

Acquitted - Not retried
NFR

273

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

Mr. Justice Abdul Maalik Gaddi

Mr. Justice Mohammad Karim Khan Agha

Cr. Acq. Appeal No.D-22 of 2017.

Ghulam Mustafa

Vs.

Banoohn and others

Appellant : Ghulam Mustafa	Through Mr. Nisar Ahmed Durrani, Advocate.
Respondents No.1 to 3 : Baboon and others	Through Mr. Abdul Sattar G. Luhrani, Advocate.
Respondent No.4 : The State	Through Syed Meeral Shah Bukhari, Additional Prosecutor General.
Date of hearing :	08.10.2018
Date of judgment :	08.10.2018

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J.- This criminal acquittal appeal under Section 417(2-A) Cr.P.C. has been filed by the appellant against the judgment dated 06.07.2017, passed by the learned Additional Sessions Judge, Hala in Sessions Case No.123 of 2013 (re-The State Vs. Banhoon and others), arising out of Crime No.66/2013, registered at P.S Saeedabad, under sections 302, 34 PPC, whereby the learned trial Court after full dressed trial acquitted the private respondents by giving them the benefit of the doubt.

2. Precisely, the facts of the prosecution case as disclosed in FIR No.66/2013 lodged by complainant Ghulam Mustafa at P.S. Saeedabad are that on 30.06.2013 the brother of complainant Salar left village for visiting mela of Qalandar, but did not return to home for sufficient days, therefore, they submitted application to SSP Naushehro Feroz and also got published such news in newspaper. After publication of news in newspaper on 11.07.2013 they received information from Matiari police that within the jurisdiction of P.S Saeedabad dead body of one person was found, on whose right arm Salar was written, on receiving such information the complainant party went at PS Saeedabad, where after seeing photographs and name of Salar on right arm they identified him as his brother Salar, therefore, informed

the police and that after completing formalities the dead body was handed over to Edhi. After obtaining order from Civil Judge & Judicial Magistrate Hyderabad and after examining the dead body was brought at village and buried there. There are inimical terms with Banhoon Panhwar and others, and matrimonial affairs who were always pressurizing them on one or other pretext. They received postmortem report which revealed that death of deceased was caused on account of threatening. They checked mobile phone of deceased and it transpired that Banhoon, his wife and Bashir Panhwar made call to the brother of complainant, they also came to know that deceased was seen with Banhoon in a car on the evening of 30.06.2013 in Kotri, therefore, they became sure that deceased was killed by Banhoon, his wife Mst. Nusrat and Bashhir alongwith their companions. Hence the F.I.R.

3. After usual investigation, challan of the case was submitted before the concerned Court. At trial, learned trial Court framed charge against the accused named above as Ex.02, to which they pleaded not guilty and claimed to be tried.

4. The prosecution in order to prove its case against the accused persons examined 09 witnesses. Then prosecution side was closed.

5. Thereafter, statements of the accused persons were recorded under section 342 Cr.P.C. wherein they have denied the prosecution allegations by claiming their innocence and false implication in this case. However, neither they examined themselves on oath nor led any defense evidence.

6. The trial court after hearing the learned counsel for the parties and assessing the evidence available on record, by the impugned judgment acquitted the accused / private respondents as stated in concluding para of the impugned judgment. Hence, this acquittal appeal has been filed by the appellant.

7. Learned Counsel for appellant contended that the reasons for acquitting the private respondents are artificial, vis-à-vis the evidence on record; that the prosecution has fully proved its case against the private respondents by producing evidence on all material points; that the trial Court has erred while not considering the fact that there is strong CDR record and last seen evidence against the private respondents and other material available on record including evidence of medical officer in respect of unnatural death of deceased and passed the impugned judgment in a hasty manner without applying its judicial mind; that the grounds on which the trial court proceeded to acquit the private respondents are not supportable from

the evidence on record and for all the above reasons the impugned Judgment should be set aside and that this criminal acquittal appeal may be allowed as prayed.

8. On the other hand learned counsel for private respondents No.1 to 3 as well as the learned Additional Prosecutor General have supported the impugned judgment passed by learned trial court by arguing that the impugned judgment has been passed after due appreciation of evidence on record; that this is an unseen incident. They further argued that the incident was allegedly committed on 01.07.2013 whereas it was reported at police station on 27.07.2013 with a delay of 27 days for which no satisfactory explanation has been furnished, as such, according to them, false implication of the private respondents with due deliberation and consultation on this ground alone cannot be ruled out. They further argued that in this case there is no direct evidence available on record connecting the respondents in this crime; that during course of arguments they have read the entire evidence of the prosecution witnesses and they have lastly contended that the learned trial court while rendering the acquittal judgment has attended to all the aspects involved in this case and as such this appeal against acquittal should be dismissed.

9. We have heard the learned counsel for the parties and perused the evidence so brought on record alongwith impugned judgment with the able assistance of the parties.

10. It is settled law that judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous as held by the Honorable 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.

11. The main reasons that the trial court in the impugned judgment acquitted the respondents are as under:

"It is admitted position that the incident is unseen incident. The complainant in his evidence say that his deceased brother went to visit Mela of Qalandar but did not came back. Therefore, he moved application to SSP Naushehro Feroz and also got published news in newspaper. He on 11.07.2013 receipt of information from Matiari police that Saeedabad police has recovered dead body of one unknown person. He went there and photographs of dead body were shown to him and was informed

that on the right arm of dead body name Salar was written. He lodged report against present accused. He deposed that he obtained CDR recovered of mobile phone of deceased and transpired that accused had called deceased at Kotri. During cross examination he admitted that he in his application moved to SSP Naushehro Feroz stated that his brother Salar went alongwith Sodhal and Sahib Khan. He admitted that there is dispute between him and accused over the landed property. Record shows that the prosecution neither nominated Sodhal and Sahib as accused nor cited them as witness in this case. Record shows that the complainant acquired CDR record of mobile of deceased but neither such record is produced nor any witness from concerned department is examined to prove that the accused had called deceased on phone, thus the version of complainant is not corroborated by any witness in this regard.

PW Khadim Hussain who is cousin of deceased had deposed that accused had informed him that they had finished Salar and during cross examination he admitted that he did not disclose the facts to the complainant. No reason is assigned regarding not informing the said fact to complainant and no version of this witness is supported by any other source of evidence. He admitted that there is dispute between the complainant and accused party over the landed property in which the accused are co-sharers.

These are mere words of complainant and PW Khadim Hussain without any independent source of evidence. Hence no implicate reliance can be placed on the mere words of above PW.

As regards the death of deceased, the same is confirmed by evidence of PW Dr. Ghulam Mustafa.

It appears that the case of the prosecution is fall of doubts and version of complainant is not supported by any witness".

12. It transpires from the evidence that there is no direct eye witness evidence against the respondents; that the murder was unwitnessed; that the entire case is based on circumstantial evidence for which there is no unbroken chain of evidence. For example, in his application to the police the complainant mentions that his brother Solar left with Sodhal and his brother Sahib Khan yet neither Sodhal or Shahib Khan is either a PW or an accused. In a case of this nature the evidence of these two persons was vital as a starting point to the potential chain of events which lead to the death of Solar. Furthermore, we find some of the key PW's to be manifestly unreliable and not trustworthy. For example, PW Khadim Hussain states that accused Banhoon and Bashir Khan told him that they were responsible for his cousin's Solar's death yet quite incredibly he failed to mention this to the complainant who is also his relative. This failure does not appeal to a reasonable mind. The F.I.R. was also delayed by 21 days without any explanation and it is an admitted position that the complainant had a dispute over land with the respondents so the complainant had plenty of time to cook up a false case

against the respondents which cannot be ruled out based on the facts and circumstances of this case; the CDR records are also inconclusive.

13. Keeping in view the extremely narrow scope of appeals against acquittal as a matter of law as mentioned above, the fact that the respondents are entitled to the benefit of the doubt and the double presumption of innocence having again reviewed the evidence against the respondents for what has been discussed above we consider that the respondents are entitled to the benefit of the doubt and that the impugned judgment is based upon valid and sound reasons and has rightly acquitted them on this basis and as such the appeal against their acquittal is dismissed.

14. These are the reasons for our short order which was announced to day in open court and reads as under:

"Parties Advocates have been heard. They have concluded their arguments. For the reasons to be recorded later on this Cr. Acq. is dismissed."