

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Acquittal Appeal No.S – 115 of 2020

Appellant/Complainant : Haji Shah Dino through
Chaudhry Shahid Hussain Rajput , Advocate

Date of hearing : 22.02.2020
Date of decision : 22.02.2020

JUDGMENT

AFTAB AHMED GORAR, J.- By filing instant Criminal Acquittal Appeal, the appellant/complainant has impugned judgment dated 09.12.2020, passed by learned 1st Civil Judge and Judicial Magistrate, Ubauro, whereby the private respondents have been acquitted of the offence under Sections 431, 504, 147, 148 and 149 PPC.

2. The facts of the prosecution case, briefly stated are that on 08.09.2020 at 1430 hours, complainant Haji Shahdino Khoso lodged the FIR at Police Station, Wasti Jiwan Shah, alleging therein that his agricultural land is settled on watercourse Tug Minor 27-AL, whereas, his nephew Muhammad Yousuf had contracted love marriage with sister of Hafeezullah Khoso, hence they were annoyed and issuing threats. It is alleged that on 18.05.2020 he along with his nephew Muhammad Sharif and Shahul went for rotating the water, there came accused each one Hafeezullah with gun, Najeebullah with Pistol, Gul Muhammad alias Guloo, Muhammad Ghulam Qadir alias Nandhoo, with Spades, Bhooral, Ali Hassan, Sattar, Moro, with lathies. It is alleged that accused Hafeezullah instigated his accomplices to close the water

flowing to the lands of the complainant, hence he (complainant) entreated them that his cotton crop is standing, there is likelihood to destroy, the accused persons hurled abuses, thereafter the complainant lodged the FIR under the orders of learned Ex-Officio Justice of Peace, hence the case was challaned against private respondents.

3. At trial, the private respondents did not plead guilty to charge and the prosecution to prove it, examined PW-1 Investigating Officer ASI Aijaz Ahmed at (Ex.11); who produced relevant entry, Order of Additional Sessions Judge Ubauro, Form VII-B, letter of Assistant Executive Engineer Mirpur Sub-Division (Irrigation) at Mirpur Mathelo at (Ex.11/A to 11/E) respectively; memo of site inspection and relevant entries at (Ex.11/F to 11/G) respectively; PW-2 complainant Shahdino at (Ex.12); PW-3 Muhammad Sharif at (Ex.13); PW-4 Ali Sher at (Ex.14). Thereafter the prosecution side was closed.

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 due to matrimonial dispute. They did not examine any one in their defence or themselves on oath.

5. The learned trial Court on evaluation of evidence so produced by the prosecution, recorded the acquittal of the private respondents, as stated above.

6. Learned counsel for the appellant/complainant contended that the prosecution has been able to prove its case against the private respondents beyond shadow of doubt by producing cogent evidence which has not been considered by learned trial Court without lawful justification; that the version of the complainant has been fully supported by prosecution witnesses, although there are minor contradictions, which were not fatal to the prosecution case for recording the acquittal of the private respondents; there was sufficient material available on record for convicting the private respondents. He lastly prayed that the impugned judgment passed by learned trial Court dated 09.12.2020 is liable to be set-aside and the private respondents may be convicted in accordance with law.

7. I have considered the arguments of learned counsel for the appellant/complainant and perused the record.

8. Admittedly, the FIR of the incident was lodged with delay of more than three months without plausible explanation, as it is reflecting consultation and deliberation. 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”.

09. The appellant/complainant Shahdino when was examined by the trial Court attempted to improve his evidence by deposing that the accused / private respondents caused them kicks and pushes blows, whereas, in his FIR there is nothing mention of the causing of kicks, but only the private respondents have issued threats for dire-consequences. The parties admittedly are disputed over matrimonial affairs. In that situation, the involvement of the private respondents in this case by the complainant party to satisfy their above said dispute could not be overlooked. In these circumstances, learned trial Court was right to record the acquittal of the private respondents by extending them benefit of doubt.

10. In case of **State and others v. Abdul Khaliq and others (P L D 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”.

11. In view of the above, no such irregularity or infirmity is found in the impugned judgment dated 09.12.2020 passed by learned 1st Civil Judge and Judicial Magistrate, Ubauro calling for interference by this Court hence the instant criminal acquittal appeal is dismissed in *limine*.

Judge