IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Acquittal Appeal No.D–24 of 2020

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE.

Mrs. Justice Rashida Asad, J.
Mr. Justice Khadim Hussain Soomro, J.

Date of hearing. 06.09.2023
Date of Announcement 03.10.2023

Mr. Achar Khan Gabole, Advocate for respondents.

Mr. Zulfiqar Ali Jatoi, Addl.P.G.

JUDGMENT

KHADIM HUSSAIN SOOMRO, J; Through this acquittal appeal the appellant/complainant, namely, Shakeel Ahmed Panhwar has impugned the judgment dated 06.06.2020 passed by Additional Sessions Judge-III/MCTC-II, Sukkur in Sessions Case No.178/2015, arising out of crime No.242/2014 U/s 302, 203, 109, 148 and 149 PPC Police Station, Rohri whereby the respondents Bilawal @ Shahnawaz, Sardar, Asif Nadeem, Mehar and Ishaque alias Ali Khan were acquitted by extending benefit of doubt to them.

2. Brief facts of the prosecution case are that 21.10.2014 at 1930 hours, complainant Shakeel Ahmed got the FIR registered at Police Station, Rohri stating therein that he is resident of Taluka Bhirya district Naushehro Feroze. His brother Abdul Haq was serving in Pakistan Army since, 2006 who visited home on Shab-e-Bar'at while returning he informed his family members that he will return on Eid-ul-Fitr holidays. On 28.07.2014 complainant received information from Police Station Tharoshah that Abdul Haq was murdered, and his dead body was lying at Rohri Hospital. Complainant enquired from 11 Sindh Regiment Quetta and he was informed that Abdul Haq had been on leave since 26.07.2014. The complainant informed his relatives, namely, Ghulam Sarwar, Azizullah and other relatives and approached at Taluka Hospital, Rohri, where they identified the dead body of his brother.

Postmortem of the dead body was already conducted. The dead body had injuries from knives. The complainant then approached to Police Station Rohri, where he was informed by SHO that Police received information from Firdous Hotel about a smell from Room No.1, Police broke the locked door and found dead body of a man, who was identified as Abdul Haq from hotel record. It showed that deceased stayed there from 26.07.2014, and he was murdered at night time by four unknown persons. Complainant party informed officers of 11 Sindh Regiment Quetta, who ordered them to shift the dead body to CMH Pano Akil. After completion formalities, dead body was handed over to complainant side and after funeral rite complainant lodged FIR on 04.08.2014 but it was not having correct details. After that complainant approached High Court and lodged FIR against four unknown accused.

After investigation the charge-sheet against accused/respondents was vcpresented in trial Court. Formal charge against accused were framed to which they pleaded not guilty and claimed trial vide their pleas at Ex.6 to 10 respectively.

3. In support of his case prosecution examined PW-I/Dr. Bisharat Ali was examined at Ex.11 who produced Police letter No.975, provisional postmortem report dated 28.07.2014, chemical reports dated 08.08.2014 and 22.08.2014, Histopathological report No.33 dated 25.10.2014, chemical Laboratory report of Rohri dated 04.08.2014 for histopathological examination of postmortem viscera dated 04.08.2014 at Ex.11-A to 11-G respectively. PW-2/ Complainant Shakeel was examined at Ex.13 who produced true copy of order of Honourable High Court of Sindh Bench at Sukkur, attested photocopy of his statement, FIR No.242/2014 and also his further statement dated 18.01.2015 at Ex.13-A to Ex.13-D respectively. PW-3/HC Azizullah was examined at Ex.14. PW-4/Abdul Kareem was examined at Ex.15 who produced attested photocopy of mashirnama dated 28.07.2014, attested photocopy of mashirnama of recovery of shirt of deceased dated 04.08.2014 and mashirnama of place of incident at Ex.15-A to 15-C respectively. PW-5/Muhammad Ramzan was examined at Ex.16. PW-6/SIP Shafqat

Hussain Kanasiro was examined at Ex.17, who produced mashirnama of arrest, Roznamcha entries, Chemical Lab Report of knives, attested copy of order of learned Magistrate, mashirnama of recovery knives at Ex.17-A to 17-I respectively. PW-7/Retired ASI Abdul Rasheed was examined at Ex.18, who produced Danishnama at Ex.18-A, PW-8/LPC Ramesh Kumar was examined at Ex.19, who produced certificate at Ex.19-A. PW-9/ASI Mumtaz Ali was examined at Ex.21. PW-10/Tapadar Shakeel Ahmed was examined at Ex.22 who produced memo/sketch of place of wardat at Ex.22-A Thereafter, learned ADPP closed the prosecution side at Ex.23, and then statements of accused were record U/s 342 Cr.P.C at Ex.24 to 28 respectively.

4. Learned trial court after hearing the learned Counsel for the parties on the assessment of the evidence, acquitted the accused/respondents as stated above. Hence, this appeal has been filed by the appellant before this Court.

5. This appeal was presented in the office on 06.07.2020 and first time it was placed before the Court on 16.09.2020 when none appeared on behalf of complainant/appellant; however, notice was ordered to be issued against the appellant/complainant and intimation notice his counsel. Thereafter matter was adjourned to 29.09.2020, on said date neither appellant nor his counsel put their attendance and on latter date i.e.03.11.2020 Mr. Abdul Karim, Advocate filed Vakalatnama but he too did not bother to appear or pursue the matter vigilantly till yet.

6. Mr. Zulfiqar Ali Jatoi, learned Addl. Prosecutor General for the State along with counsel for respondent while supporting the impugned judgment submitted that the prosecution has failed to prove the guilt of the respondents, as such the trial Court had no option but to acquit the respondents of the charge. He, therefore, prayed that instant acquittal appeal may be dismissed.

7. We have carefully heard learned Additional Prosecutor General as well as respondents and have scanned the material available on record.

8. It is admitted that the alleged incident occurred on 26.07.2014 while FIR was lodged on 21.10.2014 after three months of the incident but there is no explanation for such delay, which alone is fatal to the prosecution case as it gives presumption or mediation, consultation and false implication of innocent persons. Upon careful examination of the judgement, it is evident that the complainant indicated in his First Information Report (FIR) that he had obtained information regarding the murder of his brother inside Room No.1 of Firdous Hotel, situated in Rohri. He also admitted in his cross-examination that after consultation with his elders, he lodged a second FIR and also did not deny the allegation of 'Karap' against his deceased brother and nominated the accused on the information of Abdul Kareem and Ayoub; during cross-examination, the complainant admitted that, he received six hundred thousand from the accused and on denial of the rest of six hundred thousand, he had got the FIR registered. It is also axiomatically clear from the record there is no eye witness of the incident, the entire evidence is merely "***hearsay***", nothing else. Furthermore, the accused Asif Nadeem was nominated on the basis of CDR, which was also not helpful for the prosecution case.

9. It is important to note that when the evidence is based on indirect clues, the circumstances that lead to the conclusion of guilt should be thoroughly proven. Furthermore, all the established facts should only support the assumption that the accused is guilty. In addition, the circumstances must have a decisive quality and direction, and they must be constructed in a way that precludes any other possible explanation besides the one proposed to be demonstrated. Simply, there needs to be a solid and comprehensive chain of evidence that eliminates any reasonable doubt regarding the innocence of the accused. This evidence must demonstrate, with a high degree of certainty, that the accused is highly likely to have committed the act in question. The preceding explanation establishes that in the case of circumstantial evidence, it is necessary to have an unambiguous and sequential chain of events in order to establish the guilt of the accused. A minor breakage or missing

of a link would go against the prosecution; therefore, entangles events are to be produced through evidence to prove guilt of accused. When the case is evaluated based on the aforementioned criteria, numerous significant breaches and omissions are identified.

10. The complainant and other witnesses had given no intrinsic worth evidence against the respondents/accused and prosecution evidence is discrepant and highly insufficient to base conviction of accused persons in a charge entailing capital punishment; i.e. there is no circumstantial evidence, Recovery is doubtful, motive not proved, lack of independent corroboration. Thus, no inference can be pinched against accused persons to be guilty of the alleged offence hence, this is case of totally ***"last seen and hearsay evidence"*** which appears to be unbelievable. The reliance can be placed in the case of Nasir Jawaid V/S The State 2016 SCMR 1144.

11. It is settled law that judgment of acquittal should not be interjected unless findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous as held by the Supreme Court in the case of *The State v. Abdul Khaliq and others (PLD 2011 Supreme Court 554)*. Moreover, the scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of the innocence is significantly added to the cardinal rule of criminal jurisprudence as the accused shall be presumed to be innocent until proved guilty. In other words, the presumption of innocence is doubled as held by the Supreme Court in the above referred judgment. The relevant para is reproduced hereunder:-

> "16. We have heard this case at a considerable length stretching on quite a number of dates, and with the able assistance of the learned counsel for the parties, have thoroughly scanned every material piece of evidence available on the record; an exercise primarily necessitated with reference to the conviction appeal, and also to ascertain if the conclusions of the Courts below are against the evidence on the record and/or in violation of the law. In any

event, before embarking upon scrutiny of the various pleas of law and fact raised from both the sides, it may be mentioned that both the learned counsel agreed that the criteria of interference in the judgment against acquittal is not the same, as against cases involving a conviction. In this behalf, it shall be relevant to mention that the following precedents provide a fair, settled and consistent view of the Superior Courts about the rules which should be followed in such cases; the dicta are

Bashir Ahmad v. Fida Hussain and 3 others (2010 SCMR 495), Noor Mali Khan v. Mir Shah Jehan and another (2005 PCr.LJ 352), Imtiaz Asad v. Zain-ul-Abidin and another (2005 PCr.LJ 393), Rashid Ahmed v. Muhammad Nawaz and others (2006 SCMR 1152), Barkat Ali v. Shaukat Ali and others (2004 SCMR 249), Mulazim Hussain v. The State and another (2010 PCr.LJ 926), Muhammad Tasweer v. Hafiz Zulkarnain and 2 others (PLD 2009 SC 53), Farhat Azeem v. Asmat ullah and 6 others (2008 SCMR 1285), Rehmat Shah and 2 others v. Amir Gul and 3 others (1995 SCMR 139), The State v. Muhammad Sharif and 3 others (1995 SCMR 635), Ayaz Ahmed and another v. Dr. Nazir Ahmed and another (2003 PCr.LJ 1935), Muhammad Aslam v. Muhammad Zafar and 2 others (PLD 1992 SC 1), Allah Bakhsh and another v. Ghulam Rasool and 4 others (1999 SCMR 223), Najaf Saleem v. Lady Dr. Tasneem and others (2004 YLR 407), Agha Wazir Abbas and others v. The State and others (2005 SCMR 1175), Mukhtar Ahmed v. The State (1994 SCMR 2311), Rahimullah Jan v. Kashif and another (PLD 2008 SC 298), 2004 SCMR 249, Khan v. Sajjad and 2 others (2004 SCMR 215), Shafique Ahmad v. Muhammad Ramzan and another (1995 SCMR 855), The State v. Abdul Ghaffar (1996 SCMR 678) and Mst. Saira Bibi v. Muhammad Asif and others (2009 SCMR 946).

From the ratio of all the above pronouncements, it can be safely hold 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 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 re-appraisal 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. It is averred in The State v. Muhammad Sharif (1995 SCMR 635) and Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals."

12. It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace. Reliance is placed upon cases of *Azhar Iqbal v. The State (2013 SCMR 383) and Muhammad Akram v. The State (2009 SCMR 230).*

13. Principles for appraisal of evidence in an appeal against acquittal are altogether different from the appeal against conviction. Once an accused is acquitted by a competent Court of law after facing the agonies of trial, then they earns the presumption of double innocence which cannot be set at naught by the appellate Court slightly unless it is established on the basis of available evidence that the impugned judgment of acquittal is perverse, fanciful or has resulted into grave miscarriage of justice.

10. After having adjudged the case from every angle, having sifted grain from the chaff and after having applied independent judicious mind, this Court is of the considered view that impugned judgment passed by Additional Sessions Judge-III/MCTC-II, Sukkur is based on proper appreciation of the evidence which is not fanciful. Needless to mention that when an accused person is acquitted by a Court of competent jurisdiction, then double presumption of innocence is attached to its judgment, with which the superior Courts in numerous cases do not interfere unless the impugned judgment appears to be vague, perverse and arbitrary or against the record.

11. In view of above, we are of the considered view that trial Court has rightly come to the conclusion that reasonable doubt has been created in the prosecution case and its benefit has rightly been extended to the respondents, therefore, Additional Sessions Judge-III/MCTC-II, Sukkur vide impugned judgment dated 06.06.2020 was fully justified for acquitting the accused/respondents hence, this Crl. Acquittal appeal being devoid of merits is accordingly dismissed.

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