time to prepare the case. Notices have been issued to the respondents / accused and intimation notices to their counsels.

3. We have carefully heard Syed Meeral Shah, Deputy Prosecutor General Sindh and M/s Hidayatullah Abbasi and Ayaz Hussain Tunio, Advocates for respondents.

4. Learned D.P.G. argued that there was sufficient evidence against the accused for recording the conviction and trial court acquitted accused without assigning cogent reasons. However learned D.P.G. after going through prosecution evidence stated that PWs had not supported the case of prosecution.

5. M/s Hidayatullah Abbasi and Ayaz Hussain Tunio, Advocates for respondents argued that 192 witnesses were examined before the trial

court. None of them supported the case of prosecution. It is further argued that the trial court for the sound reasons had acquitted the respondents and appeals are without merit.

6. We have perused the prosecution evidence and impugned order passed by the trial court dated 25.07.2003. The relevant portion whereof is reproduced hereunder:-

“As regards the acquittal of the accused under Section 265-K Cr.P.C. before the charge, as pointed out by the learned DDA is concerned, it has been held in PLD 1997 S.C. 275 by their Lordships that acquittal of the accused under Section 249-A and 265-K Cr.P.C. can be ordered at any stage and expression “At any stage” used in Sections 249-A and 265-K Cr.P.C. indicates that any such stage can either be the very initial stage after taking cognizance, or middle stage after the recording some proceedings or even a later stage.

In this connection it is observed that initially the cases were challaned in the Sessions Court Hyderabad but subsequently the same were transferred to the S.T.A. Court Hyd: and thereafter R & Ps were sent to the Special Court No.1 at Karachi. After examination of about 192 witnesses, cases were transferred to the Court of Sessions Hyderabad treating them as STA cases. Subsequently, it was ordered by the learned Sessions Judge that these cases are not falling within the ambit of STA, therefore, the challans were returned for submitting afresh, as such subsequently, police submitted challans and thereafter, cases were transferred to this Court, which relates to year 1988.

The accused are facing terror of trial since 1988 and cases have remained pending in different Courts either at Hyd: or Karachi. As mentioned above confessions of the some accused whose names are given above, can not be made basis for conviction of remaining accused. Though from the record and orders of the Honourable High Court of Sindh Karachi, it appears that Magistrate who recorded confessions were examined before the STA Courts and they also not supported the cases and confessions have been retracted by the accused by way of cross as well as through different applications, but record of the evidence is not available before this court, therefore, I order that cases to proceed against only accused Abdullah s/o Habibullah Memon, Gulab Khan alias Madad Ali, Ghulam Sarwar, Muhammad Hashim, Mazhar Ali, Dr. Abdul Hameed, Karim Bux and Ahsan. The remaining accused mentioned above are hereby acquitted under Section 265-K Cr.P.C. as there is no probability of their conviction even, if the witnesses are called and examined.”

7. We have come to the conclusion that trial court has assigned sound reasons while acquitting the accused persons u/s 265-K Cr.P.C. It is admitted fact that 192 PWs were examined by the prosecution and they had not supported the case of prosecution. 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 appeals against acquittal. Acquittal recorded by trial Court in favour of respondents /accused is based upon the sound reasons, which require no interference at all. As such, the appeals against acquittal are without merit and the same are dismissed.

JUDGE

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