

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Acquittal Appeal No. S- 31 of 2012

Appellant/Complainant : Mukhtiar Ahmed Ghanghro through
Mr. Ghulam Shabbir Shar, Advocate

Respondent : Jamaluddin Kaladi, through Mr. Aijaz
Ahmed Naich Advocate

The State, through Mr. Aftab Ahmed Shar,
Additional Prosecution General

Date of hearing : 04.11.2019

Date of decision : 04.11.2019

JUDGMENT

Aftab Ahmed Gorar, J.- The appellant/complainant by way of instant Criminal Acquittal Appeal has impugned judgment dated 14.06.2010, passed by learned IInd Civil Judge and Judicial Magistrate Ghotki, whereby the private respondent has been acquitted of the offence, for which he was charged.

2. The facts of the prosecution case, in brief are that the appellant/complainant being Deputy Director, Sindh Seed Corporation lodged the FIR at Police Station Sarhad, stating therein that on 20.3.2010, he along with his Field Assistant Irshad Ahmed Kalhor and Farm Manager Qazi Abdul Hameed Haq left on Government vehicle for

visiting the Basic Feed Farm, situated in Deh Belo Sanghri, it was 5:00 pm, they found three Sheesham trees of Farm were cut and seven persons were standing there with tractor trolley loaded the logs thereon. Out of them, they identified the private respondent Jamaluddin Kaladi resident of adjacent to such Farm area, on seeing the complainant party all the accused persons made their escape good towards southern side leaving the loaded tractor trolley there, which was protected and as such FIR was lodged at Police Station.

3. At trial, the private respondent did not plead guilty to charge and the prosecution to prove it, examined PW-1 complainant Mukhtiar Ahmed; PW-2 Irshad Ali; PW-3 Hameedul Haq; PW-4 Anees Zarar; PW-5 ASI Azizullah; PW-6 ASI Muhammad Younis and then closed the side.

4. The private respondent during the course of his examination u/s 342 Cr.PC denied the prosecutions' allegation by pleading innocence by stating that he has been involved in this case falsely by the complainant party due to their personal grudge. He did not examine any one in his defence or himself on oath.

5. The learned trial Court on evaluation of evidence so produced by the prosecution acquitted the private respondent of the offence for which he was charged by way of impugned judgment, as stated above.

6. It is contended by learned counsel of the appellant/complainant that the prosecution has been able to prove its case against the private respondent beyond shadow of doubt by producing cogent evidence which has not been considered by learned trial Court without lawful justification; that there is recovery of the tractor trolley and the Sheesham cut trees from the possession of the private respondent, when he along with co-accused on seeing the appellant/complainant escaped away from the place of incident; that there is misreading and non-reading of the evidence by the learned trial Court, whereas, the contradictions mentioned in the impugned judgment are minor and are not sufficient for recording the acquittal; the evidence of the complainant and eye-witnesses is in line with each other, whereas, the learned trial Court has disbelieved their evidence. He lastly prayed that the impugned judgment is liable to be set-aside and the private respondent may be convicted in accordance with law.

7. Learned counsel for the private respondent and learned APG for the State by supporting the impugned judgment sought for dismissal of the instant criminal acquittal appeal by contending that the logs were belonging to one Rasool Bux and not to the government, whereas, the private respondent was involved by the complainant just to save their own skin; no recovery of the alleged Sheesham logs have been affected from the physical possession of the private respondent

nor the appellant/complainant has taken efforts to arrest the private respondent or any of his accomplices at the place of incident; that there is inordinate and unexplained delay of about 04 hours in lodgment of the FIR; that the impugned judgment passed by learned trial Court is proper and does not call for any interference by this Court; that the case was recommended to be disposed of under 'C' cancelled class, but on the direction of learned Magistrate the challan was submitted.

8. I have considered the arguments of learned counsel for the respective parties and perused the record. Admittedly, after registration of the FIR, the investigation was conducted and subsequently summary report was filed by the police and case was recommended for disposal under 'C' class but on the direction of concerned Magistrate the challan was submitted in the Court by the police. The complainant in his evidence has contracted his own version as setout in the FIR by admitting in his cross-examination that the private respondent was walking away, whereas, in the FIR he has stated that the private respondent and others on having seen them run away leaving the loaded trolley, whereas, in his evidence he has stated that one log was yet to be loaded. Further the PW Irshad Ali has also contracted the complainant by stating that out of 20 logs 14/15 were loaded and 5/6 were lying on the ground and the accused persons were running away

not walking. The third eyewitness of the incident has also contracted them on this account also. The PWs have also admitted in their evidence that the private respondent was tenant of the Farm. In such circumstances, the eyewitnesses have contradicted each other on each account of the alleged theft of the logs, therefore, their evidence in such scenario cannot be believed as trustworthy and confidence inspiring. So-far the recovery of logs is concerned, the IO/ASI Azizullah Waseer has stated in his evidence that during investigation one Rasool Bux moved an application to SSP Ghotki claiming to be the owner of the logs, whereupon such inquiry was ordered, whereas, upon enquiry the claim of said Rasool Bux was found to be correct and the logs were not found to be belonging to government, therefore, the said logs were released to said Rasool Bux Kaladi and the case was recommended to be disposed of under 'C' cancelled class. The IO has further admitted that at the time of visit he found such trees to be cut away very old and not fresh one and the circumferences of the trees were also not matching with the property recovered by ASI Younis Bullo from such tractor trolley. In that situation, the involvement of the private respondent in this case by the complainant party to save their own skin could not be overruled. In these circumstances, learned trial Court was right to record the acquittal of the private respondent by extending him benefit of doubt. In this regard, reliance is placed upon the case of **State and others vs. Abdul Khaliq and others**

(P L D 2011 SC-554), wherein it has been held by the Hon'ble Supreme Court 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. 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. Judgment of acquittal should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous. The Court of appeal should not interfere simply for the reason that on the reappraisal 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"*.

9. In view of the facts and reasons discussed above, it could be concluded safely that the impugned judgment is not calling for any interference by this Court by way of instant criminal acquittal appeal. It is dismissed accordingly.

Judge

ARBROHI