IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Acq. Appeal No. D-36 of 2023

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

Appellant	:	Abdul Sattar, through Lohac Muhammad Mithal, Advocate.
Respondents	:	Nemo.
Date of hearing	:	31.10.2023

JUDGMENT

YOUSUF ALI SAYEED, J. – The Appellant, who is the complainant of Crime No. 235 of 2020 registered at Police Station Naushehro Feroze, under Sections 452, 302 read with Section 149 PPC (the "**FIR**"), has preferred the captioned Appeal under Section 417 (2A) Cr. P.C., impugning the Judgment entered by the learned Additional Sessions Judge-III Naushehro Feroze on 12.10.2023 in the ensuing Session Case, bearing No. 201 of 2021, resulting in the acquittal of the Respondents Nos. 1 to 3, namely Ishaque, Meer Khan and Muhammad Muneer respectively, and the case against the Respondent No.4, namely Zahid Hussain, being kept on the dormant file in view of his absconsion.

2. Succinctly stated, through the FIR the Appellant had alleged that the murder of his daughter, namely Khusboo, had taken place at the hands of the Respondents on 20.11.2020.

3. The sequence of events forming the backdrop to the fatality was traced back by the Appellant to the marriage of his son, Sanas Ali, to one Naveedan, who was the former wife of the Respondent No.4, with it being said that he had been issuing threats to the Appellant since the time of their union. It was stated by the Appellant that on the fateful day, he was at home along with Sanas Ali, Khushboo, Naveedan and his other son, namely Qurban Ali, when, at 0930 hours, the Respondents Nos. 1 and 4 entered armed with pistols and the latter fired upon his daughter with the bullet striking her in the abdomen so as to claim her life. It was said that those two Respondents then proceeded to leave the house, at which time the Appellant and his relatives followed them till the outer door, and saw the Respondents Nos. 2 and 3 standing outside next to two motorcycles. It is said that the Respondents pointed their weapons at them and issued threats that they would be killed if they were pursued further, prompting the Appellant and others to stop in their tracks, whereafter the Respondents then fled the scene. It was said that the body of the deceased was then taken to the Civil Hospital, Naushehro Feroze, after which it was interred following the post mortem, with the Appellant appearing at the police station at 1300 hours the next day (i.e. 21.11.2020) for registration of the FIR.

4. 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 Respondents entered a plea of not guilty in response to the charge and claimed trial, during the course of which the prosecution, while giving up Sanas Ali through a formal statement, proceeded to call several other witnesses who produced various documents, as specified hereinunder: -

(i) PW-1, the Appellant/complainant Abdul Sattar Lashari, who produced the receipt of delivery of the dead body of the deceased and the FIR;

(ii) PW-2, Qurban Ali, who came forward as an eye witness, and produced a Danishnama, mashirnama of inspection of the dead body, mashirnama of the last worn clothes of the deceased, and mashirnama of the inspection of the place of wardat, securing of blood-stained clay and recovery of an empty;

(iii) PW-3, SIP Ishaque Mallah, the investigating officer, who produced carbon copy of the Lash Chakas Form, the departure and arrival entries, and Chemical Report.

(iv) PW-4, Muhammad Jameel Rajput, the tapedar, who produced a police letter and a sketch of the place of incident.

(v) PW-5, Dr. Shahzadi Sarwat, the medical officer, who produced a police letter, the Lash Chakas Form, provisional post mortem report, Chemical Report, and final post mortem report of the deceased.

5. A perusal of the impugned Judgment reflects that 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, with it *inter alia* being observed that:

(a) The actions attributed to the Respondents ran contrary to the motive ascribed by the Appellant in as much as he, Sanas Ali and Naveedan were all present at the time of the alleged attack, but the Respondent No.4 is said to have ignored all three of them and targeted Khushboo, with whom he had no concern or grudge. This was regarded as incongruous, hence beggared belief and was seen as damaging to the prosecution's case.

(b) The only eye-witnesses produced were the Appellant and his son and the prosecution did not call any independent persons from the locality to examine them as a witness, albeit the alleged incident being shown to have taken place during the morning hours, at 9.30 am, and it being said that there were other houses in the vicinity.

(c) If the body of Khushboo had been taken to the hospital by the prosecution witnesses, their hands and clothes ought to have been smeared with blood, but the Appellant had conceded during his cross examination deposed that their clothes were not smeared. He had stated however that drops of blood had fallen on the seat of the rickshaw in which the body was transported, but that was contradicted by PW Qurban Ali, who stated under cross examination that the rickshaw was not stained with blood.

(d) The investigating officer failed to recover the weapons said to have been used in the commission of alleged offence or collect any CDR reports to establish the presence of the respondents at the place of occurrence at the relevant time.

(e) While the investigating officer secured the last worn clothes of the deceased on 20.11.2020, the same were dispatched to the Chemical Laboratory on 26.11.2020 and then too, received on 30.11.2020, after delay of 10 days.

(f) While the investigating officer also secured one 30 bore empty, the same was not sent to FSL Larkana for analysis.

(g) The record shows that the WMO found that one injury on the person of the deceased was blackening, whereas none of the witnesses deposed that any of the accused had caused injuries from a close range.

6. Moreover, we have observed that Sanas Ali, the Appellant's son and a central character in the motive ascribed for the attack, was shown to have been present at the spot at the relevant time, but was given up as witnesses by the prosecution, hence a presumption or inference may be drawn in terms of Illustration (g) of Article 129 of the Qanun-e-Shahadat Order, 1984, that he been called and examined, he would not have supported the prosecution. Thus, his non-examination also undermines the prosecution's case.

7. 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 and remained at a loss to show how a conviction was possible under the circumstances, particularly in view of the points noted herein above.

8. Indeed, it is well settled that the presumption of innocence and standard of proof beyond a reasonable doubt are fundamental tenets of a criminal trial, and even a single circumstance that serves to create reasonable doubt in a prudent mind as to the guilt of the accused entitles him to that benefit, not as a matter of grace or a concession, but as a matter of right. We are fortified in this regard by the Judgments of the Supreme Court in the cases reported as Muhammad Akram v. The State 2009 SCMR 230 and Tariq Pervez, v. The State 1995 SCMR 1345. As such, for an accusation underpinning a charge to crystallize into a conviction, the same has to be proven as per the prescribed standard through legally admissible evidence that is sufficiently probative in that regard.

9. It is axiomatic that the presumption of innocence applies doubly upon acquittal, and that such a finding is not to be disturbed unless there is some discernible perversity in the determination of the trial Court that can be said to have caused a miscarriage of justice. If any authority is required in that regard, one need turn no further than the judgment of 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. However, in the matter at hand the learned trial Judge 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, the Appeal is found to be devoid of merit and stands dismissed accordingly.

JUDGE

JUDGE

Irfan/PA