IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS

Criminal acquittal Appeal No. S-130 of 2024

Appellant	:	Khamoon son of Hussain Through Mr. Ayoub Shaikh, Advocate
Respondents	:	Nemo
The State	:	Through Mr. Shahzado Saleem, Additional Prosecutor General, Sindh
Date of Hearing	:	22-08-2024
Date of Judgment	:	22-08-2024

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J U D G M E N T

Adnan-ul-Karim Memon, J. Appellant Khamoon has filed the instant Criminal Acquittal against the judgment dated 07.05.2024, passed by the learned Additional Sessions Judge-II Tharparkar in Sessions Case No. 203 of 2023 (Re-*The State v Zahid and others)* arising out of FIR No.47 of 2023 under section 395 PPC of Police Station Diplo, whereby the respondents have been acquitted with following reasoning:-

> " In view of my findings on point No. 1 above, the prosecution has miserably failed to prove its case against any of the accused beyond a reasonable shadow of a doubt, and the benefit of doubt is extended to all accused including the absconding accused Mir Muhammad son of Ahmed and as a result thereof all the above named accused are acquitted of the charge U/S 265-H(i) Cr. PC. All accused are present on bail except accused Mir Muhammad, their bail bonds stand canceled and surety/sureties discharged Let the intimation of acquittal of absconding accused Mir Muhammad son of Ahmed be sent to the concerned police station."

2. The complainant is present along with his counsel claims that on 20-09-2023, the private respondents robbed away his 25 livestock animals. Thereafter, he appeared before the concerned Police, and his F.I.R. was registered against the respondents for the offense 395 PPC. The chargesheet

was submitted for the trial of the accused. A formal charge was framed against them and they pleaded not guilty and claimed trial.

3. To substantiate his assertions, he was examined at Ex. 06, and he produced an order on an application under section 22-A & B CrPC., and FIR at Ex 06/A & Ex 6/B respectively.
PW-02/mashir Hussain was examined at Ex 07 and he produced mashinama of the place of incident at Ex 7/A.
PW- 03/witness Allahdino was examined at Ex 08.
PW-04/ investigating officer ASI Sooran Singh was examined at Ex 9, he produced entries No. 21, 5. 14, 7 & 14 a: Ex 9/4 to Ex 9/E respectively.

4. The statements of respondents under section 342 Cr.PC was recorded al Ex: 11 to Ex 21 whereby they denied the allegations of the prosecution leveled against them and claimed that they were/are innocent and had falsely been implicated in this case due to enmity over matrimonial affairs. During the statement accused persons did not opt to examine themselves on oath so they also to failed lead the evidence. The learned trial court after hearing the parties acquitted the respondents vide impounded judgment of acquittal.

5. Learned counsel for the appellant focuses on the trial court's alleged errors in assessing the evidence, including that the decision was not supported by the evidence or the law; the trial court did not give sufficient weight to the evidence of the complainant, private witnesses; and the trial court applied incorrect legal principles in its analysis. The trial court gave too much weight to minor inconsistencies in the evidence. The learned counsel argued that the trial court's decision was not supported by the evidence or the law and that the acquittal should be reversed.

6. learned APG has supported the impugned judgment and prayed for dismissal of the acquittal appeal.

7. I have heard the learned counsel for the parties and perused the record with their assistance.

8. It appears from the record that besides the evidence of the complainant which has been discussed by the trial court in detail needs no reiteration on my part, however, the Investigating officer deposed on 21-09-2023, along with his subordinate staff left to visit the place of the incident where he prepared mashinama and obtained signatures/LTIs from mashirs Abdul Hakeem and Hassan Aho as well as independent witnesses namely Nazar Muhammad Muhammad Soomar, Ashique Ali and Muhammad Anwar they disclosed that no such offense had taken place and FIR was falsely lodged by the complaint in such a situation he obtained their affidavits and signatures and again recorded statements of dependent witnesses namely Nazar Hassan, Manzoor Hassan, and Abdul Malik and finally recommended the case under B-Class. However, the learned Magistrate did not agree with the report under section 173 Cr.PC took cognizance of the office and sent the case for trial.

9. The only piece of evidence that the prosecution has brought against the respondents is the word of the complainant without any corroboration. It is also worthwhile to state here that also goes to the benefit of the respondents that during the investigation no incriminating article including the case property was recovered from them to establish their connection with the commission of the present offense. As per well-settled principles of criminal administration of justice, the conviction can be awarded to an accused, only after reliable, trustworthy, and unimpeachable evidence containing no loophole or discrepancy casting some cloud over the veracity of the prosecution story is brought on record. The question of liberty of a person has to be dealt with very cautiously by the Courts. Unless some cogent, best, and natural evidence is produced against him fully establishing his guilt beyond any reasonable doubt, he should not be sent behind bars. The benefit of the doubt to an accused presence of multiple circumstances causing doubt to the prosecution case is not necessary. Single circumstance creating reasonable doubt in the prudent mind about the guilt of the accused would make him entitled to such benefit not as a matter of grace but as a matter of right. In the present case as has been discussed above the prosecution has failed to bring on record the evidence of that quality and

degree which would justify maintaining conviction and sentence against the respondents and this was the reason the trial court acquitted the respondents from the charge.

10. The evidence of the Investigating officer, explicitly shows that initially he found the case to be false and recommended its disposal under B Class, but the same was declined and the trial began and finally ended in the acquittal of the accused this precious time of the trial court futility due to the order of the Magistrate as there was no material with him to disagree with the report of the investigating officer. Primarily, there is a difference between the role of the investigating officer and that of the 'Magistrate' in the investigation and outcome thereof. Every investigation is conducted in terms of *Chapter XIV of the* ***Criminal Procedure Code*** as well as relevant Police Rules. The *vitality* of the role of the investigating officer cannot be denied because it is the very *first* person, who per law, is authorized to dig out the truth which, *too,* without any limitations including that of the *version* of informant/complainant as during the investigation conducted after the registration of an FIR the investigating officer may record any number of versions of the same incident brought to his notice by different persons which versions are to be recorded by him under section 161 Cr.PC in the same case. Further during the investigation, the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and, as required by Rule 25.2 (3) of the Police Rules 1934 "An investigating officer must find out the truth of the matter under investigation. His object shall be to discover the facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person and upon conclusion of the investigation the report to be submitted under section 173 Cr.PC is to be based upon the facts discovered during the investigation irrespective of the version of the incident, advanced by the first informant or any other version brought to the notice of the investigating officer by any other person.

11. Elaborating further on the subject point, primarily, taking cognizance alone shall prejudice no right of the accused. Even otherwise, it is by now

settled that cognizance is taken against the offense and not the accused when police say no offense had taken place in such a scenario if the learned Magistrate disagrees with the recommendation he can simply order for further investigation, and cannot direct Investigating officer to submit chargesheet in the case as has been done in the present case. Therefore, it can safely be concluded that if a tentative examination of available material shows no *prima facie* commission of a cognizable offense was made out and does not justify proceeding further with the case then a criminal case normally be disposed of in **'B'** or **'C'** class.

12. Coming to the exercising the powers of a Magistrate under subsection (3) of section 190 of the Criminal Procedure Code, a Magistrate who takes cognizance of any offense under any of the clauses of subsection (1) of that section, is required to apply his mind to ascertain whether the case is one which he is required to 'send' for trial to the Court of Session or whether it is one which he can proceed to try himself. It must always be kept in view that an act of taking cognizance has nothing to do with the guilt or innocence of the accused but only shows that the Magistrate concerned has found the case worth trying therefore, the Magistrate should never examine the matter in ***deep*** but only has to asses prima facie of commission of the **offense** or otherwise however at the same time again says that id case is not recommended for trial Magistrate has to asses by applying it mind keeping in view the law on the subject and not to act as post office. However, once the Magistrate has taken cognizance of the offense exclusively triable by the Court of Session, he has to send the case of that Court to the Court of Session for the trial of the accused. Adding further, in such a situation when the case is at all sent up for a trial, the trial court has to look into the case at the beginning i.e at the time of framing the charge whether there was sufficient material to proceed with the case or to acquit the accused under section 265-K Cr.PC, but no such action was taken and the trial continued and finally ended in the acquittal of the accused this kind of procedure consumes much time for all concerned, and such practice needs to be curbed in the beginning.

13. Much said about the aforesaid proposition, coming on the main issue, it is a settled principle of law that no one should be convicted of a crime based on the presumption in the absence of strong evidence of unimpeachable character and legally admissible. Similarly, the mere heinous or gruesome nature of the crime shall not detract the Court of law in any manner from the due course to judge and make the appraisal of evidence in a laid down manner and to extend the benefit of reasonable doubt to an accused person being indefeasible and inalienable right of an accused. It is also an established principle of law that an accused person is presumed to be innocent until and unless he is proven guilty beyond a reasonable doubt and this presumption of his innocence continues until the prosecution succeeds in proving the charge against him beyond a reasonable doubt based on legally admissible, confidence-inspiring, trustworthy and reliable evidence. It has also been held by the Superior Courts that conviction must be based upon unimpeachable evidence and certainty of guilt and any doubt arising in the prosecution case must be resolved in favor of the accused.

14. The rule of giving the benefit of the doubt to an accused person is essentially a rule of caution and prudence and is deep-rooted in our jurisprudence for the safe administration of criminal justice. In common law, it is based on the maxim, "It is better that ten guilty persons be acquitted rather than one innocent person be convicted".

15. 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 cranial jurisprudence, that an accused shall be presumed to be innocent until proven guilty; in other words, the presumption of innocence is doubled.

16. 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 lightly interfere and the 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 in a 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 be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities.

17. I have examined the record and the reasons recorded by the learned trial court for the acquittal of respondents and for not interfering with the acquittal of respondents are borne out from the record. No misreading of evidence could be pointed out by the learned counsel for the complainant/appellant, which would have resulted in a grave miscarriage of justice. The learned courts below have given valid and convincing reasons for the acquittal of respondents which reasons have not been found by me to be arbitrary, capricious, or fanciful warranting interference by this Court. Even otherwise this Court is always slow in interfering in the acquittal of the accused because it is well-settled law that in criminal trial every person is innocent unless proven guilty and upon acquittal by a court of competent jurisdiction such presumption doubles.

18. The complainant has miserably failed to establish the guilt against the respondents shadow of reasonable doubt and this was the reason that respondents were acquitted of the charge by the trial court.

19. In view of the facts and reasons discussed above, the instant Criminal Acquittal appeal is dismissed along with the pending application(s) if any.

JUDGE