

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

Cr. Acquittal Appeal No.S-20 of 2018

Appellant: Nazeer Soomro
Through Mr. Rafique Ahmed Abro, Advocate

Respondent(s): Khursheed Ahmed and others
Nemo for respondents.

The State: Through Raja Imtiaz Ali Solangi, A.P.G.

Date of Hearing: 11.06.2018

Date of Decision: 11.06.2018

JUDGMENT

KHADIM HUSSAIN TUNIO, J.- This Criminal appeal is directed against the judgment, dated 07.04.2018 passed in Direct Complaint No.66 of 2015 arisen out of FIR No. 155/2013 registered at P.S. A-Section Thul for offence under sections 302, 114, 337-H(2) and 34 PPC, whereby the learned Additional Sessions Judge-II, allowed the application under section 265-K Cr.P.C. and acquitted Respondents No. 1 to 30. The appellant preferred this appeal and prays that the impugned judgment may be set-aside.

2. Brief facts leading to filing of the appeal are that on 18.12.2013 the respondent Mohammad Murad Soomro lodged FIR bearing crime No.155/2013 at PS A-Section Thul against the murder of his brother and falsely involved accused Guhram, Abdul Hakeem, Lal Bux and Ubedullah, the relative of complainant and his witnesses, therefore due to fear the accused and witnesses along with their family members left their house for the complainant to look after. At 4:00 PM, all the accused duly armed with fatal weapons i.e. KKs, Rifles, T.T Pistols, spades, chisels and 'belchas' in 4 tractors arrived at the house of complainant with intentions to avenge. The accused loaded all furniture, appliances, ornaments and other valuables of total worth Rs.1,007,500 and vandalized the house. The complainant resisted on which he was told to remain silent otherwise he would be

murdered in vengeance of the murder of deceased Mohammad Anees. The complainant approached police station A-Section Thul to register FIR, but the in-charge kept them on false hopes upon the intimidation of the accused. Thereafter the complainant party filed application under sections 22-A, 22-B Cr.P.C. before learned Sessions Judge, Jacobabad which was transferred to learned 2nd Additional Sessions Judge, Jacobabad who dismissed the same and thereafter the complainant filed Criminal Misc. Application No. S-166/2014 Honourable High Court of Sindh, Circuit Court Larkana against the order passed by learned 2nd Additional Sessions Judge, Jacobabad and on 27.10.2017, the order was passed that the complainant is at liberty to file direct complaint against the accused.

3. After filing of the criminal complaint, statement u/s 202 Cr.P.C of the complainant was recorded and 1st Civil Judge & Judicial Magistrate Jacobabad was directed to conduct preliminary inquiry and recording of the statements of the witnesses. During preliminary inquiry, in all 4 witnesses namely Bashir Ahmed, Mushtaque Ahmed, Noor Ahmed and Asadullah were recorded. Thereafter complaint was brought on the regular file. During pendency of complaint, respondent/accused filed an application u/s 265-K Cr.P.C for their acquittal on the ground that charge is groundless and there is no probability of accused being convicted in any of the offence, after hearing the learned DDPP for State and the respondent/accused, application u/s 265-K Cr.P.C was allowed and respondent/accused were acquitted vide order dated 07.04.2018.

4. Mr. Rafique Ahmed Abro, learned counsel for the appellant argued that the appellant and his witnesses during the course of preliminary inquiry have implicated all respondents in commission of offence and prima facie case was made out against them; that the learned Judge without considering the material available on record has allowed the application under section 265-K Cr.P.C; that the learned trial Judge has not given due attention to the material available on record; that the instant case requires full-fledged trial; that respondents have committed a heinous offence and the police has favoured the respondents since the beginning; that this case is based on probability of conviction of the accused.

5. On the other hand, learned APG for State has fully supported the impugned judgment.

6. The learned Court while recording acquittal of the respondents observed as under:-

“Perusal of record appears that, the complainant Nazeer Ahmed and appellant/accused are residing in one and same village Tolo Maari taluka Thul. Perusal of record shows that, all the applicants/accused are close relatives to each other being one family members. Record further transpires that, the applicant/accused No.04 Muhammad Murad had already lodged FIR bearing Crime No. 155/2013 at PS-A Section Thul for offence punishable under section 302, 114, 337-H (2), 32 PPC for the murder of his brother Muhammad Anees. Record further reveals that, applicant/accused No.04 Muhammad Murad had also registered the case bearing crime No. 159/2013 at PS-A Section Thul against the complainant party of this case. Record also reveals that applicant/accused No.13 Ali Gohar had also registered the case bearing crime No.123/2013 at PS-A Section Thul against the complainant party of this case, in which complainant Nazeer Ahmed is one of the accused.

Record further reveals that, witness Mehran of this direct complaint is also an accused in case bearing crime No. 123/2013 and in crime No. 141/2006 at PS Thul, the witness Noor Ahmed of this direct complaint is also an accused in crime No. 123/2013, the witness Assadullah of this direct complaint is an accused in crime No. 123/2013 so also witness Shair Ahmed of this direct complaint is an accused in said crime, all these case have been lodged from the side of applicants/accused against the complainant party of this case. Record further appears that, there is admitted old enmity between the parties and the complainant has involved huge numbers of accused in flimsy manner and has involved the applicants/accused.

It is surprising to note that, the huge quantity about 2000 mounds paddy Irri-6, 3000 mounds of paddy super, 200 mounds of wood, including 03 fridges, 05 large size boxes, 30 iron griders, 60 iron tears, 02 water pump machines, 01 grass cutting machines with motor, 10 ceiling fans, 05 pedestal fans and other house hold articles would be carried out by these applicants/accused in the tractor trolleys, but there was not any single private witness was available on the spot for the whole episode. It is surprising to note that, both parties are residing in one and same village and accused persons belongs to one and same family members and have committed the dacoity of

complainant party. The applicants/accused party have registered many cases against complainant party of murder and others offences, so it could be presumed that, complainant party due to create pressure upon the applicants/accused party for withdrawal of cases, filed this direct complaint.”

7. Perusal of record transpires that the applicant/complainant has not disclosed the survey number and area of the land from where respondent/accused took away paddy-grainweighing 3000 mounds. The complainant has also not disclosed the colour and company of ceiling fans, pedestal fans, iron girders and iron tears, water pump machine, grass cutting machine, refrigerators, household articles and particular weight of gold ornaments in the complaint as well as in his statement under section 200 Cr.P.C. Perusal of record further shows that the applicant has not disclosed the colour, company and registration numbers of the tractors on whose trolleys on which the respondents allegedly took away the articles. Perusal of record further shows that the PWs have exaggerated the facts and made improvements in their statements recorded in Sindhi verbatim during preliminary inquiry and given altogether version from the version of the complainant. There are material contradictions/discrepancies in the evidence of the complainant and witnesses. Perusal of evidence also shows that there are general allegations against the respondent/accused and no specific role is assigned to the respondents. Enmity is admitted by the complainant in his complaint and statement which is double-edged sword and cuts both sides. The complainant party is already booked by the respondent Muhammad Murad in case bearing FIR No. 159/2013 registered at Police Station A-Section Thul. Respondent/accused Ali Gohar lodged FIR No.123/2013 which is registered at PS-A-Section Thul against complainant Nazeer Ahmed Soomro, witness Mehran and Shabeer Ahmed. Witness Noor Ahmed is accused in case bearing FIR No. 18/2013. More so the complainant party has not disclosed the area, boundaries and descriptions of the house allegedly demolished by the respondent/accused.

8. It is now well-settled principle of law that the consideration for deciding of a criminal appeal against acquittal is quite different from that of a criminal appeal against conviction as in the former case presumption of double innocence of the accused is available in the case, and the superior Courts act slowly in interfering with an order of acquittal, unless grounds for acquittal are perverse, wholly illogical or unreasonable. In the case of *State/Government of Sindh through Advocate General Sindh, Karachi versus Sobharo (1993 SCMR 585)*, honourable Supreme Court has laid down the principle that in the case of appeal against acquittal while evaluation the evidence distinction is to be made in appeal

against conviction and appeal against acquittal. Interference in the latter case is to be made when there is only gross misreading of evidence, resulting in miscarriage of justice. In the case in hand, the impugned judgment, in our considered view, does not suffer from any infirmities.

9. Suffice it to say that the order of acquittal passed by the trial Court which is based on correct appreciation of evidence will not warrant inference in appeal. Honourable Supreme court while dealing with the appeal against acquittal has been pleased to lay down the principle in the case of *Muhammad Shafi vs. Muhammad Raza & another (2008 SCMR 329)* as under:-

“An accused is presumed to be innocent in law and if after regular trial he is acquitted, he earns a 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, we are therefore, of the view that the prosecution has failed to discharge the onus and the finding of acquittal is neither arbitrary nor capricious to warrant interference.”

10. It is settled law that while examining the facts in the order of acquittal, substantial weight should be given to the findings of the Courts below, whereby accused were exonerated from the commission of crime as held by the Apex Court in the case of *Muhammad Ijaz Ahmed v. Fahim Afzal (2010 SCMR 491)* and *Jehangir v. Aminullah and others (2010 SCMR 491)*.

11. In view of the above discussion, I am of the humble opinion that there is hardly any improbability or infirmity in the impugned order of acquittal recorded by the learned trial Court, which being based on sound and cogent reasons does not warrant any interference by this court and is accordingly maintained. Resultantly, present criminal acquittal appeal having no merits for consideration was dismissed by short-order dated 11.06.2018.

These are the reasons for the same.

J U D G E