IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Acquittal Appeal No.S- 30 of 2018

Hearing of Case

1.For orders on office objection.
2.For hearing of main case.

Mr. Ajeebullah Junejo Advocate along with Appellant.
Mr. Khalil Ahmed Maitlo, Deputy P.G for the State.

Date of Hearing: **14-12-2020**
Date of Judgment: **14-12-2020**

J U D G M E N T

AFTAB AHMED GORAR J., Vakalatnama filed by Mr. Sanwal Khan Chachar Advocate on behalf of respondents No.1 to 4, is taken on record. Said private respondents are also present in person.

2. Respondents / accused Ghulam Qadir alias Ghulam Muhammad, Qutub, Kauro and Azizullah alias Ajju were tried by learned Civil Judge & Judicial Magistrate (Family Court), Ghotki in Crl. Case No. 76 of 2017, arising out of Crime No. 120 of 2017, registered with P.S, A-section, Ghotki, for offences under Sections 337F(iii), 337F(i) & 34 PPC.

2. The case of the prosecution, in nutshell, is that earlier father of complainant had got registered FIR No.68/2017 under Section 393 PPC at P.S, Khanpur Mahar against accused Ghulam Qadir and others, whereupon accused persons were annoyed. On 15.06.2017 at midnight time, complainant along with relatives Faizullah and Sanaullah was coming to village from city Ghotki, when they reached at Ablu Wari

Bridge, all of a sudden, accused persons intercepted the complainant party, who were holding Lathies and pistol. Accused Ghulam Qadir alias Ghulam Muhammad caused lathi blow to complainant so also other accused, namely, Kauro, Azizullah alias Ajju inflicted lathi blows to him, whereas, accused Qutub caused butt blows of pistol to him on his shoulder. Thereafter, complainant raised cries, on which all accused persons fled away. Then complainant with the help of witnesses was taken to police picket Mathelo, wherefrom he got referral letter for treatment and after having treatment at Taluaka Hospital Ghotki and getting medical certificate, complainant filed Crl. Misc. Application under Section 22-A Cr.P.C and on the orders of learned Justice of Pace, he lodged the abovementioned FIR.

3. Charge was framed against accused, to which they pleaded 'not guilty' and claimed to be tried. Thereafter, prosecution led the evidence of prosecution witnesses. Thereafter statements of accused / respondents were recorded in terms of Section 342 Cr.P.C and on the assessment of evidence available on record and hearing the learned counsel for the parties, learned trial Court acquitted the accused / respondents vide impugned judgment dated 20.01.2018.

4. The appellant / complainant being dissatisfied with the acquittal of the accused has filed this Crl. Acquittal Appeal.

5. Learned counsel appearing for appellant / complainant argued that there was sufficient evidence connecting the private respondents

with the commission of offence, but the learned trial Court illegally acquitted them of the charge; that respondents failed to create any dent in the prosecution case but even then the trial Court illegally, unlawfully and without any justifiable reason acquitted them of the charge and while acquitting the respondents, the trial Court has failed to record any cogent reason.

6. On the other hand, learned counsel appearing on behalf of private respondents as well as learned Deputy P.G supported the impugned judgment and argued that sufficient material was available on record creating reasonable shadow of doubt and by giving them such benefit, respondents / accused have been rightly acquitted by learned trial Court.

7. I have considered the arguments advanced by learned counsel for appellant, learned counsel for private respondents as well as learned Deputy P.G so also perused the entire material available on record and have reached to a conclusion that the respondents / accused have rightly been acquitted by the learned trial Court for the reasons that admittedly the FIR is belated by 21-days, for which no plausible explanation has been furnished by the complainant, as such element of consultation and deliberation could not be ruled out. It is a matter of fact that none of the accused caused any harm and/or extended threat to the eyewitness though they were at the mercy of accused who were armed with Pistol and having Lathies in their hands, but accused are alleged to have caused injuries to the complainant

only, which creates reasonable doubt regarding veracity of the eyewitnesses. Moreover, eyewitness Faizullah, being independent witness so also being best piece of evidence to corroborate the version of the complainant/injured witness, was not examined by the prosecution, as such it has rightly been observed by learned trial Court that failure to examine said independent eyewitness gives inference that he was not supporting the prosecution case. The perusal of evidence of complainant and eyewitnesses reflects that they have made improvements in their statements deliberately and with mala fide intentions, as such their testimony cannot be relied upon safely. Besides, there are certain other discrepancies and infirmities in the prosecution case so also glaring contradictions in the evidence of complainant and PWs on material points including admission of injured in hospital and reaching of injured to hospital, which have been rightly discussed and considered by the learned trial while acquitting the accused being fatal to the prosecution. Therefore, in such circumstances, reasonable doubt has been created by the present respondents in prudent mind and its benefit has rightly been extended to the respondents by the trial Court.

8. It is settled law that any acquittal order cannot be lightly interfered with by the Appellate Court, though it has wide powers to review the evidence and to come to its own conclusion. These powers must be exercised with care and caution because the presumption of innocence is further strengthened by the acquittal of an accused.

9. It is also 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 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:--
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> (1) In an appeal against acquittal the Supreme 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 leave is granted only for reappraisement of evidence which then is undertaken 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.
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> (2) The acquittal will not carry the second presumption and will also thus lose the first one if on points 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 reappraisement 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. ”

10. In the recent judgment in the case of Zulfiqar Ali v. Imtiaz and others **(2019 SCMR 1315),** Hon'ble Supreme Court has held as under:

“2. According to the autopsy report, deceased was brought dead through a police constable and there is nothing on the record to even obliquely suggest witnesses’ presence in the hospital; there is no medico legal report to postulate hypothesis of arrival in the hospital in injured condition. The witnesses claimed to have come across the deceased and the assailants per chance while they were on way to Chak No.504/GB. There is a

> reference to M/s Zahoor Ahmed and Ali Sher, strangers to the accused as well as the witnesses, who had first seen the deceased lying critically injured at the canal bank and it is on the record that they escorted the deceased to the hospital. Ali Sher was cited as a witness, however, given up by the complainant. These aspects of the case conjointly lead the learned Judge-in-Chamber to view the occurrence as being un-witnessed so as to extend benefit of the doubt consequent thereupon. View taken by the learned Judge is a possible view, structured in evidence available on the record and as such not open to any legitimate exception. It is by now well-settled that acquittal once granted cannot be recalled merely on the possibility of a contra view. Unless, the impugned view is found on the fringes of impossibility, resulting into miscarriage of justice, freedom cannot be recalled. Criminal Appeal fails. Appeal dismissed."

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

12. For the aforesaid reasons, this Crl. Acquittal Appeal is meritless; therefore, the same stands ***dismissed*** accordingly.

J U D G E