

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Acquittal Appeal No.D-43 of 2021.

PRESENT:

Mr. Justice Zulfiqar Ali Sangi,
Mr. Justice Arbab Ali Hakro,

Appellant	Shamshad Begum wife of Qaloo Bhatti (mother of deceased), through Mr. Habibullah G. Ghouri, Advocate.
Respondents	Muhammad Ali <i>alias</i> Ahmed Ali <i>alias</i> Papan Chandio & others. Mr. Ali Anwar Kandhro, Additional Prosecutor General, Sindh.
Dates of Hearing:	<u>25.11.2024.</u>
Date of Decision:	<u>25.11.2024.</u>

J U D G M E N T

Zulfiqar Ali Sangi, J.- The instant criminal acquittal appeal is directed against the judgment dated 10.11.2021, passed by the learned Judge, Anti-Terrorism Court, Larkana, in Special Case No.08 of 2021 (Re: State v/s Muhammad Ali *alias* Ahmed Ali *alias* Papan and another) emanated from Crime/FIR No.102 of 2020, registered at Police Station Warah, under Sections 302, 324, 353, 148, 149, PPC read with Section 7(a)(c) of Anti-Terrorism Act, 1997, whereby the respondents, namely, 1. Muhammad Ali *alias* Ahmed Ali *alias* Papan son of Tagial Chandio, and 2. Muhammad Saleh *alias* Saloo *alias* Sadiq son of Jani Baig Chandio, were acquitted of the charge.

2. Briefly stated facts of the case as narrated in the FIR are that on 24.12.2020, a police party of PS Warah comprising of ASI Ali Gul Brohi, HC Abdul Rehman Bhatti, PC Amir Ali and PC Amanullah Lashari, being on patrolling duty on two motorcycles, on a tip-off, confronted 06 armed culprits at 0245 hours at the path of Puna Shakh near the house of Ali Khan Bhatti in Hamal Mohalla, Warah town and in the result of cross-firing for about 10

minutes between the police party and the culprits, HC Abdul Rehman sustained firearm injury at the hands of accused persons, who then passed away. Hence, such FIR was registered against unknown accused.

3. During investigation no clue of the culprits was found; hence, final report under untraced class "A" was filed and it was approved by the concerned Magistrate. However, subsequently the case was reopened on 15.4.2021 and after recording further statements of complainant and PWs completion of other usual investigation, the respondents No.1 and 2 herein having been arrested were sent up to face trial.

4. Formal charge was framed by the learned trial Court against the above-named respondents/accused, to which they pleaded 'not guilty' and claimed to be tried.

5. To establish the charge, the prosecution examined PW-1 ASI Ali Gul Brohi (complainant), PW-2 PC Amanullah Lashari, PW-3 PC Aamir Ali Gogani, PW-4 ASI Hyder Bux Phulpoto, PW-5 ASI Allah Warayo Bhangar, PW-6 Dr. Ameer Ahmed Patojo, PW-7 tapedar Muhammad Talib Khushk, PW-8 Inspector Akhtar Hussain Khoso, PW-9 SIP Asadullah Tunio and PW-10 PC Abid Hussain, who exhibited several relevant documents.

6. Then the statements of accused under section 342, Cr.P.C were recorded, wherein they denied the prosecution allegations and pleaded their innocence. However, neither they examined themselves on oath nor led any evidence in their defence in terms of Section 340(2), Cr.P.C.

7. On conclusion of trial, the learned trial Court acquitted the respondents/accused of the charge extending them benefit of doubt vide impugned judgment dated 10.11.2021. Aggrieved by the same, the appellant Mst. Shamshad Begum Bhatti, who is the mother of deceased HC Abdul Rehman Bhatti, has maintained this Criminal Acquittal Appeal.

8. We have heard learned Counsel for the appellant as well as learned Addl. P.G. for the State and have perused the material available on record.

9. Mr. Habibullah G. Ghouri, learned Counsel for the appellant, has contended that the learned trial Court while deciding the case did not record cogent reasons for acquitting the respondents No.1 & 2; that the respondents/accused were identified by the eyewitnesses in the identification parade held before the Magistrate and they were also correctly identified by all the prosecution witnesses before the trial Court at the time of trial; that the learned trial Court committed illegality in not examining the concerned Magistrate, who conducted identification parade of the respondents/accused; that all the PWs in fact fully supported the prosecution case and their version was also corroborated by the medical evidence, as such, the learned trial Court while passing the impugned judgment did not act justly and equitably and thus passed the impugned judgment without applying judicious mind to the facts of the case; that sufficient evidence is available on record to believe that the respondents No.1 & 2 have committed the alleged offence, therefore, they are liable to be convicted for the same.

10. The learned APG, after consulting the record, did not support the impugned judgment, contending that the FIR was registered against unknown culprits and during investigation no clue of any of the accused were collected by the I.O. and even the eye-witnesses of the alleged incident did not disclose the name of any of the culprits during investigation. He, therefore, contended that the findings of acquittal recorded by the learned trial Court, which are based on well-founded reasoning, are not calling for interference by this Court.

11. We have given anxious consideration to the contentions of learned Counsel for the parties and have very carefully scanned the entire material available on record with their assistance.

12. According to the case of prosecution, on 24.12.2020, the police party led by complainant ASI Ali Gul Brohi of PS Warah confronted 06 unidentified armed culprits and in an encounter between them, a member of police party namely HC Abdul Rehman Bhatti sustained fire shot injuries and passed away; hence, such FIR was registered on behalf of State against 06 unidentified accused. It appears that the learned trial Court while dealing with the point No.1 after fully discussing the entire prosecution evidence in detail held that the complainant in the FIR and the eye-witnesses in 161 Cr.PC statements recorded on the next day of incident i.e. 25.12.2020, did not disclose the name of any accused and after considerable delay they through their supplementary statements recorded on 15.4.2021 and 24.4.2021 disclosed that accused Muhammad Ali @ Ahmed Ali @ Papan, Salikh @ Saloo @ Waheed were the culprits, who attacked upon them and committed murder of deceased HC Abdul Rehman, without disclosing any source, particularly when accused Salikh @ Saloo @ Waheed was previously known very well to complainant ASI Ali Gul Brohi. The incident was of odd hours of the night i.e. at 0245 hours; per memo of site inspection availability of electricity was not shown at the place of incident, therefore, the learned trial Court relying on the verdict of this Court reported in 2012 PCr.LJ 625 and 2008 SCMR 1556 rightly concluded that the sanctity and veracity of supplementary statements, on the basis of which the respondents/accused were implicated, being afterthought cannot be made basis for conviction. Learned Counsel for the appellant was unable to show that such findings of the trial Court are not contrary to the record.

13. So far the off-shoot cases relating to the recovery of crime weapons, shown to have been made from the respondents, are concerned; the present appellant, who is not the prosecution witness in the instant case, has though no locus standi to challenge the impugned judgment to that extent; however,

the learned trial Court has held such recoveries not proved against the accused beyond shadow of doubt, for the reason that accused Muhammad Ali @ Ahmed Ali being in custody by accompanying the police party to Puna Shaakh had produced an unlicensed pistol rubbed number with three live bullets from an abandoned 'Maikhana', which was not in the exclusive possession of accused and was accessible to general public and the mashir of recovery admitted in evidence that the pistol produced in Court as case property was showing the name as Ayaz Ali on it and said person had no concern with the subject case and the memo of recovery also did not show the availability of Ayaz Ali's name on the weapon; besides, word AZA found on the pistol was also not mentioned in the memo of its recovery. Moreover, several material contradictions were also found in the evidence of recovery officer and the mashir.

13. We have not seen any material piece of evidence, which was not discussed by the learned trial Court while passing the impugned judgment. The reasons recorded by the learned trial Court in support of findings of acquittal are based on evidence on record and the conclusion drawn by the learned trial Court as to the innocence of accused is appropriate. It is well-settled principle of law that the extraordinary remedy of an appeal against an acquittal is different from an appeal against the judgment of conviction and sentence, because presumption of double innocence of the accused is attached to the order of acquittal. Thus, on the examination of the findings of acquittal as a whole, credence is accorded to the findings of the subordinate Court whereby the accused had been exonerated from the charge of commission of the offence. To reverse an order of acquittal, it must be shown that the acquittal order is unreasonable, perverse and manifestly wrong; therefore, the order of acquittal passed by the trial Court, which is based on correct appreciation of evidence, will not warrant interference in appeal. The Honourable Supreme Court while dealing with the appeal against acquittal has

been pleased to lay down the principle in the case of **Muhammad Shafi Vs Muhammad Raza & another (2008 SCMR 329)** that *“an accused is presumed to be innocent in law and if after regular trial he is acquitted, he earns a double presumption of innocence and there is a heavy onus on the prosecution to rebut the said presumption. In view of the discrepant and inconsistent evidence led, the guilt of accused is not free from doubt, we are therefore, of the view that the prosecution has failed to discharge the onus and the finding of acquittal is neither arbitrary nor capricious to warrant interference.”*

14. In view of above facts and reasons, the impugned acquittal judgment does not suffer from any illegality or infirmity and misreading or non-reading of evidence leading to miscarriage of justice; therefore, the same is not open for interference by the High Court under Section 417, Cr.P.C. Hence, this acquittal appeal being devoid of merit is dismissed.

JUDGE

JUDGE

Qazi Tahir PA/*