

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA

Criminal Acquittal Appeal No. D-35 of 2020

Before

Mr. Justice Amjad Ali Sahito

Mr. Justice Ali Haider 'Ada'

Appellant : Khadim Hussain Noonari, in person

Respondent : The State, through Mr. Ali Anwar
Kandhro, Addl. Prosecutor General,
Sindh.

Date of Hearing : 15.10.2025

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J U D G M E N T

Ali Haider 'Ada', J.- Instant criminal acquittal appeal is directed against the judgment dated 01.10.2020, passed by the learned 1st Addl. Sessions judge/MCTC, Kandhkot, in Sessions Case No.92 of 2019 (Re: State v/s Abdul Basit and others) emanated from Crime/FIR No.66 of 2018, registered at Police Station A-Section Kandhkot, under Sections 302, 337-J, 506/2, 148 & 149 PPC, whereby the respondents, namely, Abdul Basit son of Ali Khan, Saeed Ahmed son of Ghulam Qadir, Jaffer son of Ghulam Qadir, Mst. Hasina Khatoon wife of Saeed Ahmed, Ali Khan son of Ghulam Qadir & Naveed Ahmed son of Noor Nabi Malik, were acquitted of the charge.

2. The brief facts of the prosecution case as unfolded in FIR lodged on 28.04.2018 at 1000 hours by complainant Khadim Hussain Noonari, are that he along with his witnesses Mst. Zahida Khatoon, daughter Zoya and other family members is residing in same house, as such, on

12.11.2017 at 03:00 am accused Naveed Ahmed Malik, Mst. Hasina Khatoon, Jaffer, Ali Khan, Saeed Ahmed, Abdul Basit all by caste Noonari resident of Mumtaz Muhalla Kandhkot armed with weapons entered in the house. It is alleged that accused Naveed Ahmed shouted that why complainant is demanding property share, therefore, they will commit murder of his son Zuhaib Ahmed, then all the accused pointed their weapons upon complainant while accused Jaffer took out bottle of poison from his pocket and forcibly administered the same to Zuhaib Ahmed, who raised cries and then all the accused went away while issuing murderous threats to complainant. Then complainant found that his son Zuhaib Ahmed became unconscious and later on he was brought at Hospital where due to reaction of poison Zuhaib Ahmed expired. Thereafter, complainant went to PS and narrated the facts but his FIR was not registered, therefore, he filed an application before the Court and after obtaining order, he again went to PS and got registered FIR.

3. After completion of usual investigation, the police forwarded a charge sheet before the learned Judicial Magistrate, where after completing formalities, the case was sent up to the Court of Sessions wherefrom it was transferred to the Court of 1st Addl. Sessions Judge/MCTC, Kandhkot, for its disposal.

4. 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.

5. To establish the charge, the prosecution examined ASI/I.O Ghulam Qasim Domki, ASI Wahid Bux Jakhrani, PC Zameer Hussain Ogahi, ASI Mir Muhammad, PC Abdul Lateef Choliyani, M.O Dr. Rafique Ahmed Soomro, Complainant

Khadim Hussain, Miss Zoya and Mithal, who exhibited several relevant documents.

6. Then the statements of accused under section 342, Cr.P.C were recorded, wherein they denied the prosecution allegations and pleaded their innocence. However, neither they examined themselves on oath nor led any evidence in their defence in terms of Section 340(2), Cr.P.C.

7. On conclusion of trial, the learned trial Court acquitted the respondents No.1 to 6/accused of the charge extending them benefit of doubt vide impugned judgment dated 01.10.2020. Aggrieved by the same, the appellant Khadim Hussain, who is the father of deceased Zuhaib Ahmed, has maintained this Criminal Acquittal Appeal.

8. We have heard the appellant present in person as well as learned Addl. Prosecutor General for the State and have perused the material available on record.

9. The appellant, who is present in person has contended that the learned trial Court while deciding the case did not record cogent reasons for acquitting the respondent No.1 to 6; that all the PWs in fact fully supported the prosecution case and their version was also corroborated by the medical evidence, as such, the learned trial Court while passing the impugned judgment did not act justly and equitably and thus passed the impugned judgment without applying judicious mind to the facts of the case; that sufficient evidence is available on record to believe that the respondents No.1 to 6 have committed the alleged offence, therefore, they are liable to be convicted for the same.

10. The learned Addl. PG, after going through the record, supports the impugned judgment.

11. We have given anxious consideration to the contentions of learned Counsel for the parties and have very carefully scanned the entire material available on record with their assistance.

12. It is settled law that if a simple circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right. Reliance in this regard is placed on the cases of *TARIQ PERVEZ v. THE STATE* (1995 SCMR 1345), *MUHAMMAD SAEED v. THE STATE* (2008 P.Cr.L.J. 1752), *GHULAM MURTAZA v. THE STATE* (2010 P.Cr.L.J. 461), *MOHAMMAD MANSHA v. THE STATE* (2018 SCMR 772).

13. In the instant matter, while acquitting the respondent the learned trial Court has given cogent reasons in the operative part of the impugned judgment which are reproduced as under:-

“12. I have scanned the depositions of complainant and PWs and found some contradictions, such as, complainant has deposed during his cross examination that they had taken rice and potatoes in dinner in the night of incident but on the other hand PW Mst: Zahida has deposed that they had cooked eggs for dinner in the night of incident.

13. Complainant in cross examination has deposed that Zuhaib was out of home at the time of taking dinner and he came late at home and fresh dinner was prepared for him but on the contrary PW Mst: Zahida has deposed that they all had jointly taken dinner but PW Miss Zoya has deposed that they all had taken dinner separately.

14. Complainant has further deposed that he and deceased Zuhaib were sleeping in same room but on the other hand PW Mst: Zahida has deposed that they all were sleeping in one room.

15. Complainant has further deposed that Zuhaib became unconscious after 30 minutes but on the contrary PW Mst: Zahida has deposed that Zuhaib became unconscious after 05 minutes of administering poison by accused. It is very surprising and shocking that alleged incident took place at 03:00 am and deceased Zuhaib might have become unconscious after 05 minutes or half an hour but complainant party took him to Hospital at

08:00 am and waited for about five hours for deterioration of the condition of the deceased Zuhaib Ahmed at home which is unbelievable to the prudent mind.

16. Complainant has further deposed in cross examination that they did not treat deceased Zuhaib just after incident but on the contrary PW Miss Zoya has deposed that they had treated deceased Zuhaib at home before shifting to Hospital."

14. We have also carefully perused the evidence and judgment brought on the record and have no hesitation to observe that the impugned judgment is speaking one and elaborated the reasons which do not suffer any illegality, gross irregularity and infirmity; however, from the perusal of the record, it reflects that the complainant has admitted during his cross-examination that dispute over land was going on between him and his brothers. It is very surprising to observe the dispute of accused persons was with the complainant but they allegedly administered poison to his minor son despite availability of complainant at the time of incident and such conduct of the complainant does not appeal to the prudent mind.

15. We have not seen any material piece of evidence, which was not discussed by the learned trial Court while passing the impugned judgment. The reasons recorded by the learned trial Court in support of findings of acquittal are based on evidence on record and the conclusion drawn by the learned trial Court as to the innocence of accused is 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 findings 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 trial Court, which is based on correct appreciation of evidence, will not warrant interference in 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.*”

16. In view of above facts and reasons, the impugned acquittal judgment 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 the High Court under Section 417, Cr.P.C. Hence, this acquittal appeal being devoid of merit is dismissed.

JUDGE

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