

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

**Criminal Acquittal Appeal No. S – 69 of 2014**

Appellant: The State through Mr. Aftab Ahmed Shar, Additional PG

Private respondent : Ali Akber Mari through Mr. Achar Khan Gabole, Advocate

Date of hearing : 07.09.2020

Date of decision : 07.09.2020

**JUDGMENT**

**AFTAB AHMED GORAR, J.-** Through instant Criminal Acquittal Appeal, the appellant/State has impugned judgment dated 02.05.2014, passed by learned Civil Judge and Judicial Magistrate, Naushahro Feroze, whereby the private respondent has been acquitted of the offence outcome of FIR Crime No.162/2012 registered at Police Station, Naushahro Feroze under Sections 13(e) Arms Ordinance 1965.

2. Precisely stated the facts of the prosecution case are that on 05.08.2012 at 1330 hours, on behalf of State complainant SIP Wali Muhammad Chang lodged the report, stating therein that the arrested accused persons in Crime No.152/2012 u/s 302, 324, 34 PPC namely Mitho and Ali Akber were interrogated in presence of the private witnesses namely Ghulam Muhammad Korai and Gul Bahar Mari, hence the accused confessed their guilt and agreed for production of the crime weapons, therefore, the private respondent and co-accused Mitho led the police party towards on the road leading from Naushahro Feroze to Phull and from graveyard the accused took out one country made pistol of 12 bore along with one empty cartridge from the *Khabar* bushes, for which they could not produce any valid license, hence such mashirnama was prepared with the signatures of the private persons namely Ghulam Muhammad Korai and Gul Bahar Mari. After

registration of the FIR and usual investigation, the private respondent was challaned to face his trial before the Court of Law.

3. At trial, the private respondents did not plead guilty to charge and the prosecution to substantiate its case, examined PW-1 PC Muhammad Arif at (Ex.4); PW-2 SIP Wali Muhammad at (Ex.5, he produced roznamcha entry of departure, memo of recovery, arrival entry, FIR, report of Chemical Examiner at (Ex.5/A to 5/E) respectively; PW-3/mashir Gul Bahar at (Ex.6). Thereafter the learned ADPP closed the side of prosecution vide his statement at (Ex.7).

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 police.

5. The learned trial Court after hearing both the parties, learned ADPP and on evaluation of evidence so produced by the prosecution, the learned trial Court 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 the learned Additional PG for the appellant/State that the learned trial Court has recorded the acquittal of the private respondent without lawful justification, though the evidence of the prosecution witnesses was fully corroborated each other on all counts. He lastly contended that the charge against the private respondent was fully proved therefore, he prayed that the judgment passed by the learned trial Court may be set-aside and the respondent shall be convicted.

7. Learned counsel appearing for the private respondent submits that the entire story as setout in the FIR is managed one, whereas, the alleged recovery of the country made pistol has been foisted upon the private respondent just to strengthen the main case which was

registered against the private respondent and co-accused Mitho Mari. He further submits that there are material contradictions in the evidence of the police officials as well as private mashir, which are sufficient for recording the acquittal of the private respondents, whereas, it is a settled principle of law that if a slightest doubt arisen in the prosecution case, that will go in favour of the accused. He lastly contended that the learned trial Court has rightly recorded acquittal of the private respondent, therefore, the impugned judgment is liable to be upheld and the present appeal may be dismissed.

8. I have considered the arguments of the learned counsel for the parties and perused the record. The FIR of the incident has been lodged with delay of 1 ½ hour without any plausible explanation hence the same could not be overlooked. In case of **Mehmood Ahmed & others vs. The State & another (1995 SCMR-127)**, it was observed by the Hon'ble 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"*. It is admitted in the evidence by the prosecution witnesses that though the private respondent was interrogated at police station in respect of the crime weapon used in the main case, for which he admitted to produce the same, even then the police / complainant did not bother either to associate any independent eye-witnesses / mashirs from the public or from the way through which the accused led them to the place of recovery, whereas, two private mashirs alleged to have self-appeared at police station and they were accompanied by the police and both the private mashirs of the alleged recovery are the near and dear ones of the victim as well as complainant of main murder case, hence it is very astonishing to note that how they were present at the exact same time at the police station when the private respondent

agreed to produce the crime weapon. In such circumstances, mere alleged recovery by police without any solid piece of supporting evidence cannot be relied upon for awarding the punishment. The mere evidence of private mashir Gul Bahar Mari, who is the close relative of the victim as well as complainant main case, cannot be relied upon. If it is so, then they appear to be stock witnesses / mashirs of the police, who could hardly be relied upon, therefore, the learned trial Court has rightly recorded the acquittal of the private respondent by extending them benefit of doubt.

09. The Honourable Supreme Court of Pakistan, in case of **State and others vs. Abdul Khaliq and others (PLD 2011 SC-554)**, has been pleased to held 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”.*

10. In view of the above, there is nothing on record which may suggest that the impugned judgment is arbitrary or cursory to be interfered with by way of instant Criminal Acquittal Appeal. Accordingly, the instant Criminal Acquittal Appeal is dismissed.

Judge

ARBROHI