

HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Cr. Acq. Appeal No.S-40 of 2023
[Saddaruddin versus Peeral & Ors]

Appellant : Through Mr. Om Parkash advocate
Respondents : Nemo
The State : Through Mr. Siraj Ahmed Bijarani Assistant P.G
Date of hearing : 17.04.2023
Date of decision : 17.04.2023

ADNAN-UL-KARIM MEMON, J: Through captioned acquittal appeal, appellant/complainant has impugned the judgment dated 14.02.2023 passed by learned Civil Judge and Judicial Magistrate-II Sakrand in crime bearing FIR No.10 of 2022 registered at PS Nasri for offence punishable under Sections 382 and 457 PPC, whereby respondents have been acquitted of the charge, as excerpt of the Judgment is reproduced as under:-

“ 12. Conversely, the upshot of the entire preceding discussion is that the prosecution has failed to bring the guilt of the accused at home beyond any shadow of doubt. It is the prime duty of prosecution to prove its case. The conviction can only be done on the unbroken chain of the prosecution case. To me the entire prosecution story is covered with clouds and under such scenario the accused cannot be convicted. The Honorable superior courts have time and again held that the benefit of even the slightest doubt must go into the favour of the accused. It is also universal principle that the accused is the favorable child of law until his guilt is proved. The whole edifice of the prosecution case is shakable. The evidence of PWs are not confidence inspiring and cannot be made basis of conviction. It is also settled law that to disbelieve of witness, it was not necessary that there should be numerous infirmities. Even if there was one such infirmity which impeached the credibility of the witnesses, same could make the entire statement doubtful. It is settled dicta of superior Courts and cardinal principle that burden to prove the charge is on prosecution. It is also settled principle of Justice that enshrines that 100 guilty men may escape away but one innocent person should not be vexed. It has been held in a judgment by the Divisional bench of Hon’ble High Court of Sindh, that **“Each and every coin of doubt, must be deposited in the account of defence; and even one stroke of doubt was sufficient to demolish the entire prosecution structure, irrespective of heinousness of the alleged offence.”**, reported in 2014 P.Cr.L.J. 1123. The rule of benefit of doubt has also got pivotal importance in Islamic law in view of the **saying of our Holy Prophet (peace be upon him.) that “ A mistake of Kazi to acquit one guilty person is better than his mistake to convict one innocent person.”** I have further been benefited from case law Re-**“Muhammad Akram Versus The State”** reported in 2009 SCMR-230, wherein Honourable Supreme Court of Pakistan has been pleased to hold as **“Benefit of doubt---Principles---For giving the benefit of doubt it is not necessary**

that there should be many circumstances creating doubts---Single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefit, not as a matter of grace and concession, but as a matter of right.”

13. Therefore, I am of the considered opinion that the prosecution has the basic and prime duty to prove its case against the accused persons by producing cogent, relevant, strong, convincing, unimpeachable, trustworthy and confidence-inspiring evidence to prove the charge but here in this case the prosecution has miserably failed to prove its case beyond any reasonable doubt. Hence the above points for determination in question stand disposed of as doubtful.

POINT NO.3

14. From my findings with reasons arrived at point No.01 & 02, I have no hesitation to hold that prosecution has miserably failed to bring home the guilt to accused persons beyond any shadow of reasonable doubt. I, therefore, extend the benefit of doubt in favour of accused persons Namely **(1) Peeral son of Haji Khuda Bux Unar, (2) Sardar Ali @ Sadam son of Ilyas Chandio and (3) Shahid son of Siddique Unar** and acquit them under section 245(1) Cr.P.C from the charge. They are present on bail, their bail bonds stand cancelled and their sureties are discharged.”

2. The aforesaid FIR was lodged by the Appellant / Complainant on 26.07.2022, alleging therein that on 06.07.2022 at about 02:30 am (night) the respondents alongwith two unknown persons, duly armed with weapons, entered in his house and took away gold ornaments and clothes on show of weapons. On completion of investigation challan was submitted before the concerned Magistrate. Then copies were supplied to respondents and charge was framed against them and after full dressed trial, the respondents were acquitted of the charge vide impugned judgment, hence this acquittal appeal.

3. Mr. Omparkash H. Karmani, learned counsel argued that impugned judgment is against the law and facts and the same is not based on sound reasoning; that learned trial Court acquitted the respondents by extending them benefit of doubt, however, same is not based on reasons; that recovery was effected on the pointation of respondents, but learned trial Court failed consider the same; that learned trial Court has failed to appreciate that last seen evidence is fully corroborated by the evidence of prosecution witnesses. Learned counsel submitted that the trial court has not considered the specific role of the accused in the incident; that statement of prosecution witnesses has not been considered; that learned trial court has failed to appreciate that there is no enmity of the Complainant with accused to falsely implicated him in the crime; that the trial court has failed to appreciate the recovery point recorded in evidence; that the accused have committed theft of golden ornaments thus the accused needs to be convicted rather than acquitted from the charge. He

lastly prayed that the impugned judgment may be set aside and respondents may be awarded sentence accordingly.

4. No one is present on behalf of the respondents; however, learned APG supports the impugned judgment pen down by the trial court and prayed for dismissal of captioned appeal on the ground that the reappraisal of evidence is restrained at this stage as the trial court has discussed every aspect of the case and thereafter passed the Judgment that no case of indulgence of this court is made out.

5. I have heard learned counsel for the appellant and perused the record with his assistance.

6. Judgment of acquittal can be reversed where trial Court committed glaring misreading or non-reading of evidence and recorded its findings in a fanciful manner, contrary to the evidence brought on record.

7. I have noticed that the trial court Judgment is very elaborative and needs no further deliberation on my part as no illegality has been pointed out by the appellant; even otherwise it is well settled principle of law that burden of proving the case is always upon the shoulders of prosecution which is bound to prove the same beyond shadow of reasonable doubt, and if a single circumstance creates doubt it goes in favour of accused, benefit of which shall be extended to the accused not as a matter of grace but as a matter of right as laid down by Honourable Supreme Court of Pakistan in case of *Tariq Pervaiz v. The State* (1995 SCMR 1345), *Muhammad Akram v. The State* (2009 SCMR 230) and in case of *Muhammad Zafar and another v. Rustam and others* (2017 SCMR 1639).

8. It is also a settled principle of law that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from appeal against acquittal, because presumption of double innocence is attached in the latter case. An order of acquittal can only be interfered with when it is found on the face of it as capricious, perverse, arbitrary or foolish in nature, which are lacking in this case. Reliance is placed on *InayatUllah Butt v. Muhammad Javed etc.* (PLD 2003 SC 563), *Mst. Anwar Begum v. Akhtar Hussain alias Kaka and 2 others* (2017 SCMR 1710).

9. In view of above legal position of the case, the impugned judgment seems to be an elaborate, speaking one hence does not suffer from misreading, non-reading or non-appraisal of evidence, and it does not warrant interference of this court.

10. From the above, we have reached at the conclusion that the acquittal of respondents does not suffer from any illegality so as to call for interference with the impugned judgment. The learned trial Judge has advanced valid and cogent reasons for passing a finding of acquittal in favour of respondents and we see no legal justification to disturb the same. Resultantly, the instant Criminal Acquittal Appeal is dismissed in limine.

JUDGE

Sajjad Ali Jessar