

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

Cr. Acquittal Appeal No.S-39 of 2017

Appellant: Abdul Ghafoor Jatoi
through Mr. Habibullah G. Ghouri

Respondent(s): Khalid Hussain Bhayo and others
Nemo for Respondents

The State: Mr. Raja Imtiaz Solangi, APG.

Date of Hearing: 29.06.2018

Date of Decision: 29.06.2018

JUDGMENT

KHADIM HUSSAIN TUNIO, J.-This Criminal appeal is directed against the judgment, dated 29.05.2017 passed by learned 3rd Additional Sessions Judge, Shikarpur arisen out of crime No. 61 of 2016, registered at P.S. Stuart Ganj, for offence under sections 395, 337-A(ii) and 215 PPC, whereby the learned 3rd Additional Sessions Judge, Shikarpur, acquitted the respondents No.1 to 5. The appellant preferred this appeal and prays that the impugned judgment may be set-aside.

2. Brief facts leading to the filing of the appeal are that on 23.06.2016 the complainant party proceeded to Sultankot. While returning back on their motorcycle when they reached at Garhi Mour at about 1500 hours, they spotted five persons on two motorcycles approaching them. The accused stopped the complainant party and withdrew their pistols and ordered them to leave, upon which the complainant resisted and the accused slapped him, took Rs.5,000 and a cellphone from him front pocket, accused Asghar forcefully took Rs.2,000 and a cell phone from the pocket of Wahid while accused Razzak took Rs.1,000 and a cell phone from the front pocket of Waseem. They directed the complainant party to leave the bike and upon their refusal they assaulted them with butt of TT pistols, fists and blows and fled away. The next day Hafeez Memon approached the complainant and demanded Rs.20,000 extortion money to return their robbed articles and upon payment he assured the complaint that they will receive their robbed possessions back, but the articles were not returned, hence the FIR.

3. After usual investigation, police submitted the challan against the respondents No.1 to 5, who were formally charged by the trial Court, to which they pleaded not guilty and claimed for trial. During trial in all 4 witnesses were examined namely complainant/PW-1Abdul Ghafoor Jatoi, PW-2 Muhammad Waseem, PW-3 Abdul Sattar and PW-5 Dr. Khadim Hussain. Finally the prosecution closed its side by filing statement at Ex.17.

4. Mr. Habibullah G. Ghouri, learned counsel for the appellants argued that the prosecution has proved its case against the respondents; that the accused were nominated in the FIR with a specific role of commission of robbery of cash, cellphones, motorcycles and also assaulting the complainant party in the process; that there is no reason for the complainant to falsely accuse the respondents/accused for the commission of offence; that as far as the alleged dispute between appellants and accused, the enmity could be the motive for commission of offence and vice-versa.

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

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

“From the contents of FIR, the allegations by the complainant that accused persons have snatched one Mobile phone from his pocket, but he has omitted to disclose the sim number, descriptions of mobile and the value of mobile which shows that he had no such mobile available with him, else he had necessarily disclosed the sim number of the mobile. It is also matter of fact that though I.O had concluded the investigation in “B” class, but neither complainant nor any witness had approached the superior officer of police department for complaint against I.O or claimed that I.O had not investigated the matter in true manner

It is also matter of record that complainant actively concealed the material facts that he had a previous dispute with the accused persons on plot and he had filed civil proceedings against the accused party which were dismissed by the concerned civil courts and this fact firstly was brought into knowledge by the accused party during cross-examination. I am unable to understand as to why this material fact was concealed which prima-facie shows that complainant had tried to twist the facts by concocting the story to lodge vexatious proceedings against accused party.

From bare reading of the contents of proposed Fir the FIR deposition before this Court which appears totally different on the material particulars i.e. time of incident, manner of incident and the version of the complainant in corroborating with previous versions also not matching to each other. Besides that it speaks volume of malafide, ill will and motive of the complainant. In such circumstances, it cannot be said that prosecution has proved any case. Besides that from perusal of statement of complainant U/S 154 Cr.P.C recorded by the police before lodging FIR, he has disclosed the names of some accused persons without disclosing their proper addresses and the fact that they are in possessions of plot on which already dispute is going-on with the complainant party which against shows malafide of complainant and the motive to implicate the accused persons in vexatious proceedings.

From the perusal of evidence of the injured witness, it appears that he had not deposed a single word regarding happening of dacoity, snatching of any article or cash by specifying the description from the complainant party. Besides that he has deposed that his grandfather called him before this court as a witness. Moreover, he admitted that his blood-stained clothes were not given to the police. He also admitted that there is a previous dispute with the accused party on a plot with my grandfather. He also admitted that there were already cases in between the parties which he had concealed by the complainant which against shows that complainant had used influence upon witness to depose before the Court and state which otherwise have been concocted by the complainant party to drag the accused persons in vexatious proceedings, hence in my opinion complainant shall be taken with iron hands, hence he is put at show-cause U/S 250 Cr.P.C to explain his position as to why he shall not be imposed cost for each accused for lodging such vexatious proceedings against the accused persons.

From the appreciation of evidence, it appears that the complainant version is consistent to his own version before police at initial stage and subsequent stage and at the time of loading FIR. Besides that PW/injured witness had also not supported the complainant, so also the evidence of mashirs is also not consistent with material aspects of the case with the version of complainant,”

7. On close consideration of the submission made by the learned counsel of the parties and perusal of the record, I have come to the

conclusion that the impugned judgment is well reasoned and well discussed and found no occasion to interfere in it. It is necessary to clarify that the appeal against acquittal has distinctive features and the approached deal with the appeal against conviction is entirely distinguishable from the appeal against acquittal. Further, judgment of acquittal can only be interfered if it is found on its face to be capricious, perverse, and arbitrary in nature or based on misreading, non-reading, non-appraisal of evidence or is artificial and leads to gross miscarriage of justice. It would be necessary to observe that in order/judgment of acquittal gives rise to strong presumption of innocence. 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 (1998 SCMR 1281)* and *Jehangir v. Aminullah and others (2010 SCMR 491)*. The acquittal would be unquestionable when it could be said that acquittal was either perverse or that acquittal judgment was improper or incorrect as it is settled that whenever there is doubt about guilt of accused, its benefit must go to him and Court would never come to the rescue of prosecution to fill-up the lacuna appearing in evidence of prosecution case as it would be against established principles of dispensation of criminal justice.

8. Suffice it to say that when an accused is acquitted from the charge by court of competent jurisdiction, then, it is well established principle of law that double presumption of innocence will remain attached with the judgment of acquittal, therefore, said judgment cannot be interfered unless it is proved that same is arbitrary, shocking, capricious, fanciful and against the settled principles of criminal administration of justice. In this respect, reliance may respectfully be placed on case of *State/Government of Sindh through Advocate General, Sindh, Karachi v. Sobharo (1993 SCMR 585)*.

9. Keeping in view of the above position, discussion and circumstances, appellant has failed to make out case to interfere with the impugned judgment, therefore, criminal acquittal appeal was dismissed by short order dated 29.06.2018.

These are the reasons for the same.

J U D G E