Judgment Sheet.

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Cr. Acq. Appeal No. S-190 of 2019

Date of hearing : **02.03.2020**.

Mr. Bahawaluddin Shaikh Advocate for Appellant/Complainant.
Mr.Zulifqar Ali Jatoi, Additional Prosecutor General.

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JUDGMENT

Naimatullah Phulpoto, J. Through this Acquittal Appeal, appellant / complainant Mai Sadori Khatoon W/O Late Pir bakhsh Chohan has impugned the judgment dated 30.09.2019 passed by Judicial Magistrate-III/MTMC Sukkur in criminal case No. 142/2018 for offences under sections 504, 506/2, 114, 337-A(i), F(i), L(ii), 336 PPC. On the conclusion of trial Judicial Magistrate-III Sukkur vide judgment dated 30.09.2019 acquitted the respondent/accused Achar from the charges.

2. Brief facts of the prosecution case as reflected in the impugned Judgment are as under :-

> *"Brief facts of prosecution case as per contents of FIR lodged by complainant, Umed Ali Chohan stating therein that accused Achar is his uncle his and his marriage was solemnized with daughter of Mubarak. while accused Achar has affairs with her on that there was matrimonial distute. On 29.5.2018 complainant along with his mother and other family members were available in the house, it was 07.30 pm they saw accused Achar, Nazeer with lathi, Bashir with lathi, Muhammad Murad with pistol in the house and they started using abusive language, in the*

meantime accused Achar instigated other accused to commit murder of Umed Ali and not to spare him, on that instigation accused Bashir and Nazir caused' lathi blows to complainant and accused Muhammad Murad caused butt of pistol on the head of complainant soal on his teeth blood was oozing, on cries PW Allah Wadhayo and other villagers gathered, seeing them coming all the accused went away issuing threats and using abusive language then complainant came at PS Dubar obtained letter for treatment and certificate, thereafter he came to Taluka Hospital Rohri for examination, treatment and certificate where he was admitted for one day in hospital thereafter he approached to Police and lodged FIR. After completing usual investigation police submitted challan against accused before the Court of law."

3. On the conclusion of the investigation, challan was submitted against the respondents/accused.

4. Trial Court framed the charge against respondents/accused for offence under sections 504, 114, 337-A(i), F(i), L(ii) and 506/2 PPC. Respondents/accused pleaded not guilty and claimed to be tried.

5. At the trial, prosecution examined six (06) PWs and prosecution side was closed.

6. Statements of accused were recorded under Section 342, Cr. P.C in which accused claimed false implication in this case and denied the prosecution's allegations. They did not examine themselves on oath nor produced any witness in their defense.

7. Learned trial Court after hearing learned counsel for the parties and assessment of the evidence, by assigning sound reasons in point No.1 of the impugned judgment, acquitted the accused vide judgment dated 30.09.2019, for the following reasons.

" After considering the arguments and perusal the evidence and other material available on record, it appears that complainant has fully supported the contents of FIR, so also she is the eye witness of the case and chance witness Allah Wadhayo have also corroborated the version of complainant, but that the medical evidence is on record which also corroborate the ocular account that the injured Umaid Ali has received five injuries as detailed above which were caused with hard and blunt substance. Further the evidence of mahsir also support the prosecution story, and also I/O in his evidence has fully supported the case of prosecution.

So far the defense plea taken by the accused persons that there is contradiction in the evidence of witnesses and some delay in lodging of the FIR which are minor lacunas and did not discard the ocular account supported with medical evidence when the accused has not denied if the injured Umed Ali had not received above said injuries. In this regard it is admitted position that there is cross cases between the parties and the case lodged by the accused party wherein complainant of this case is shown as accused hence the same defense plea cannot be taken into consideration to discard the prosecution in respect of injuries on the person son of complainant. Furthermore the admission of matrimonial dispute/enmity is double edge weapon which cuts the roots of both parties but here in this case, this dispute is the motive of causing injuries to complainant by the accused, which has also been established through evidence. Further there is no evidence on record in respect of trespass into the house of complainant or using abusive language with complainant by the accused so also threats of murder as well as instigation against accused Achar.

In view of the above discussions, I am of the considered view that prosecution has been able to prove this case against all the accused named above except accused Achar against whom the allegation of instigation are attributed but no material evidence has been brought on record for proving the allegation of instigation against said accused, hence this point in hand and same is partly answered in affirmative against all the accused except accused Achar and it is partly answered in negative against accused Achar."

8. Complainant being dissatisfied with the acquittal of the accused has filed this appeal.

9. Learned advocate for the appellant/complainant mainly contended that prosecution has proved its case against respondents/accused. He submitted that impugned judgment of the trial Court is based on misreading and non-reading of evidence. It is further submitted that trial Court has disbelieved strong documentary evidence without assigning sound reasons, and prayed for converting the acquittal of respondent/accused Achar to the conviction.

10. Mr. Zulifqar Ali Jatoi Additional P.G supported the judgment of the trial Court and argued that trial Court has properly appreciated the evidence and acquittal of the accused / respondent Achar is neither perverse nor based upon misreading of evidence. He has supported the judgment of the trial Court.

11. It is settled law that ordinary scope of acquittal appeal is considerably narrow and limited and obvious approach for dealing with the appeal against the conviction would be different and should be distinguished from the appeal against acquittal because presumption of double innocence of accused is attached to the order of acquittal. In the case of *The State and others v. Abdul Khaliq and others* (**PLD 2011 Supreme Court 554**), following guiding principles have been laid down for deciding an acquittal appeal in a criminal case:

> *"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. In the recent judgment in the case of *Zulfiqar Ali v. Imtiaz and others*(**2019 SCMR 1315**), Hon'ble Supreme Court has held as under:

"2. According to the autopsy report, deceased was brought dead through a police constable and there is nothing on the record to even obliquely suggest witnesses' presence in the hospital; there is no medico legal report to postulate hypothesis of arrival in the hospital in injured condition. The witnesses claimed to have come across the deceased and the assailants per chance while they were on way to Chak No.504/GB. There is a reference to M/s Zahoor Ahmed and Ali Sher, strangers to the accused as well as the witnesses, who had first seen the deceased lying critically injured at the canal bank and it is on the record that they escorted the deceased to the hospital. Ali Sher was cited as a witness, however, given up by the complainant. These aspects of the case conjointly lead the learned Judge-in-Chamber to view the occurrence as being un-witnessed so as to extend benefit of the doubt consequent thereupon. View taken by the learned Judge is a possible view, structured in evidence available on the record and as such not open to any legitimate exception. ***It is by now well-settled that acquittal once granted cannot be recalled merely on the possibility of a contra view. Unless, the impugned view is found on the fringes of impossibility, resulting into miscarriage of justice, freedom cannot be recalled.*** *Criminal Appeal fails. Appeal dismissed."*

13. I have heard learned counsel for the parties and perused the evidence as well as impugned judgment carefully. Admittedly there was delay of one month in lodging of the F.I.R. Case of respondent/accused Achar was quite distinguishable from the case of co-accused who have been convicted by the trial Court. No overt act has been attributed to him. Allegation of instigation has not been substantiated at trial by cogent and confidence inspiring evidence. In the background of the dispute between the parties over the matrimonial affairs, false implication of respondent/accused Achar could not be ruled. Judgment of the trial Court appears to be justified and well-reasoned. Trial Court has assigned sound reasons by acquitting the respondent/accused Achar. Learned counsel for the appellant / complainant has not been able to point out any serious flaw or infirmity in the impugned judgment. View taken by the learned trial Court is a possible view, structured in evidence available on record and as such not open to any legitimate exception. It is by now well settled that acquittal once granted cannot be recalled merely on the possibility of a contra view. Unless, impugned view is found on fringes of impossibility, resulting into miscarriage of justice, freedom cannot be recalled.

14 . This Criminal Acquittal Appeal is without merit and the same is **dismissed**.

JUDGE

Irfan/PA