

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Acquittal Appeal No.S- 106 of 2018

Appellant/Complainant : Mumtaz Ali Bhatti through Mr. Saeed Ahmed Bhatt, Advocate

Private Respondents : Aftab Ahmed, Badaruddin and Muhkamuddin through M/s Ghulam Murtaza Buriro and Hamid Ai Memon, Advocates

: The State, through Mr. Khalil Ahmed Maitlo, Deputy Prosecutor General for the State

Date of hearing : 09.11.2020

Date of decision : 09.11.2020

JUDGMENT

AFTAB AHMED GORAR J.- The appellant/complainant by way of instant Criminal Acquittal Appeal has impugned judgment dated 17.07.2018, passed by learned Civil Judge and Judicial Magistrate-I , Khairpur, whereby the private respondents have been acquitted of the offence outcome of FIR Crime No.218/2017 of Police Station 'B' Section, Khairpur.

2. The facts of the prosecution case, in brief are that on 30.08.2017 at 1530 hours, the appellant/complainant Mumtaz Ali Bhatti lodged the FIR regarding the incident which had taken place on 13.08.2017 at 1000 hours, alleging therein that one Zahid Hussain Jalbani had borrowed Rs.50,000/- from him but did not return the same, whereas, on demand used to issue threats, hence such FIR bearing Crime No.202/2017 under Sections 420 and 406 PPC has been registered at Police Station 'B' Section Khairpur. On 13.08.2017, the construction work of his house was going on, therefore, he accompanied the labourers namely Raja S/o Habibullah and Sajjad S/o

Abdullah and was going for purchasing Cement, it was 10:00 am, when they reached near Jumali Saw Machine Old Pir-Jo-Goth Luqman, they were confronted by accused namely Aftab Ahmed with Pistol, Zahid Hussain with Iron Rod, Badaruddin and Muhkamuddin with lathies. Out of them, accused Zahid Hussain asked that you don't abstain from demand the amount and has constrained us (accused), today you will not be spared, hence accused Aftab Ahmed caused pistol butt blow on his head; accused Zahid caused Iron Road blow on his right arm, whereas, rest of the accused also caused lathi blows on different parts of his body. It is alleged that on resistance accused Badaruddin forcibly took out valet from his pocket containing cash of Rs.20000/- and CNIC and driving license. They raised cries, which attracted the passer-byes, seeing them coming, all the accused persons escaped towards Luqman side. Thereafter he accompanied with witnesses went and got letter for medical treatment from police station and got treatment from Civil Hospital Khairpur and after getting such order from the Court, hence got registered the FIR as stated above.

3. At trial, the private respondents did not plead guilty to charge and the prosecution to prove it, examined appellant/complainant and his witnesses 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 appellant/complainant. They neither examined themselves on oath nor led

any evidence in their defence except private respondent Aftab Ahmed, who has examined himself u/s 340(2) Cr.P.C and produced true copy of judgment dated 14.02.2018, photocopy of 161 Cr.P.C statement of witness Raja Bhatt and he has also examined one witness in his defence namely Qurban Ali. Thereafter, learned counsel for the accused persons closed his side through his statement.

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, whereas, the case against the proclaimed offender Zahid Hussain S/o Khan Muhammad Jalbani was kept on dormant file.

6. It is contended by the appellant/complainant that the learned trial Court has recorded the acquittal of the private respondents without lawful justification; that the learned trial Judge has not properly assessed the evidence adduced by the prosecution; that the ocular account furnished by the complainant is supported by the medical evidence, whereas, the learned trial Judge has not considered the evidence of the prosecution, thus has recorded the acquittal of the private respondents; that from the evidence available on record the charge has been established, therefore, the private respondents are liable to be convicted; that one of the nominated accused persons namely Zahid Hussain Jalbani is still absconder and he has been declared as proclaimed offender; that at the time of final arguments, the learned trial Judge pressurized the appellant/complainant to make compromise with the private respondents, hence on his refusal he

has recorded the acquittal of the private respondents, though they are real culprits; that the acquittal of the private respondent is the result of misreading and non-reading of the evidence. He lastly contended that adequate action against the private respondents may be taken by awarding conviction and sentences to them.

7. Learned counsel for the private respondents and learned DPG for the State by supporting the impugned judgment have sought for dismissal of the instant criminal acquittal appeal by contending that there was dispute between the parties over the money matter; that the appellant/complainant has got registered another criminal case in which the private respondent Aftab Ahmed has been acquitted by the trial Court vide judgment dated 14.02.2018; that it is very much visible from the judgment that the facts which narrated in the FIR are contrary to the application filed under Section 22-A and 22-B Cr.P.C; that the version of the appellant/complainant is not corroborated by the other witnesses ; that there is inordinate and unexplained delay of Seventeen days in lodgment of the FIR for which no plausible explanation has been furnished, hence the false implication of the private respondents cannot be ruled out; that there is no recovery affected from the private respondents.

8. I have considered the arguments of learned counsel for the appellant/complainant and learned counsel for the private respondents and DPG for the State and perused the material available on record.

9. Admittedly, the FIR of the incident has been lodged with delay of about seventeen days, such delay has not been explained plausibly, same as such could not be overlooked. In this respect, reliance is placed upon the case of ***Mehmood Ahmed & others vs. the State & another (1995 SCMR-127)***, wherein it has been 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. The ocular account hinges upon the evidence of appellant/complainant Mumtaz Ali Bhatti and eyewitness Raja Khan. They in their evidence have given contradictory version of the incident with regard to the seat of injury caused by accused Aftab by deposing that accused Aftab caused pistol butt blow on the forehead of complainant Mumtaz Ali Bhatti, whereas, in the application u/s 22-A and 22-B, Cr.P.C, it is stated that accused Aftab caused him pistol butt blow on his head. The appellant/complainant in the application u/s 22-A Cr.P.C has stated that the accused who was armed with pistol made direct fire upon him with intent to commit his murder, whereas, he has not mentioned such fact of making fire by the accused in his first information report or in the evidence. The appellant/complainant and eyewitness Raja Khan have neither given the details that the license was belonging to which type of vehicle, nor the

number of the CNIC or the denominations of the currency notes alleged robbed from the appellant/complainant during the incident. Since there are material contradictions in the evidence of the appellant/complainant and eyewitness with regard to the seat of injury sustained by the injured/complainant as well as exaggerating the fact of firing at the time of incident in the application u/s 22-A Cr.P.C; not giving the details of the denominations of the currency notes, driving license and number of CNIC. Furthermore, the bone of dispute between the appellant/complainant and the absconding accused Zahid Hussain Jalbani was the loan amount of Rs.50000/-, whereas, one of the private respondents namely Aftab Ahmed examined himself and one witness Qurban Ali in his defence. In their defence, the private respondent Aftab and his witness Qurban Ali have categorically stated that on the date of incident the private respondent Aftab was present at Hyderabad, whereas, he was not present at the place of incident at the relevant time nor he has taken the loan from the appellant/complainant, despite cross-examination by the learned counsel for the complainant, their version was not shaken. It is pertinent to mention that prior to this incident, the present appellant/complainant on the same bone of dispute got lodged FIR No.202/2017 under Sections 406, 420, 504 and 34 PPC of borrowing cash of Rs.50000/- by the absconding accused Zahid Hussain Jalbani, but he has failed to produce any agreement or document showing such deal of loan between the appellant/complainant and the private respondents. No recovery of crime weapon i.e. lathies or pistol, allegedly used in the commission of the

offence, have been affected from the private respondents/accused, which is fatal to the prosecution case creating a reasonable doubt. In these circumstances, learned trial Court was right to record acquittal of the private respondents by extending them benefit of doubt.

11. It is also settled law that ordinary scope of acquittal appeal is considered to be 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 **State and others vs. Abdul Khaliq and others (PLD 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. 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 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 law 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.

13. For what has been discussed herein above, the instant Criminal Acquittal appeal being devoid of any merit stands dismissed accordingly.

Judge

ARBROHI