IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Acq. Appeal No. D-46 of 2021

Present:
Yousuf Ali Sayeed, J
and Zulfiqar Ali Sangi, J

Appellant	:	Bagan Khan, through Syed Asghar Ali Shah, Advocate
Respondent Nos.1 to 6	:	Syed Israr Ali Shah, Advocate.
Respondent No. 7	:	The State, through Khalil Ahmed Maitlo, DPG
Date of hearing	:	18.10.2023

JUDGMENT

YOUSUF ALI SAYEED, J. – The Appellant, who is the complainant of Crime No. 257 of 2013 registered on 04.11.2013 at Police Station Patni, /Rohri, District Sukkur, under Sections 302, 311, 506/2, 147 and 149 PPC (the "**FIR**"), has preferred the captioned Appeal under Section 417 (2A) Cr. P.C., impugning the Judgment entered by the learned 1st Additional Sessions Judge, (MCTC) Ghotki on 19.11.2021 in the ensuing Session Case, bearing No.63 of 2015, resulting in the acquittal of the Respondents Nos.1 to 6.

2. Succinctly stated, through the FIR the Appellant had alleged that the murder of his wife had taken place at the hands of the Respondents Nos. 1 and 6 on 03.11.2013. The sequence of events forming the backdrop to the fatality was traced back by the Appellant to the time of his marriage on 25.07.2012, with it being narrated that the deceased had been living with him at his village since that time, until he had taken her back to her own village to visit her relatives about 16 days prior to the date of the FIR, and had left her at the home of the Respondent No.5, namely Muhammad

Yousif. It was stated that whilst they had been received amicably at that time, he had been met with hostility by the Respondents Nos. 1 to 6 when he returned to retrieve his wife a little over a week later, who refused to hand her over on the pretext that the marriage had taken place without their consent. It was said that the Appellant then filed a Cr. Misc Application under S.491 Cr.P.C. before this Court, which angered the Respondents and prompted them to threaten their murder if the same was not withdrawn. It was said that on 03.11.2014 he then received a call on his cellphone from the Respondent No.5, informing him that he along with the other Respondents had throttled his wife to death and that he would be their next victim. It was said that he narrated the factum of the call to his father and nephew, and as the S.491 proceeding was fixed the next day (i.e. 04.11.2013), he attended the hearing in Court before proceeding for registration of the FIR later that day.

3. After the usual investigation the police submitted the challan, with the case then being sent-up to the Sessions Court for disposal in accordance with law, where the accused entered a plea of not guilty in response to the charge and claimed trial.

4. The prosecution examined several witnesses, with the Statements of the accused under S.342 Cr. P.C being recorded after closure of the prosecution side, wherein they denied the allegations leveled against them and professed their innocence.

5. From a cumulative assessment of the evidence, the learned trial Court determined that the prosecution had failed to prove the guilt of the Respondents hence duly extended them the benefit of doubt, resulting in their acquittal. The relevant excerpt from the impugned Judgment reflecting the reasons that prevailed to the mind of the learned trial Court reads as follows:

"9. ...Admittedly, nobody has seen the accused at the time of committing murder of deceased Mst. Naseeba, hence in order to prove this case prosecution has relied upon circumstantial evidence. As per complainant, he was informed by accused, that they had committed murder of his wife and prior to that he has filed an application u/s-491 Cr.P.C before Honourable High Court of Sindh, Bench at Sukur. In support, he examined himself where in he has deposed that when he left his wife at the house of accused, she was happy but during mobile talk she had disclosed him about maltreatment at the hands of accused and subsequently, when complainant visited house of accused, he was being threatened by the accused party. Except this piece of evidence there is no other material connecting accused with the commission of offence. In this regard, further perusal of evidence shows that there is no eye-witness of the threats, while complainant himself deposed that on gaining knowledge of threats and maltreatment he made complaints to nekmards and he also deposed names of some of them as Peeral, Allah Ditto and Muhammad Alam, but did not produce them in witness box to support his plea. It is surprising to note that neither names of these nekmards or disclosure of receiving of phone calls from Mst. Naseeban is introduced in the application submitted before Honourable High Court of Sindh, Bench at Sukkur, hence there is no material in corroboration of threats and maltreatment. It is also matter of record that complainant never made complaint before police in respect of alleged threats issued to him at the hands of accused.

10. On the other hand, prosecution has examined HC-Nawab and mashir Hakim. As per HC-Nawab, on 03.11.2013, he was available at PS Patni, where at about 0400 hours, Muhammad Ibrahim (accused) appeared and narrated facts of suicide, hence such information was incorporated in roznamcha book as entry No.16 (Ex. 10/A). He further deposed that when he reached at spot, he noticed door of the house was broken from inside and one dead body in hanging position, hence he cut the rope and released the dead body from hanging in presence of mashirs and then formulated memo of dead body, Danishtnama and inquest report. Mashir Hakim also supported the version of hanging of dead body with rope inside room and they did not notice any injury on any other part of the body except on neck. Lady doctor Rehana, examined at Ex. 12, clearly deposed that deceased had committed suicide, as she did not find any bruise or abrasion on her back.

11. Admittedly, it is a case of un-natural death, but there are two versions. **First version**, as per accused party, as introduced in entry No. 16 (Ex.10/A) that lady has committed suicide and accused in their statements u/s- 342 Cr.P.C. had also corroborated such fact and stated reason behind suicide is blackmailing of complainant, while **Second version**, is of complainant that accused jointly committed murder of his wife, but there is no material support with second version, on the contrary HC-Nawab, mashir Hakim have themselves seen the deadbody in hanging position; lock of the room

> was broken from inside; there were no signs of violence on the body of deceased and lady doctor clearly opined her death due to suicide, all such instances are in corroboration rather in conformity with first version of accused as introduced in entry No. 16 at 0400 hours on 03.11.2013. Mashir Hakim deposed in his cross examination that "all the ten bricks were lying underneath the loud speaker and height of the speaker was about three feet and from there anybody could easily commit suicide by standing over the speaker".
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> 12. No other evidence connecting accused with commission of charged offence is brought on record. It is a well settled principle of law that to convict accused, it requires strong evidence connecting them with the case with which they are charged but it is lacking in this particular case. It is also a well settled principle of law that for the purpose of extending benefit of doubt to an accused, more than one infirmity is not required but a single infirmity creating reasonable doubt in the mind of a reasonable and prudent person regarding the truth of charge, makes the whole case doubtful."

6. When called upon to demonstrate the misreading or non-reading of evidence or other infirmity afflicting the impugned judgment, learned counsel for the Appellant was found wanting and could not point out any such error or omission.

7. Conversely, for his part, learned counsel for the Respondents Nos. 1 to 6 maintained that they were innocent, whereas the learned APG also did not support the Appellant, instead, defended the impugned Judgment as being correct and unexceptionable.

8. Indeed, it is well settled principle of law that an appeal against acquittal is distinct from an appeal against conviction, as the presumption of double innocence is attracted in the former case and an acquittal can only be interfered with when it is found to be capricious, arbitrary and perverse.

9. We are fortified in this regard by the judgment rendered by the Supreme Court in the case reported as The State v. Abdul Khaliq PLD 2011 Supreme Court 554, where after examining a host of case law on the subject, it was held as follows:-

> "From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced 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. It has been categorically held in a plethora of judgments that 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. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the, findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). 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 the matter at hand it is apparent that the learned trial Court has advanced valid and cogent reasons in acquitting the Respondents and no palpable legal justification has been brought to the fore for that finding to be disturbed. As such, for that reason, the Appeal was found to be devoid of merit and was dismissed vide a short order made in Court upon culmination of the hearing on 18.10.2023.

JUDGE

JUDGE

Sukkur.
Dated: