

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

**Cr. Acquittal Appeal No.S-259 of 2017**

*Date of Hearing:* 14.09.2020  
*Date of Judgment:* 14.09.2020

*Appellant/Complainant:* *Neem Raj Kohli, S/o Dayalo Kohli,  
Through Mr. Raja Hans Raj Naurang,  
Advocate.*

*The State:* *Through Mr. Shahzado Saleem  
Nahiyoan, D.P.G Sindh.*

**J U D G M E N T**

**NAIMATULLAH PHULPOTO, J.-** Respondents / accused Gova and Nihalo @ Nihal Chand were tried by learned Sessions Judge, Tharparkar @ Mithi for in Sessions Case No.42 of 2017 arising out of Crime No.10 of 2017 registered at P.S Nangarpar for offences under Sections 364, 365, 506 & 34 PPC. On the conclusion of the trial, vide judgment dated 16.11.2017, respondents / accused were acquitted of the charges.

2. Brief facts of the prosecution case, as stated by the complainant (PW-1) in his deposition, are as under:-

“On 15.11.2016 at 11-00 p.m (night) I myself, PWs Bhavsingh, Lalji and my uncle abductee Bharmal were available in the house of Bharmal situated in Bharmal-Ji-Dhani near village Behrano. In the meantime, accused Govo and Nihalchand arrived at the house of my

uncle on motorcycle and called my uncle Bharmal outside the house. Accused Govo asked Bharmal to accompany with them on motorcycle. Thereafter, Bharmal proceeded with both accused on motorcycle. In the morning time I alongwith my relatives proceeded from the house and inquired from accused about Bharmal but accused persons kept us on false hopes and lastly refused to return our uncle Bharmal and issued threats of our kidnapping so also directed not to lodge any complaint against them.”

3. F.I.R against the respondents / accused was lodged on the directions of this Court on 10.04.2017 at 1430 hours vide Crime No.10 of 2017 at P.S Nangarparkar for offences under Sections 365, 506 & 34 PPC.

4. After usual investigation, challan was submitted against the respondents / accused for offences under Sections 365, 506 & 34 PPC.

5. Learned Trial Court framed the charge against the accused at Ex-03. Accused pleaded not guilty and claimed to be tried.

6. At the trial, prosecution examined PW-1 complainant Naeem Ram at Ex-06, PW-2 Bhav Singh at Ex-07, PW-3 Bheem Raj at Ex-09 and PW-4 IO/ASI Abdul Rasheed Thebo at Ex-10. Thereafter, prosecution side was closed.

7. Statement of accused was recorded under Section 342 Cr.P.C at Ex-12 and 13, in which both accused claimed false implication in this case and denied the prosecution's allegation.

8. Learned trial Court after hearing learned counsel for the parties and assessment of the evidence, vide judgment dated 16.11.2017, acquitted the accused / respondents mainly for the following reasons:-

“Apart from above contradictory and inconsistent evidence, there is unexplained delay of more than four months in lodging the FIR, even the CrI. Misc. Appln. filed by complainant before the Hon’ble High Court of Sindh on 22.11.2016 with a delay of 07 days of incident, the said application was allowed on 03.04.2017, but the present FIR was lodged on 10.04.2017 after seven days. Admittedly, complainant and PWs / Mashir Bhavesingh and Bheemraj are related inter se, and no private person had witnessed the alleged incident and even the I.O didn’t bother to record the statement of any local inhabitant to ascertain the facts of incident. Admittedly, the law enforcement agencies including Rangers are conducting patrolling in the border area where the place of alleged incident shown, as well as, in the surrounding and an person who wants to go towards any village of the border area, he has to pass from the check-post of Rangers, they are keeping entries in their registers. Even, the I.O through investigation, did not conduct any enquiry from the officials of Rangers check-post, regarding the arrival of the accused persons on their motorcycle after sun-set time & departure of their motorcycle after 11:00 p.m. Not only this, but the I.O has failed to recover the motorcycle from the accused on which they allegedly took away / abducted Bharmal, the uncle of complainant, hence, all these factors are sufficient to render the entire persecution story doubtful.

The perusal of their testimony reveals that it is replete with infirmities & inconsistencies, which lacks quality as well as reliability making the entire prosecution episode doubtful.”

9. Appellant / complainant being dissatisfied with acquittal of the respondents / accused has preferred this appeal.

10. Learned Counsel for the appellant / complainant has mainly contended that the impugned judgment of the trial Court is based on misreading and non-reading of the evidence. It is also argued that the trial Court has disbelieved strong evidence without assigning sound reasons, and prayed for converting the acquittal of the accused / respondents to the conviction.

11. On the other hand, learned D.P.G supported the impugned judgment.

12. As far the acquittal of the respondents / accused is concerned, it is by now 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 the 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:--*

*(2) The acquittal will not carry the second presumption and will also thus lose the first one if on pints 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. ”*

13. Coming to the present case, admittedly there was delay of about four months in lodging of F.I.R. No doubt F.I.R was lodged on the directions of the Court, inspite of that delay in lodging of the F.I.R has not been explained satisfactorily. It was night time incident, the source of light has also not been disclosed by the complainant. Learned D.P.G has highlighted the material contradictions in the evidence of the prosecution witnesses. Trial Court has also based

findings upon several infirmities and lacunas in the prosecution case. Moreover, there was also a check-post of the Rangers and the entry of every person, who entered into the village, was always kept by the Rangers but no such record / entry was produced before the trial Court, so as to establish the prosecution story. Admittedly, the prosecution had failed to prove it's case against the respondents / accused as it was the primary duty of the prosecution to establish the case independently instead of depending upon the weaknesses of the defence. I have also examined the overall evidence of the prosecution witnesses and have come to the conclusion that prosecution had miserably failed to prove it's case against the respondents / accused. The acquittal recorded in favour of the accused by the trial Court is well-reasoned and cannot be interfered unless some cogent, trustworthy and confidence inspiring material is brought on record by the prosecution which is lacking in this case.

14. In an appeal against acquittal this 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 appeal is admitted for reappraisal of evidence 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.

15. Learned Counsel for the appellant / complainant has not been able to point out any serious flaw or infirmity in the impugned judgment. The view taken by the learned trial Court is a possible view, structured in evidence available on the record and as such is not open to any legitimate exception. It is by now well settled that acquittal once granted to an accused 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.

16. For the above stated reasons, this Criminal Acquittal Appeal is meritless and the same is dismissed.

**JUDGE**

Shahid