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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Crl. Acquittal Appeal No.S-07 of 2003.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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For Hearing of case.

24.09.2018.

Mr. Altaf Hussain Surahiyo, advocate for the respondents
No.1 to 4, 6 to 9, 11 and 13.

Mr. Sharafuddin Kanher, A.P.G.

Counsel for the appellant is called absent without any
intimation. Reserved for orders.


Judge

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IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Acquittal Appeal No.S-07 of 2003.

Appellant Abdul Ghaffar Chachar through Mr. Saeed Ahmed B. Bijarani, Advocate.

Respondents Ali Hassan Chachar & others, through Mr Altaf Hussain Surahio, Advocate for respondents No.1 to 4, 6 to 9, 11 & 13.

Mr. Sharafuddin Kanhar, Assistant Prosecutor General.

Dates of Hearing: 03.09.2018, 17.09.2018 & 24.09.2018.

Date of Decision: 12. 10.2018.

J U D G M E N T

Zafar Ahmed Rajput –J. The instant criminal acquittal appeal is directed against the judgment dated 03.01.2003, passed by the learned Additional Sessions Judge, Kashmore, in Criminal Appeal No. Nil of 2002, whereby the judgment of conviction dated 14.12.2002 passed by the learned Civil Judge & FCM, Kashmore in Criminal Case No.179/1993 (Re: State v/s Ali Hassan & others) emanated from Crime/FIR No 49 of 1993, registered at Police Station Bakhshapur, District Jacobabad, for offence under Sections 337-A(i), 337-F(i), 337-F(vi), 147, 148, 149, PPC, was set aside and the respondents No.1 to 13, namely, 1. Ali Hassan, 2. Bakhsho, 3. Guloo, 4. Nasir, 5. Ghulam Mustafa (now expired), 6. Amanullah, 7. Ghulam Yasin, 8. Rozi, 9. Wazir, 10. Hazoor Bakhsh (now expired), 11. Meeran, 12. Sulleman (now expired), and 13. Rajo, all by caste Chachar, were acquitted of the charge.

2. Briefly, the facts of the prosecution case are that on 17.8.1993 complainant Abdul Ghaffar lodged FIR with Buxapur Police, stating therein that he along with his father Hazoor Bux was returning to Thalho Shakh from Kandhkot town, where his relatives Qaimuddin and Mohammad Sulleman

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came from 19-Mile of Shahi Wah and all jointly set out for their village at 6.00 p.m. It is further stated that when they reached near Village Sheral Chachar on Saifal Chachar link road, accused Ghulam Mustafa, Raza Mohammad alias Sheral, Ali Hassan, Amanullah, Ghulam Yasin, Rozi, Wazir, Bakhsho, Nasir, Hazoor Bux, Meeran, Rais Shadal alias Raza Mohammad, Saleem and Rajo along with two unknown persons, armed with hatchets and lathis, appeared from canal. Accused Shadal issued "hakaal" to complainant party and further declared that they had come to take revenge of Qabil; thereafter accused Ghulam Yasin, Ali Hassan and Amanullah started causing blows to Hazoor Bux; accused Nasir, Guloo, Ghulam Mustafa and Bakhsho caused blows to PW Qaimuddin and accused Rozi, Saleem, Hazoor Bux and Wazir caused blows to complainant Abdul Ghaffar, while accused Rais Shadal, Meeran, Rajo and two unknown persons caused blows to Sulleman and then all the accused persons went away towards their respective houses and in the meanwhile P.Ws Shah Mohammad Chachar came there, who also witnessed the incident and brought injured P.W to Police Station Buxapur and lodged present FIR.

3. After completion of formalities, a 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. At trial, the prosecution examined PW-1 complainant Abdul Ghaffar at Exh.3, he produced FIR at Exh.3-A; PW-2 injured Qaimuddin at Exh.4; PW-3 injured Hazoor Bux at Exh.7; PW-4 Dr. Abdul Sattar at Exh.8, who produced copy of M.Cs of injured at Exh.8-A to 8-D respectively; PW-5 Sulleman at Exh.9, PW-6 Hafiz Bashir Ahmed (mashir of the case) at Exh.10, who produced copies of mashirnamas at Exh.10-A to 10-D respectively. Meanwhile, co-accused Shadal alias Raza Mohammad son of Dhani Bux expired and proceedings against him were abated by the learned trial Court.

4. The statements of accused under section 342, Cr.P.C were recorded by the learned trial Court, wherein they denied the prosecution

allegations and pleaded their innocence. The accused/respondents neither examined themselves on oath, nor did they produce any evidence in their defence in terms of Section 340(2), Cr.P.C. On conclusion of trial, the learned trial Court i.e. Civil Judge & FCM, Kashmore convicted and sentenced the respondents/ accused vide judgment dated 14.12.2002.

5. The respondents/accused filed appeal being Criminal Appeal No.Nil of 2002 before the learned Sessions Judge, Jacobabad, which was heard by the learned Additional Sessions Judge, Kashmore, who vide his judgment dated 03.01.2003 acquitted the respondents/accused of the charge extending them benefit of doubt. It is against that judgment, that instant Criminal Acquittal Appeal has been maintained by the appellant/ complainant.

6. I have heard the learned Counsel for the parties at length and perused the material available on record.

7. Learned Counsel for the appellant has mainly contended that the impugned acquittal judgment of the appellate Court suffers from material irregularity, as the learned appellate Court failed to consider that the respondents/accused are nominated in the FIR by name and the incident took place in daylight and the parties were known to each other, hence no question of mistaken identity arises. He has further contended that complainant Abdul Ghaffar received seven injuries, while injured Sulleman, Hazoor Bux and Qaimuddin received 05 and 10 injuries respectively and the learned trial Court rightly convicted the respondents/accused for the alleged offence, but the learned appellate Court without assigning any cogent reason reversed the judgment of the trial Court and acquitted the private respondents.

8. The learned Counsel for the respondents/accused has fully supported the impugned judgment and have contended that the learned appellate Court while acquitting the respondents/ accused has properly discussed and assessed the evidence on record, hence, the impugned judgment being well-reasoned and speaking one, requires no interference by

this Court. The learned A.P.G, however, has maintained that in the instant case four persons sustained injuries.

9. I have considered the contentions of learned Counsel for the parties and have perused the material available on record with their assistance.

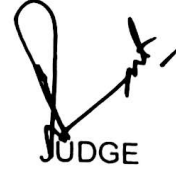
10. The learned appellate Court while reassessing the evidence on record has observed that it is an admitted position that the P.Ws examined during trial are closely related to each other and their evidence is not corroborated by any independent evidence; that I.O. has not been examined during trial; that presence of injured P.Ws at the place of occurrence would not raise any presumption that whatever they were telling was whole truth and numerous reasons are not required to disbelieve witness and even one reason may be sufficient to discard evidence of a witness; that case was registered in the year 1993 and respondents/accused have faced agony of trial for about 10 years before the trial Court; that 13 persons being brothers inter se have been roped.

11. As per the evidence brought on record, four persons including complainant Abdul Ghaffar received injuries in the alleged incident. Complainant Abdul Ghaffar and injured Qaimuddin in their statement have deposed that all the respondents/accused gave lathi and hatchet blows and they as well as Hazoor Bux and Mohammad Sulleman received injuries at the hands of all the accused persons. It appears that the allegations against the private respondents/accused are general in nature and the injuries sustained by the complainant and other injured are simple in nature. Though the injury No.3 allegedly caused to complainant Abdul Ghaffar by sharp-edged weapon is grievous in nature, but MLO Dr. Abdul Sattar (Exh.8) has admitted in cross-examination that all the injuries can be caused through some jolt. It is also admitted position that the hatchet allegedly used in causing injury No.3 to complainant was though recovered but the same was not sent to the Chemical

Examiner. Besides, prosecution has failed to examine the investigating officer, which too without any plausible and cogent reason. The importance of investigating officer in such like cases is always material because it is not the FIR on the basis whereof one is sent up to face the trial but it is the outcome of the investigation. Hence, it may be observed that investigating officer is a material witness, as many aspects of the case, which the complainant side tries to conceal or otherwise narrated by them can be discovered and/or ascertained by the evidence of investigating officer, as such, due to his non-examination, the defence of the accused was seriously prejudiced. It may further be observed that the alleged incident took place in 1993 and the private respondents/accused have faced agony of protracted trial for about 25 years. Under such circumstances of the case, the conclusion drawn by the learned appellate Court as to the innocence of private respondents/accused appears to be 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 order 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 appellate Court, which is based on appreciation of evidence, will not warrant interference in an acquittal 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."

12. Upshot of the above discussion is that the impugned judgment dated 03.01.2003 passed by the learned appellate Court 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 this Court under Section 417, Cr.P.C. Hence, this acquittal appeal being devoid of merit is dismissed.



JUDGE

Qazi Tahir PA