

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Acquittal Appeal No.S-90 of 2017

Ali Muhammad Khushk

Versus

The State & others

Date of hearing: 10-7-2017

Date of Judgment: 10-7-2017

Mr. Illahi Bux Jamali, Advocate for the Appellant

Mr. Zulfiqar Ali Jatoi, Deputy Prosecutor General for the State

JUDGMENT

Naimatullah Phulpoto, J: Respondents/accused Ghareeb Nawaz, Shahnawaz, Ahmed Nawaz and Haq Nawaz were tried by learned 1st Civil Judge & Judicial Magistrate, Kandiaro in Criminal Case No.05 of 2016, for offences under sections 382 and 215 PPC. By judgment dated 29.4.2017, the respondents/accused were acquitted of the charge. Hence, the instant Criminal Acquittal Appeal is filed by the appellant/complainant Ali Muhammad.

2. Brief facts of the case are that on 10.10.2015, complainant Ali Muhammad lodged his report alleging therein that on 06.10.2015 at 0200 hours night, he was sleeping at his house alongwith other family members. He woke-up on some commotion and saw five armed persons standing in the house. They were identified as Gharib Nawaz, Shahnawaz both armed with KKs, Haq Nawaz armed with pistol, Ahmed Nawaz armed with gun and one unidentified person having hatchet. It was alleged in the FIR that accused caused butt blows to the complainant and by show of force took away ornaments of gold and ten pairs of clothes. After the incident, complainant approached Nekmard of the locality. Accused kept the complainant on false hopes. Finding no other way, complainant lodged FIR against the accused.

3. After usual investigation police submitted report under B-clause. However, learned Magistrate took cognizance and issued process against the accused and accused appeared.

4. Charge was framed against the accused by the trial court at Ex.2. Accused pleaded not guilty and claimed to be tried. The prosecution examined 05 witnesses i.e. complainant Ali Muhammad at Ex.3, I.O Muhammad Bux Dheraj at Ex.4, mashir Sadaqat Ali at Ex.5, PW Satabo Khan at Ex.6 and I.O Inspector Noor Muhammad Surhiyani at Ex.7. Thereafter prosecution side was closed.

5. Statements of the accused were recorded under section 342 Cr.P.C. at Ex.8 to 11, in which they claimed false implication in this case and stated that complainant has lodged false FIR against them to pressurize them as accused party had lodged FIR against the nephew of the complainant bearing Crime No.96/2015. Accused declined to examine themselves on oath in disproof of prosecution allegations. Accused have also not led evidence in defence.

6. Learned trial court after hearing the learned counsel for the parties and assessment of entire evidence acquitted the accused for the following reasons:-

“11. After investigation, the Summary report was submitted by I.O recommending the cancellation of FIR under “B” false class. I.O formed his opinion on the basis that no mark of breaking of Almirah was found during site inspection & complainant failed to produce the receipts of cell phones. In other way, the I.O opined that the memo of site inspection negated the happening of incident. However, this court while taking cognizance of the case, observed that Memo of site inspection comes within the purview of corroboration and cannot be a primary source of evidence for the crime itself and cannot fix the identity of culprit and cannot curtail the value of ocular account unless prosecution witnesses are proved as biased or interested and such assessment regarding biasness or interestedness on the part of complainant and witnesses could only be entered into during the trial by trial court. Though the memo was negating the taking place of incident, but cognizance was taken and the truthfulness of the case was left to be tested on the touchstone of ocular account of complainant and witnesses that too free from biasness and interestedness. In this regard I may observe that during the course of evidence of complainant, it was admitted by him that one Shaman son of Allah Ditto is his nephew and that said Shaman is absconding accused in the FIR lodged by accused Ghareeb Nawaz vide crime No.96/2015 P.S Khanwahan U/s 452, 382 PPC. This fact was also supported by P.W Stabo and Mashir Sadaqat. Complainant denied the suggestion that mashir Sadaqat is brother of said Shaman, while mashirr Sadaqat admitted that Shaman is his brother and is still absconder in the case lodged by accused Ghareeb

Nawaz,. Accused also took plea in their statements U/s 342 Cr.P.C that due to FIR against Shaman, the complainant has implicated them. The point worth noticeable is that mashir Sadaqat admitted that said Shaman is his brother and complainant is his uncle, while the complainant Ali Muhammad denied that Shaman is brother of Sadaqat. The active concealment and lies on the part of complainant during the course of evidence adversely reflect upon his conduct and do not point out that the complainant is trustworthy person rather interested one and biased to accused Ghareeb Nawaz as admittedly accused Ghareeb Nawaz has already booked said Shaman in his FIR. Moreover Inspector Noor Muhammad Surhiyani also stated in his evidence there is enmity going on between complainant and accused party over the matter of womenfolk and a fine of Rs.600,000/- was imposed upon complainant party, who did not honour the faisla and did not make payment to accused party and he in his cross-examination admitted that the object of complainant to lodge FIR was to save himself from the payment of Rs.6,00,000/ imposed upon him. Hence keeping in view the above all, false involvement of present accused by the complainant in this case cannot be ruled out.

The upshot of the above discussion is that prosecution has miserably failed to bring home the guilt of accused beyond reasonable doubt rather the material available on record and the discussion in the preceding paras No.09, 10 and 11 suggests that the accusation against accused persons was based on no trustworthy evidence, hence the same is frivolous one. Accordingly the Point No.1 is answered as not proved.

Point No.2

12. In light of the above circumstances it is justified to opine that the prosecution episode is not believable. The prosecution has failed to establish allegations against accused persons beyond reasonable doubts, therefore accused Ghareeb Nawaz son of Muhammad Mureed Khushik, Shahnawaz son of Muhammad Mureed Khushik, Ahmed Nawas son of Muhammad Nawaz Khushik and Haq Nawaz son of Shahnawaz Khushik are acquitted from the charge of offence punishable under section U/s: 382, 215 PPC in exercise of powers under Section 245 (1) Cr.P.C. The accused are present on bail, their bail bonds stand cancelled and sureties are discharged. However, let Show-cause notice be issued to the complainant Ali Muhammad as to why he should not pay compensation to each accused U/s 250 Cr.P.C for having leveled frivolous accusation against the accused.”

7. I have heard Mr.Illahi Bux Jamali, learned Advocate for the appellant and Mr. Zulfiqar Ali Jatoi, learned Deputy Prosecutor General for the State.

8. Mr. Jamali learned counsel for the appellant argued that the accused were identified by the appellant/complainant Ali Muhammad and other PWs and accused had committed the alleged offence by show of deadly weapons. He has further contended that the trial court did not appreciate the evidence according to settled principles of law and acquitted the accused without any legal justification.

9. On the other hand, Mr. Zulfiqar Ali Jatoi leaned Deputy Prosecution General argued that the trial court had appreciated the evidence rightly and for the sound reasons recorded acquittal in favour of the respondents/accused. Lastly it is contended by Mr. Jatoi that even otherwise scope of appeal against acquittal is very narrow. In support of his contention he has relied upon the case of **State Vs. Abdul Khaliq and others (PLD 2011 SC 554)**.

10. I have carefully perused the evidence recorded by the trial court. Complainant Ali Muhammad has deposed before the trial court that present incident had occurred on 6.10.2015 at midnight time. At that time he was sleeping in the house. Accused persons namely Ghareeb Nawaz, Shahnawaz, Ahmed Nawaz, Haqnawaz alongwith one unidentified person appeared armed with deadly weapons and broke the lock of almirah and took away ornaments of gold and clothes. I am unable to believe the evidence of the complainant Ali Muhammad for the reasons that the incident had occurred on 6.10.2015 but incident was reported to the police on 10.10.2015. Delay in lodging of FIR has not been fully explained. Complainant had admitted in cross-examination that one Shaman s/o Allah Ditto is his nephew and he is absconder in Crime No.96/2015 lodged by accused Ghareeb Nawaz at Police Station Khanwahan u/s 452, 382 PPC. Complainant has also admitted that there was private settlement in between his nephew Shaman and accused Ghareeb Nawaz in which his nephew Shaman was fined to pay Rs.600,000/- to the accused party and present case was registered subsequently. Story appears to be un-natural and unbelievable. Moreover, source of identification has also not been mentioned. Trial court for the sound reasons mentioned in Para No.11 and 12 of the judgment recorded acquittal in favour of the respondents/accused.

11. Even otherwise scope of appeal against acquittal is very narrow and limited as held by the Honourable 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 Honourable Supreme Court of Pakistan 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 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 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. For the above stated circumstances, the findings recorded by the trial court are neither perverse, arbitrary nor speculative. As such, there is no merit in the appeal against acquittal. Acquittal recorded by trial Court in favour of respondents/accused is based upon sound reasons, which require no interference at all. As such, the appeal against acquittal is without merit and the same is dismissed.

13. These are the reasons for my short order announced on 10.7.2017.

JUDGE