

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANO**

Criminal Acq. Appeal No.D-08 of 2012

Before:

Mr. Justice Muhammad Saleem Jessar
Mr. Justice Jawad Akbar Sarwana

Appellant: Alta Mustafa Narejo, (in person). *Absent*

Respondent No.1: Shahid Hussain son of Muhammad Usman (in person).

Respondent No.2: Khan Muhammad s/o Muhammad Umar (in person).

Respondent No.3: Ghulam Qadir son of Ali Bakhsh (Expired)

Respondent No.4: Riaz Hussain son of Muhammad Usman (in person)

Respondent No.5: The State through Mr. Ali Anwar Kandho, Additional Prosecutor General, Sindh a/w ASI Sharafuddin Narejo, P.S. Thariri Mahbat.

Date of Hearing: 26.03.2024

Date of Judgment: 26.03.2024

JUDGMENT

MUHAMMAD SALEEM JESSAR, J.- Through instant Appeal against Acquittal, Appellant/Complainant Atta Mustafa son of Shamsuddin Narejo has assailed the Judgment dated 19.01.2012, handed down by the learned 1st Additional Sessions Judge, Dadu in Sessions Case No.156/2004 (*Re- The State v/s. Shahid Hussain and others*) being outcome of Crime No.31/2004, registered at Police Station Thariri Mahbat for offence under sections 302, 324, 148, 149, 114 P.P.C. After full dress trial while considering the evidence adduced by the prosecution the learned Trial Court found the Respondents to be innocent, therefore, acquitted them from the charge by extending benefit of doubt, hence this Acquittal Appeal has been maintained by the Complainant.

2. Perusal of record reveals that this case is hanging upon the board of this Court since 2012 and the Appellant lastly appeared

before the Court on 07.11.2018 and sought time to engage his Counsel but till today neither any counsel has been engaged nor the Appellant effected his appearance despite issuance of direct notice against him, which *prima facie* indicates that the Appellant / Complainant has lost his interest to proceed with the matter.

3. Respondents No.1 & 2 Shahid Hussain and Khan Muhammad are present in person and submit that Respondent No.3 Ghulam Qadir has expired, therefore, proceedings against him may be abated and seek dismissal of instant Criminal Acquittal Appeal on merits.

4. Learned Additional Prosecutor General submits that the learned Trial Court has passed a well reasoned Judgment by discussing each and every aspect of the case, therefore, same may be maintained and instant Criminal Acquittal Appeal may be dismissed.

5. We have heard the Respondents as well as learned Additional Prosecutor General for the State and perused the material available on record.

6. From [✓] ~~the~~ perusal of record it appears that Respondent No.3 Ghulam Qadir son of Ali Bux has died and proceedings against him are abated. As far as merits of the case are concerned, it appears that the learned Trial Court has discussed each and every aspect of the case. Before parting with the Judgment, it will be appropriate to reproduce the relevant portion of the impugned judgment, which reads as under:

"10. The P.W Atta Mustafa Narejo, who is Complainant has deposed in his examination-in-chief (Ex-22) that on 16.03.2004, he alongwith his brother Mehboob Ali (deceased), cousin Nadir Ali and maternal cousin Rafique Ahmed (PW-5) went to Pir Wadhiyo graveyard for offering Fateha to the souls of their relatives and when they came out they saw accused Shafqat Hussain, Riaz Hussain and Khan Muhammad with rifles Ghulam Qadir with Repeater, Shahid Hussain with Pistol. He has further deposed that accused Shafqat Hussain fired shot, which hit his brother Mehboob Ali in chest, who fell down. He has deposed that accused also fired upon them (PWs) and they put themselves down first to save them. He has further deposed that they raised cries on which villagers rushed and accused

on seeing the villagers escaped. The P.W-5 Rafique Ahmed Narejo, who is eye-witness has also supported the evidence of P.W-4 (Complainant) by deposing in examination-in-chief (Ex-23) that accused, Shafqat fired burst and made so many fires upon them (Pws), which hit Mehboob Ali on chest who died.

11. The Complainant Atta Mustafa (P.W-4) and eye-witnesses Rafique Ahmed (P.W-5) has deposed that fires made by accused Shafqat Hussain caused murder of deceased Mehboob Ali, the brother of complainant Atta Mustafa (P.W-4) and accused Shafqat is absconder.
12. The P.W-6 Noor Mustafa Narejo who is mashir has deposed in his examination-in-chief (Ex-24) that on 08.05.2004 SIP Ali Mardan Chandio (P.W-8) called him and Aijaz Ali disclosed that accused Shahid Hussain is ready to produce the weapon and they (P.Ws) proceeded to the house of accused and accused Shahid Hussain produced a pistol from one small black colour leather bag lying on the large iron box in the middle room of the house and pistol was loaded with four live bullets in its magazine and it was giving smell of fire. The P.W-8 SIP Ali Mardan Chandio has supported the evidence of P.W-6 by deposing in his examination-in-chief (Ex-29) that on 08.05.2004 accused Shahid Hussain voluntarily produced the pistol No.132350 from his house for which he (accused) had no license and accused further disclosed that the pistol was used by him in this crime. The report of ballistic expert available at Ex.35-D shows that the pistol was in working condition.
13. The mashirnama of place of wardat (Ex-18) does not show recovery of any empty of thirty bore. The P.W-4 & 5 are the eye-witnesses and none of them has deposed that the fire of accused Shahid resulted in the murder of deceased Mehboob Ali. Thus there is no evidence on record to believe that the pistol recovered from accused Shahid Hussain was used in this crime while committing murder of deceased Mehboob. However, the mere recovery does not prove the charge of murder because the recovery is separate offence under Arms Ordinance and such separate case has also been registered.
14. For the reasons given in the preceding paragraphs No.10 to 13, I am of the considered view that prosecution has failed to prove the charge of committing murder of deceased Mehboob against the present accused beyond shadow of reasonable doubt and accordingly point No.2 is replied as not proved against accused Shahid Hussain, Khan Muhammad, Ghulam Qadir and Riaz Hussain.
15. As a result of my findings on point No.3 accused Shahid, Khan Muhammad, Ghulam Qadir and Riaz Hussain are acquitted under section 265-H(i) Cr.P.C. by extending benefit of doubt. They are present on bail and their bail bonds stands cancelled and sureties discharged."

373

7. It is settled law that accused after / acquittal earns double presumption of his innocence and to shatter the acquittal findings recorded by the trial Court there must be strong type of evidence. It is also settled law that the scope of interference in an appeal against acquittal is most narrow and limited than the appeal against conviction, 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 as heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. 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 is perfunctory or wholly artificial or a shocking conclusion has been drawn. Judgment of acquittal should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous. The Court of Appeal should not interfere simply for the reason that upon reappraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusion should not be upset, except when palpably perverse, suffering from serious and material factual infirmities. In view of dictum laid down by the Hon'ble Supreme Court of Pakistan in the case of **Ghulam Sikander v. Mamraiz Khan & others (PLD 1985 SC-11)** the findings of acquittal recorded by the Trial Court in the impugned judgment neither are perverse, arbitrary or based upon non-reading or misreading of evidence. Hence, same does not require any interference by this Court.

8. We have gone through the evidence adduced by the prosecution as well as findings of the Trial Court and find that there is no illegality or any infirmity, which may warrant interference of this

Court. Hence, the Appeal against Acquittal in hand merits no consideration, which is hereby dismissed. Consequently, findings of Acquittal recorded by the Trial Court are hereby maintained.



Judge



Judge

Manzoor