

**IN THE HIGH COURT OF SINDH,  
AT KARACHI**

**Cr. Acq. Appeal No. 241 of 2019**

**Present:**

Ahmed Ali M. Shaikh, CJ  
and Yousuf Ali Sayeed, J

Appellant : Syed Muhammad Farooq,  
through, Irfan Hassan Ansari,  
Advocate

Respondent Nos.1 to 4: Nemo

The State : Through Ali Haider Saleem, APG

Date of Hearing : 22.04.2021

**JUDGMENT**

**YOUSUF ALI SAYEED, J.** - The Appellant, who is the complainant of FIR No.292/2017 registered at PS Sukhan, Malir, Karachi (the “**FIR**”) under Sections 147/148/149/186, 353/384/385/386/337-H(II) 337-A(I) read with Section 512 of the Pakistan Penal Code, 1860 (the “**PPC**”) and Section 7 of the Anti-Terrorism Act, 1997 (the “**ATA**”), has preferred the captioned Appeal under Section 25(4A) of the ATA read with Section 417 (2A) Cr. P.C., impugning the Judgment entered by the Anti-Terrorism Court No. II, Karachi on 10.06.2019 in the ensuing Special Case, bearing No.1781 of 2017, resulting in the acquittal of the Respondent Nos. 1 to 4, namely Usman Ghani Paul, Shoaibuddin, Mohammad Siddique and Nooruddin.

2. As to the substance of the FIR, succinctly stated, the Complainant, who at the time was apparently a Senior Director, Veterinary Services in the Karachi Metropolitan Corporation (the “**KMC**”), *inter alia* provided information at about 0015 hours on 31.08.2017 that that vide a letter No.SDVS/PS/KMC/190 dated 02.08.2017, the KMC had

awarded a contract to one Khaaksar Ali (the “**Contractor**”) to operate a maweshi mandi (i.e. livestock/cattle market) at the ground of the Bhains Colony Slaughter House from 02.08.2017 up to 01.09.2017, and that on 28.8.2017 at about 1700 hours, the Contractor had informed him via telephone that the Respondent Nos. 1 to 3, namely Usman Nizami, Shoaibuddin and Muhammad Siddiq Himayati had come there along with other unknown persons, armed with weapons, and had engaged in aerial firing, maltreated his workers while stopping them from carrying on their activities, and forcibly taken away money from persons who had come to sell their cattle. It was stated that on receiving this information, the Complainant had telephonically apprised the KMC Recovery Officer, Muhammad Sohail, of the development and had then sent complaint to the IGP Sindh on 29.08.2017 as to their having stopped the work of the Contractor and to have forcibly money from the cattle sellers. As such, his case was stated as being against the accused persons for stopping the working of the contractor, maltreatment, aerial firing and forcible extraction of sums from the cattle sellers who were present.

3. After the usual investigation the police submitted the challan with the charge then being framed against all accused by the trial Court on 04.01.2018, to which they pleaded not guilty and claimed trial.
4. In an endeavor to prove its case, the prosecution examined several witnesses, including the Complainant (PW-1), Muhammad Sohail (PW-5), and the Contractor (PW-7), as well as some of the Contractor’s employees and certain other persons who had allegedly come to the mandi to sell their livestock.

5. After, the APG appearing on behalf of the State closed the side of the prosecution, the Statements of the accused under S.342 Cr. P.C were recorded, wherein they denied the allegations and professed their innocence, taking the plea that the slaughterhouse had been given to their company, namely Multex International Corporation, for a period of 15 years, as was still in subsistence and that they were embroiled in earlier litigation with the KMC involving the Complainant personally as a defendant, due to which they had then been falsely implicated through the FIR. Furthermore, their Statements were recorded under S.340(2) Cr.P.C., with that of the accused Usman Ghani Paul being marked as Ex.34, at which time he inter alia produced an Agreement relating to the use of the slaughterhouse as Ex.3 and Stay order of the High Court as Ex.36, whereas the S.340(2) Statement of Shoaibuddin was recorded as Ex.44, with him producing letters as to handing over of the land of slaughter house as Ex.45 and Ex.46, and a sketch as Ex.47.
  
6. A perusal of the impugned Judgment reflects that from a cumulative assessment of the evidence, the learned trial Court determined that the prosecution had failed to prove the guilt of the accused, hence duly extended them the benefit of doubt, resulting in their acquittal. Paragraphs 68 to 70 of the impugned judgment are of particular significance, reading as follows:-

“68. I have already discussed that the incident had occurred on 28.8.2017 but the FIR was registered on 31.8.2017 and the flimsy ground has been given that they had filed application to IGP Sindh on 29.8.2017. The firing had taken place but despite that nobody from the Mandi not even the Munshi of Khaaksar had called “15” or PS that accused persons are firing and snatching money from them, even the complainant Syed Muhammad Farooq Shah in his statement before the Court has given that the incident had occurred at 5.15 pm whereas in the FIR it is written that it occurred at 5.00 pm. the rest of the witnesses have yet extended the time of occurrence to be at 5.30 pm. The prosecution witnesses are not consistent at what time the incident had taken place. PW-11 Investigating

Officer Nazar Mohammad had stated that he had gone to the place of incident but nobody had complaint him that money was snatched from him even the PW-05 Sohail who had given the report to Senior Director Dr. Syed Mohammad Farooq had admitted in cross examination that Mandi had continued till Bakra Eid and nobody had complained him that money had been taken by the accused persons. He had also admitted that in his report he has not mentioned the accused persons nor given the names of those persons from whom the money was taken.

69. The statement of the witness u/s 161 Cr.P.C was recorded after few days of the incident and in same [sic] cases after 25 days of the incident therefore, it appears that such witnesses have given statements after deliberation and discussion to implicate the accused persons. My little mind fails to understand that how a goat seller will remain quiet over loss of thousands of Rupees without reporting.

70. Therefore, under such circumstances there is no consistency amongst the witnesses of the prosecution whereas accused persons did not have any previous criminal record. They have stated on oath that they have not taken any money from the goat sellers, hence the benefit of doubt extended to the accused and points under discussion are as not proved.”

7. When called upon to demonstrate the misreading or non-reading of evidence or other infirmity afflicting the impugned judgment, learned counsel for the Appellant was found wanting and could not point out any such error or omission or otherwise controvert the observations encapsulated in Paragraphs 68 to 70 of the impugned judgment, as reproduced herein above. Furthermore, on query posed he conceded that no empties had been found at the scene of the alleged incident and no incriminating articles had been recovered from the possession of the accused so as to connect them to the commission of the offence.
8. The learned APG also did not support the Appellant, instead, defended the Impugned Judgment as being correct and unexceptionable.

9. Indeed, it is well settled principle of law that an appeal against acquittal is distinct from an appeal against conviction, as the presumption of double innocence is attracted in the former case and an acquittal can only be interfered with when it is found to be capricious, arbitrary and perverse.
10. We are fortified in this regard by the judgment of the Honourable Supreme Court in the case reported as the State v. Abdul Khaliq PLD 2011 Supreme Court 554, where after examining a host of case law on the subject, it was held as follows:-

“From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced 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. It has been categorically held in a plethora of judgments that 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. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the, findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). 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.”

11. In the matter at hand the learned trial Judge has advanced valid and cogent reasons in acquitting the Respondents and no palpable legal justification has been brought to the fore for that finding to be disturbed.

12. As such, the Appeal is found to be devoid of merit and stands dismissed accordingly.

JUDGE

CHIEF JUSTICE

Karachi.  
Dated: