

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Acqtl. Appeal No.D-15 of 2019.

Present:  
Mr. Justice Zafar Ahmed Rajput,  
Mr. Justice Shamsuddin Abbasi,

Appellant : Abdul Hameed Shabrani(Chandio), through  
Mr. Asif Ali Mohammad Khan Chandio, Advocate.

Respondents : Ashique Ali Shabrani & others.  
Mr. Aitbar Ali Bullo, Deputy Prosecutor General.

Date of hearing: 14.01.2020. Date of Judgment: 14.01.2020.

J U D G M E N T.

**Shamsuddin Abbasi, J.-** This criminal acquittal appeal has been filed by appellant/complainant Abdul Hameed Shabrani against the judgment dated 02.05.2019, passed by learned Additional Sessions Judge-II, Larkana, in Sessions Case No.908/2014, arisen out of Crime No.97/2014 of Police Station Rehmatpur, Larkana, registered under Sections 302, 504, 34, PPC, whereby the respondents No.1 & 2, namely, Ashique Ali son of Bashir Ahmed and Imtiaz Ali son of Wahid Bux, both by caste Shabrani, who were facing trial, have been acquitted of the charge, while the respondent No.3, namely, Gulzar Ali son of Ali Gohar Shabrani, who was absconder, has been acquitted in absentia.

2. In brief, the prosecution case as per FIR is that on 13.9.2014, complainant Abdul Hameed, his sons Munawar Ali and Ashraf Ali were sitting in the shop of complainant situated near Waggan Hotel, Bhians Colony Road, Larkana town, while complainant's another son Mohammad Yameen was standing outside the shop, when at about 8.00 p.m., accused persons, namely, Ashique Ali, having wooden plank

in his hand, along with two bare-faced unidentified persons, who were not previously known to the complainant party and would be identified if seen again, both armed with Pistols, emerged there; accused Ashiq Ali by hurling abuses inflicted blow with his wooden plank on the head of Mohammad Yameen, who fell down on the ground; the pistol bearer accused aiming their pistols towards complainant and witnesses, while accused Ashique Ali kept on inflicting wooden plank blows to Mohammad Yameen and then all the accused persons fled away. Complainant took his injured son Mohammad Yameen to Casualty Ward Hospital, Larkana, then he obtained letter for treatment from police station, delivered it in the hospital and then again went to police station and lodged FIR at 11.00 p.m.

3. The FIR was initially registered for offence under Sections 324, 34, 504, PPC; however, subsequently injured Mohammad Yameen succumbed to injuries, hence Section 324 was substituted with 302, PPC.

4. Initially, the respondent No.1/accused Ashique Ali was arrested and sent up to face trial and charge was also framed against him; however, subsequently respondent No.2/accused Imtiaz Ali was also sent up with supplementary challan; while respondent No.3/accused Gulzar Ali all along remained absconder.

5. Formal amended charge was framed against respondents/accused Ashique Ali and Imtiaz Ali, to which they pleaded 'not guilty' and claimed to be tried. At the trial, the prosecution examined PW-1 ASI Niaz Ali Solangi at Ex.14, who produced FIR at Ex.14-A; PW-2 complainant Abdul Hameed Shabrani, who produced receipt of dead body at Ex.15-A; PW-3 Ashraf Shabrani at Ex.16, who produced mashirnama of injuries at Ex.16-A, mashirnama of dead body

at Ex.16-B, danistnama at Ex.16-C, mashirnama of place of incident at Ex.16-D, mashirnama of arrest of accused Ashique Ali at Ex.16-E, mashirnama of recovery of alleged wooden bar at Ex.16-F and his 164, Cr.P.C statement at Ex.16-G; PW-4 mashir Munawar Ali at Ex.18, who produced his 164, Cr.P.C statement at Ex.18-A; PW-5 tapedar Mohammad Bachal Awan at Ex.19, who produced site plan and letter of Mukhtiarkar at Ex.19-A & B respectively; PW-6 PC Bachal Khan at Ex.20, PW-7 Medical Officer Dr. Ashok Kumar at Ex.22, who produced postmortem report and lash chakas form at Ex.22-A & 22-B; PW-8 SIP/SIO Zubair Ahmed at Ex.23, who produced roznamcha entries, mashirnama of place of incident and recovery of blood stained earth, road certificate and chemical report at Ex.23-A to 23-G respectively. Thereafter, the side of prosecution was closed.

6. The respondents/accused Ashique Ali and Imtiaz Ali in their 342, Cr.P.C statements (Ex.25 & 26), denied the allegations leveled against, pleaded their innocence and prayed for justice. Neither they examined themselves on oath nor led any evidence in defence.

7. The learned Counsel for the appellant has contended that prosecution has fully proved its case against the respondents/accused; that strong ocular evidence fully corroborated by the medical and circumstantial evidence, was brought on record by the prosecution, but even the learned trial Court ignoring the same has acquitted not only the respondents No.1 and 2, who were facing trial, but also the respondent No.3, who was absconder, in absentia. Learned Counsel has, therefore, contended that the impugned judgment may be set aside and the respondents/accused be convicted.

8. Learned Deputy Prosecutor General has fully supported the impugned judgment and has contended that the prosecution has failed

to prove the case beyond reasonable doubts and, therefore, no case is made out for interference.

9. We have heard the learned Counsel for the appellant as well as learned D.P.G and have perused the record as well as the R&Ps.

10. At the very outset we may observe that while deciding an acquittal appeal the appraisal of the evidence vis-à-vis an appeal against conviction is not on same plane. In appeal against conviction the evidence is appraised with a strict view, whereas the same rigid method of appraisal of evidence is not to be taken into consideration while deciding an acquittal appeal. The learned trial Court has recorded findings of acquittal, mainly on the grounds that in the FIR complainant had not disclosed any specification of the injuries on any other part of the body of injured except single injury on the head of deceased and he improved his version in his evidence by deposing that the other blows caused by accused Ashique Ali with wooden plank hit on forehead, nose and left side of temporal region of deceased; in the FIR the complainant had implicated respondent/accused Ashiq Ali and two unknown accused and in the evidence he named those two unknown accused to be Imtiaz and Gulzar; however, he further improved his version in the evidence by deposing that 2/3 other persons were also accompanying the accused and he also did not disclose the source of identification for implicating accused Imtiaz and Gulzar; PWs Ashraf and Munawar Ali, the sons of the complainant, who were allegedly with the complainant at the time of incident, did not disclose about presence of any other accused except the above-named three accused persons and PW Ashraf Ali did not say about repetition of blows by accused Ashiq Ali on the person of deceased; as per prosecution case the accused persons were seen by the complainant

and P.Ws on the light of electric bulbs, but the complainant and PWs did not depose about availability of electric bulbs at the place of incident; even the mashirnama of place of incident (Ex-16-D) does not show the existence of electric bulbs at the place of incident and the tapedar also has not shown in the site plan about existence of electric bulbs at the place of wardhat, which has made the identification of the accused persons very doubtful; PW Munawar Ali in his evidence deposed that the accused persons were present on southern side, while the site plan prepared and produced by tapedar indicates presence of the accused on northern side; the complainant deposed that the incident lasted for only 3 to 5, while PWs Munawar Ali and Ashraf deposed that the incident lasted for about 20 minutes; the evidence of IO SIP Zubair Ahmed shows that accused Imtiaz and Gulzar, who were shown in the FIR to be unidentified accused, were implicated by the complainant in his supplementary statement as well as by PWs Munawar Ali and Ashraf through their 164, Cr.P.C statements, though in the 161, Cr.P.C statements recorded on 24.09.2013 i.e. after 11 days of the FIR, these witnesses had not disclosed the names of both the accused; it is also surprising to note that accused Imtiaz is maternal nephew (sister's son) of complainant, and further PW Munawar Ali also admitted in cross-examination that accused Gulzar and Imtiaz were known to him; this aspect of the case has created serious doubt in the prosecution case, which shows malafide on their part to implicate accused Imtiaz, who is nephew of complainant amongst the unidentified persons; so far recovery of wooden bar/plank is concerned, PW/mashir Ashraf admitted that the same was recovered by the police after maltreating the accused and that despite availability of private mashirs, no independent person was associated with such recovery proceedings

of wooden bar as well as the blood-stained earth; the motive was also not established/proved by the prosecution.

11. In an appeal against acquittal, interference is only made when it appears that there is gross misreading of evidence which might cause miscarriage of justice. In acquittal appeals ordinarily the Courts are reluctant to interfere with the judgment of the trial Court and instead due weight is to be given to the findings of the trial Court, as the evidence has been appraised and a conclusion has been drawn. The Hon'ble Supreme Court in the case of *Muhammad Usman & 2 others v. The State (1992 SCMR 489)* has laid down certain principles in respect of acquittal appeals, which read as under:

*"(1) In an appeal against acquittal the Supreme Court would not on principle ordinarily interfere and instead would give due weight and consideration to the findings of Court acquitting the accused. This approach is slightly different than that in an appeal against conviction when leave is granted only for the reappraisal of evidence which then is undertaken so as to see that benefit of every reasonable doubt should be extended to the accused. This difference of approach is mainly conditioned by the fact that the acquittal carries with it the two well accepted presumptions: One initial, that till found guilty, the accused is innocent; and two that again after the trial a Court below confirmed the assumption of innocence.*

*(2) The acquittal will not carry the second presumption and will also thus lose the first one if on points having conclusive effect on the end result the Court below: (a) disregarded material evidence; (b) misread such evidence; (c) received such evidence illegally.*

*(3) In either case the well-known principles of reappraisal of evidence will have to be kept in view when examining the strength of the views expressed by the Court below. They will not be brushed aside lightly on mere assumptions keeping always in view that a departure from the normal principle must be necessitated by obligatory observances of some higher principle as noted above and for no other reason.*

*(4) The Court would not interfere with acquittal merely because on reappraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If, however, the conclusion reached by that Court was such that no reasonable person would conceivably*

*Abdul Hameed*

reach the same and was impossible then this Court would interfere in the exceptional cases on overwhelming proof resulting in conclusion and irresistible conclusion; and that too with a view only to avoid grave miscarriage of justice and for no other purpose. The important test visualized in these cases, in this behalf was that the finding sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous."

12. On perusal of the record and evidence placed before us, it appears that the trial Court has taken due care in acquitting the respondents, as this is a case which suffers from infirmities, deficiencies, improbabilities, contradictions and improvements, which rendered the prosecution case highly doubtful. This appears to be a case of improvement. All these points and issues do not lead us to any conclusion other than the acquittal of the respondents.

13. In view of hereinabove facts and circumstances of this case, we are of the view that the learned trial Court has passed a well-reasoned judgment by acquitting the respondents, as the prosecution has failed to prove the case against the respondents/accused beyond any reasonable shadow of doubt. Accordingly instant acquittal appeal was dismissed by us through short order announced in open Court on 14.01.2020. Above are the detailed reasons thereof.

  
JUDGE 22/01/2020

  
22-01-2020  
JUDGE