

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Acquittal Appeal No.S- 212 of 2017

Hearing of Case

- 1.For orders on office objection.
- 2.For orders on MA 12094/17.
- 3.For hearing of main case.

Mr. Saeed Ahmed Chachar Advocate for PW so also Brother/Legal Heir of Appellant/Complainant.

Mr. Allah Bux Gabol Advocate for Respondents No.1 to 3.

Mr. Khalil Ahmed Maitlo, Deputy P.G for the State.

Date of Hearing: **08-02-2021**

Date of Judgment: **08-02-2021**

J U D G M E N T

AFTAB AHMED GORAR J. Respondents / accused Meer Muhammad alias Meer, Ghulam Sarwar and Arbab alias Khairo were tried by learned 4th Additional Sessions Judge, Mirpur Mathelo in Sessions Case No.160 of 2016, arising out of Crime No.04 of 2016, registered with P.S, Yaro Lund, for offences under Sections 459, 457 & 380 PPC.

2. The case of the prosecution, in nutshell, is that on 12.01.2016 at about 2300 hours, in the house of complainant, situated in Deh Khirohi, private respondents/accused in association with two unidentified culprits, duly armed with hatchet, Kalashnikov, Lathi and guns committed lurking house trespass and attempted to commit *Qatl-i-Amd* by causing injuries to PWs Ahmed Deen, son of complainant and Mst.Gullan, daughter-in-law of complainant and also committed theft of hard cash of Rs.50,000/-, 12 pairs of golden ear rings, weighing two

tolas, one gold Popo weighing half tola, silver leg bangles 60 tolas from the house of complainant. Consequently, above FIR was lodged on 12.02.2016.

3. Charge was framed against accused, to which they pleaded 'not guilty' and claimed to be tried. Thereafter, prosecution led the evidence of prosecution witnesses and statements of accused / respondents were recorded in terms of Section 342 Cr.P.C and then on the assessment of evidence available on record and hearing the learned counsel for the parties, learned trial Court acquitted the accused / respondents vide impugned judgment dated 17.11.2017.

4. The PW so also Brother/Legal Heir of Appellant/Complainant being dissatisfied with the acquittal of the accused has filed this CrI. Acquittal Appeal.

5. Learned counsel appearing for PW so also Brother/Legal Heir of Appellant/Complainant argued that there was sufficient evidence connecting the private respondents with the commission of offence, but the learned trial Court illegally acquitted them of the charge; that respondents failed to create any dent in the prosecution case but even then the trial Court illegally, unlawfully and without any justifiable reason acquitted them of the charge and while acquitting the respondents, the trial Court has failed to record any cogent reason.

6. On the other hand, learned counsel appearing on behalf of private respondents as well as learned Deputy P.G supported the impugned judgment and argued that sufficient material was available on record creating reasonable shadow of doubt and by giving them such benefit, respondents / accused have been rightly acquitted by learned trial Court.

7. I have considered the arguments advanced by learned counsel for PW so also Brother/Legal Heir of Appellant/Complainant, learned counsel for private respondents as well as learned Deputy P.G so also perused the entire material available on record and have reached to a conclusion that the respondents / accused have rightly been acquitted by the learned trial Court for the reasons that admittedly the FIR is belated by one month, for which no plausible explanation has been furnished by the complainant, as such element of consultation and deliberation could not be ruled out. It is a matter of fact that accused persons were identified on the light of bulbs, which is always treated as a weakest type of evidence. Even in the Mashirnama of place of occurrence, it was nowhere mentioned as to whether the electricity bulbs were fixed there and the same were lightening or not.

8. Moreover, another important aspect of the case is that alleged offence took place on 12.01.2016 at 2330 hours, but the Medical Officer in his evidence has clearly disclosed that injured arrived at hospital on 13.08.2016 at 12.00 Noon and the probable duration of injuries was about one or two hours and the injuries were fresh, as such it has

rightly been held by learned trial Court that incident had not taken place at night time and/or in the manner, as alleged by the complainant and PWs.

9. Besides, there are certain other discrepancies and infirmities in the prosecution case so also glaring contradictions in the evidence of complainant and PWs on material points including reaching of injured to hospital, which have been rightly discussed and considered by the learned trial Court while acquitting the accused being fatal to the prosecution. Therefore, in such circumstances, reasonable doubt has been created by the present respondents in prudent mind and its benefit has rightly been extended to the respondents by the trial Court.

10. It is settled law that any acquittal order cannot be lightly interfered with by the Appellate Court, though it has wide powers to review the evidence and to come to its own conclusion. These powers must be exercised with care and caution because the presumption of innocence is further strengthened by the acquittal of an accused.

11. It is also settled law that ordinary scope of acquittal appeal is considerably narrow and limited and obvious approach for dealing with the appeal against the conviction would be different and should be distinguished from the appeal against acquittal because presumption of double innocence of accused is attached to the order of acquittal. In case of *Zaheer Din v. The State* **(1993 SCMR 1628)**.

following guiding principles have been laid down for deciding an acquittal appeal in a criminal case:

“However, notwithstanding the diversity of facts and circumstances of each case, amongst others, some of the important and consistently followed principles can be clearly visualized from the cited and other cases-law on, the question of setting aside an acquittal by this Court. They are as follows:--

(1) In an appeal against acquittal the Supreme Court would not on principle ordinarily interfere and instead would give due weight and consideration to the findings of Court acquitting the accused. This approach is slightly different than that in an appeal against conviction when leave is granted only for reappraisal of evidence which then is undertaken so as to see that benefit of every reasonable doubt should be extended to the accused. This difference of approach is mainly conditioned by the fact that the acquittal carries with it the two well accepted presumptions: One initial, that, till found guilty, the accused is innocent; and two that again after the trial a Court below confirmed the assumption of innocence.

(2) The acquittal will not carry the second presumption and will also thus lose the first one if on points having conclusive effect on the end result the Court below: (a) disregarded material evidence; (b) misread such evidence; (c) received such evidence illegally.

(3) In either case the well-known principles of reappraisal of evidence will have to be kept in view while examining the strength of the views expressed by the Court below. They will not be brushed aside lightly on mere assumptions keeping always in view that a departure from the normal principle must be necessitated by obligatory observations of some higher principle as noted above and for no other reason.

(4) The Court would not interfere with acquittal merely because on reappraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If however, the conclusion reached by that Court was such that no reasonable person would conceivably reach the same and was impossible then this Court would interfere in exceptional cases on overwhelming proof resulting in conclusion and irresistible conclusion; and that too with a view only to avoid grave miscarriage of justice and for no other purpose. The important test visualized in these cases, in this behalf was that the finding sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous. ”

12. In the judgment in the case of Zulfiqar Ali v. Imtiaz and others **(2019 SCMR 1315)**, Hon'ble Supreme Court has held as under:

“2. According to the autopsy report, deceased was brought dead through a police constable and there is nothing on the record to even obliquely suggest witnesses’ presence in the hospital; there is no medico legal report to postulate hypothesis of arrival in the hospital in injured condition. The witnesses claimed to have come across the deceased and the assailants per chance while they were on way to Chak No.504/GB. There is a reference to M/s Zahoor Ahmed and Ali Sher, strangers to the accused as well as the witnesses, who had first seen the deceased lying critically injured at the canal bank and it is on the record that they escorted the deceased to the hospital. Ali Sher was cited as a witness, however, given up by the complainant. These aspects of the case conjointly lead the learned Judge-in-Chamber to view the occurrence as being un-witnessed so as to extend benefit of the doubt consequent thereupon. View taken by the learned Judge is a possible view,

structured in evidence available on the record and as such not open to any legitimate exception. It is by now well-settled that acquittal once granted cannot be recalled merely on the possibility of a contra view. Unless, the impugned view is found on the fringes of impossibility, resulting into miscarriage of justice, freedom cannot be recalled. Criminal Appeal fails. Appeal dismissed.”

13. Learned counsel for the appellant / complainant has not been able to point out any serious flaw or infirmity in the impugned judgment. View taken by the learned trial Court is a possible view, structured in evidence available on record and as such not open to any legitimate exception. It is by now well settled that acquittal once granted cannot be recalled merely on the possibility of a contra view. Unless, impugned view is found on fringes of impossibility, resulting into miscarriage of justice, freedom cannot be recalled.

14. For the aforesaid reasons, this CrI. Acquittal Appeal is meritless; therefore, the same stands ***dismissed*** accordingly.

JUDGE