# IN THE HIGH COURT OF SINDH CIRCUIT COURT AT LARKANA

*Cr. Acquittal Appeal No. S-49 of 2013*

***Mr. Athar Abbas Solangi, advocate for the appellant.***
***M/s Habibullah G. Ghouri and Altaf Hussain Surahiyo, amicus curiae.***
***Mr. Safdar Ali Ghouri, advocate for respondent No.3.***
***Mr. Muhammad Ismail Chandio, advocate for respondent No.4.***
***Mr. Khadim Hussain Khooharo, Additional Prosecutor General.***

**Date of hearing : 22-10-2018**
**Date of decision : 12-01-2019**

**O R D E R**

**Khadim Hussain Tunio, J.** This criminal acquittal appeal is directed against the judgment dated 02.11.2013, passed by Special Judge, Anticorruption (Provincial), Larkana in Direct Complaint No.31 of 2010, Re: Haji Imdad Ali Memon V/S Shafi Muhammad Larik and others, whereby the learned trial court has acquitted the respondents/accused, namely, Shafi Muhammad, Altaf Gohar and Khuda Bux, under Sections 161, 166, 170, 34, PPC, read with Section 5(2) of Act-II of 1947.

2. Brief facts of the prosecution case are that the complainant Haji Imdad Ali Memon is dealer of fertilizer and pesticide at Shikarpur City. On 02.06.2009 accused Khuda Bux Kalwar came at his shop and demanded bribe Rs.200,000/- for accused Shafi Muhammad Larik or fertilizer of same amount by complainant refused to pay the bribe else the accused threatened to teach him lesson. On 11.06.2009 at about 04.30 a.m. he, his Munshi Maqsood Ahmed Soomro and one businessman Abdul Rahim Brohi were available at the shop, meanwhile accused Shafi Muhammad Larik, Khuda Bux Kalwar and accused Altaf Gohar Memon, who disclosed himself to be D.C.O, Shikarpur, came in the shop along with three four police constables. They asked police constables to apprehend the complainant, he asked them as to why they are insulting him as he is respectable businessman. On which accused Shafi Muhammad told him that he had refused to pay Rs.200,000/- bribe

hence they will tell him how officer is powerful. Accused forcibly took search of cash box and took out Rs.27,000/-, accused Shafi Muhammad said it is an installment of Rs.200,000/- and remaining amount will also be recovered from you by force. Then the accused took one ledger book, cash book and stock register. The accused abused him and caused restraint harassment and humiliation to him and he felt sever heat pain. The accused did not allow him to visit doctor for 2/3 hours, when his condition became serious and witnesses and other businessman protested, then they left the shop. Then the complainant went to doctor and got first aid then the complainant was admitted in hospital at Karachi, where his heart surgery was conducted.

3. Statement of complainant U/S 200 Cr.P.C. was recorded by the learned Special Judge, Anti-Corruption, Larkana. The learned Special Judge, Anticorruption Larkana directed the C.O ACE Larkana to hold the P.E and report within month as C.O ACE Shikarpur who was reported to be relative of one accused person. The C.O ACE Larkana recorded statement of P.Ws, who have supported the version of the complainant and also recorded statements of accused Shafi Muhammad Larik, Khuda Bux Kalwar, Altaf Gohar Memon. The learned trial court after the report of C.O ACE Larkana brought the complaint on file and issued warrants against the accused. Accused appeared before the court and after observing formalities, charge was framed by the Trial Court against the accused. They pleaded not guilty and claimed trial.

4. The complainant examined himself as PW-1, he has also examined PW Maqsood Ahmed Soomro as P.W-2 and then closed the side.

5. Statements of accused Shafi Muhammad Larik, Khuda Bux Kalwar and Altaf Gohar Memon were recorded by the trial court under Section 342, Cr.P.C, wherein they denied the allegations made by the complainant by pleading innocence. However, they neither examined themselves nor any witness in their defence.

6. After hearing the parties, the learned trial court acquitted the respondents/accused of the charge vide impugned judgment.

7. Being aggrieved and dissatisfied with the judgment of acquittal, the appellant/complainant has assailed the same through instant criminal acquittal appeal.

8. Before proceeding further, it would be relevant to mention here that on 08.10.2018 it was observed by this Court that this criminal acquittal appeal has been filed without seeking leave from the Court, hence M/s Habibullah G. Ghouri and Altaf Hussain Surahio advocates were appointed as amicus curiae to assist the Court on this point. Both the learned Counsel have *unanimously* contended that filing of application under sub-section (2) of Section 417, Cr.P.C is a formality and the Court at the initial stage can treat the memo of acquittal appeal as an application for leave to appeal.

9. In view of above, without prejudice to the case of either party, the memo of criminal acquittal is treated as an application for leave to appeal.

10. Learned counsel for the appellant has argued that while passing the impugned judgment the learned trial court has not fully discussed and considered the evidence and other material placed on record hence it is a case of misreading and non-reading of the evidence; that the learned trial Court has based finding of acquittal in favour of respondents/accused on flimsy grounds and no strong reason has been given; that the version of complainant was fully supported by the P.W Maqsood Ahmed Soomro, though he was no more in the service of the complainant at the time of recording his evidence at trial; that if the complainant/appellant was running business without license, then why the respondents No.2 to 4 had not taken any action against him; that the respondents No.2 to 4 in their statements have not denied of conducting raid on the shop of the appellant/complainant and no reason with

support of document was given by them. He, therefore, prayed that impugned judgment may be set-aside.

11. Learned counsel for the respondents No.3 and 4 have argued that the learned trial Court has fully discussed the evidence and has recorded cogent and valid grounds for acquitting the respondents/accused.

12. Learned Addl. P.G. also supported the impugned judgment, contending that no illegality has been committed by the learned trial Court in acquitting the respondents/accused.

13. I have heard the learned counsel for the appellant as well as the respondents No.3 and 4 and learned Addl. P.G for the State and have perused the record.

14. Before going into merits of the case, I find it proper to add that the principles for appreciation of evidence in an appeal against the acquittal are now well-settled hence departure from detailed criterion is not permissible. In case of Yar Muhammad and 3 others V/S The State (1992 SCMR 96), it has been observed by the Hon'be Apex court of Pakistan that "unless the judgment of trial court is perverse, completely illegal and on perusal of evidence no other conclusion could be except that the respondent/accused is guilty or there has been made complete misreading of evidence leading to miscarriage of justice, High Court would not exercise jurisdiction U/S 417 Cr.P.C." It was further held that in exercising this jurisdiction, High Court has always to be slow unless it feels that gross injustice has been done in the administration of criminal justice. Therefore, it becomes the obligatory duty of the appellant in acquittal appeal to *prima facie* establish existence of said ingredients in the judgment *impugned* else it would never be safe to deprive the presumption of double innocence which an *accused* earns through an acquittal from charge by a **competent** court of law. In this respect, reliance may respectfully be placed on case of State/Government of

Sindh through Advocate General, Sindh, Karachi v. Sobharo (1993 SCMR 585).

15. In the case of State and others v. Abdul Khaliq and others (PLD 2011 SC 554), Honourable Supreme Court has held as under:-

> *"The scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significally 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 and 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 judgment is perfunctory of 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 on the 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".*

16. An accused is presumed to be innocent in law if after regular trial he is acquitted, whereby he earns 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, therefore, this Court is of the view that the prosecution failed to discharge the onus and the finding of acquittal recorded by trial court is neither arbitrary nor capricious to warrant interference. Reliance in this regard, may be placed on case of Muhammad Shafi v. Muhammad Raza and another (2008 SCMR 329).

17. Having referred the said criterion, I would proceed to examine the available material. From perusal of the record it appears that the complainant admitted before the trial Court that at the time of incident he was running his shop under expired license, hence the act of

respondent/accused in discharge of his official duty for preventing the complainant from selling pesticide in his shop without license cannot be said as illegal even if they failed to produce any notice etc for conducting such raid. Non-issuance of notice could, at the most, be taken as an *irregularity* which, *however,* cannot be taken as a sufficient proof to satisfy required ingredients of ***'demand of bribe'***. It further appears that the complainant failed to examine sole independent witness, namely, Abdul Raheem Brohi cited by him, as such, the learned trial Court has *rightly* inferred that said witness was not ready to depose falsely in favour of complainant, which not only appears to be logical but within parameter of Article 129(g) of Qanun-e-Shahadat Order, 1984. So far PW Maqsood Ahmed, examined by the complainant, in support of his version is concerned, the trial Court has observed that he being 'Munshi' of the complainant for more than seven years was bound to depose in his favour. Such long attachment of said PW as a ***'servant'*** normally is sufficient as a sufficient reason to presume existence of possibility of his tilt towards his ***'master'.*** In such eventuality, it would never be safe to hold a conviction on evidence of an ***interested person*** particularly when the complainant deliberately avoided examining any **'independent witness'** despite admitted availability including that of other **'businessmen'.** Therefore, such *inference,* drawn by trial court, was well justified and is permissible in law. The reference may well be made to the case of *Lal Khan v. Qadeer Ahmed* 2018 SCMR 1590 wherein it is observed as:-

> "3. …. It is trite that a conjecture has no place in criminal law **whereas an inference plays an important role because the same is based upon a logical deduction from circumstances available on the record**. The circumstances becoming clear to us upon a proper appreciation of the evidence available on the record go a long way in convincing us that Qadeer Ahmed respondent had not fired at the police party at all and that is why he was not harmed by the police party at the spot and also that he had surrendered before the police without causing any

> harm to anybody and after his surrender some engineering had been resorted to by the prosecution as to cook up a story qua the respondent's role and to bolster the same through contrived circumstances.

On the basis of such material discrepancies, the learned trial Court concluded that involvement of the accused by the complainant was motivated by malice and not free from doubt. I would add that it is now well-settled principle of law that once the Court entertains a reasonable doubt in the prosecution case, its benefit must be extended to the accused not as a grace but as of a right. Reference may well be made to the case of *Wajahat Ahmed v. State* 2016 SCMR 2073.

18. Under these circumstances, I am of the view that trial court neither disregarded the material evidence, nor misread the evidence and nor read such evidence illegally. Therefore, it cannot be said that the impugned Judgment of trial court acquitting the respondents/accused is fanciful, artificial, shocking or ridiculous. It is based on convincing reasons, learned trial court has rightly observed that the case of prosecution was not free from doubt and the prosecution has failed to prove the guilt of the respondents/accused.

19. For the foregoing reasons, in my humble opinion, the learned trial Court has not committed any illegality in acquitting the respondents/ accused from the charge, therefore, finding no substance in the application for leave to appeal, the same is hereby dismissed. Resultantly, the criminal acquittal appeal being devoid of merit is also dismissed.

**J U D G E**