

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Acquittal Appeal No.S- 40 of 2014

Appellant/Complainant : Mailap Mal through
Mr. Miran Bux Shar, Advocate

Respondents : Deewan Mal, Jeso Mal, Ramesh
Kumar, Chandar Lal and Odhar Mal
through Mr. Niazuddin N.Memon,
Advocate

The State, through Mr. Khalil Ahmed Maitlo
Deputy Prosecution General

Date of hearing : 08.11.2019

Date of decision : 08.11.2019

JUDGMENT

AFTAB AHMED GORAR, J- The appellant/complainant by way of instant Criminal Acquittal Appeal has impugned judgment dated 08.5.2014, passed by learned IInd Civil Judge and Judicial Magistrate Mirwah, whereby the private respondents have been acquitted of the offence arising out of Crime No.73 of 2013 registered at Police Station Sorah, District Khairpur.

2. The facts of the prosecution case are that the private respondents used to ask the complainant for selling his residential house, but he refused. On 29.06.2012 he along with his wife Satan Bai and sons Suneel and Walee Ram were present in the

house, when at about 7:00 a.m there came private respondents Deewan Mal, with pistol, Jeeso Mal with Iron rod, Ramesh Kumar with lathi, Chandar Mal with Pistol and Odhar Mal. Out of them accused Chandermal hurled abuses and instigated other accused persons not to spare the complainant as he has refused to accept his offer for sale of the residential house to them; on which accused Deewan Mal caused butt blows of pistol to his wife Mst. Satan Bhai on her head and other parts of the body, who raised cries and fell down on the ground; the accused Chandar Mal dragged Satan Bhai from her neck and accused Jeeso Mal gave iron rod blows to Satan Bhai on her arms and neck. Thereafter the complainant filed Criminal Miscellaneous Application before the Court of Sessions Judge Khairpur and after getting order, lodged the instant FIR against the above named private respondents.

3. At trial, the private respondents did not plead guilty to charge and the prosecution to prove it, examined PW-1 complainant Meelap Mal, who produced FIR; PW-2 Injured Satan Bhai; PW-3 Mashir Parkash, who produced the mashirnama of injuries of injured and mashirnama of place of incident, PW-4 Medical Officer Dr. Hifiz-ur-Rehman, who produced letter and medical certificate and then closed the side.

4. The private respondents during the course of their examination u/s 342 Cr.PC denied the prosecutions' allegation by pleading innocence by stating that they have been involved in this case falsely by the complainant party as all the P.Ws are the wife and sons of the complainant. They did not examine any one in their defence or themselves on oath.

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

6. Learned Counsel for the appellant/complainant contended that the version of the complainant is fully supported by the PWs, although there are some minor contradictions in their evidence but that are not sufficient for discarding their entire version; that the injured Satan Bhai has sustained injuries on her head and other parts of the body; that the delay has been properly explained by the complainant as after the incident his FIR was not registered, therefore, he has approached the Court of learned Sessions Judge / Ex-Officio Justice of Peace Khairpur, hence after getting such order, he has lodged the FIR. He last prayed that the private respondents may be convicted in accordance with law.

7. Learned counsel for the private respondents contended that the prosecution has not been able to prove its case against the private respondents beyond shadow of doubt by producing cogent evidence; that the learned trial Court has rightly acquitted the private respondents; that there is inordinate and unexplained delay of about more than 20 days in lodgment of the FIR, which creates serious doubt in the prosecution case; that there are major contradictions in the evidence of the prosecution witnesses; that the medical officer has not produced the X-Ray plates of the injured, hence in such circumstances, the injuries caused to the injured Satan Bhai are also doubtful; that all the P.Ws are related inter se being father, wife and sons, hence they all are set up witnesses, therefore, their evidence cannot be believed as trustworthy and confidence inspiring; that there is no independent eye-witness of the alleged incident. He lastly prayed that the instant criminal acquittal appeal is liable to be dismissed.

8. Learned DPG for the State by supporting the impugned judgment also sought for dismissal of the instant criminal acquittal appeal.

9. I have considered the above arguments and perused the record. The very case on investigation was recommended by the police to

be cancelled under 'B' false class and such report under Section 173 Cr.P.C was accepted by the concerned Magistrate. The FIR of the incident has been lodged with delay of about 23 days without any plausible explanation such delay could not be overruled. In case of **Mehmood Ahmad & others vs. The State & another (1995 SCMR-127)**, it was observed by the Hon'ble Apex Court that;

“Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.

10. In the present case, complainant Mailap Mal, his wife injured Satan Bai and their two sons namely Suneel Kumar and Walee Ram are the eye witnesses of the alleged incident. No independent witness to the incident has been cited by the appellant/complainant. Parties admittedly are disputed over property. The complainant Mailap Mal in his evidence has stated that private respondent Jasoo Mal caused hot Iron blow on the arm of his wife injured Satan Bai, private respondent Deewan Mal caused butt blow of pistol on the head of his wife, whereas,

accused Chandar Mal extended abuses and put the rope in the neck of Satan Bai and dragged her on the earth. His version has been contradicted by PW Suneel Kumar, who is son of the complainant Mailap Mal and injured Satan Bai, who has stated that private respondent Jasoo armed with hot Iron rod, Ramoo and Odhar with lathies, Deewan with Pistol and Ramoo Mal with lathi, caused the injuries to his mother Satan Bai, as such there are two versions, one given by complainant Mailap Mal by stating the individual role of the private respondents, whereas, second by eyewitness Suneel Kumar by assigning the general role that all the private respondents conjointly caused injuries to his mother Satan Bai. Therefore, it cannot be ascertained that which injury is caused by which of the private respondents to the injured Satan Bai, hence the story as setout by the complainant seems to be concocted and managed one. Furthermore PW Suneel Kumar has not stated regarding putting the rope in the neck of Satan Bai by private respondent Chandar Mal as deposed by PW-1 complainant Mailap Mal. The star-witness of the incident namely injured Satan Bai has disclosed the names of five accused persons in her examination-in-chief by adding the name of Ramoo, whereas, neither the said Ramoo is shown in the FIR nor in the final charge

sheet. There are material contradictions in the evidence of the complainant and eyewitnesses including injured Satan Bai. In such circumstances, the trial Court was right to record acquittal of the private respondents by extending them benefit of doubt.

11. In case of **State and others vs. Abdul Khaliq and others (P L D 2011 SC-554)**, it has been held by the Hon'ble Apex 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”.

12. 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. Accordingly, the instant Criminal Acquittal Appeal is dismissed.

Judge