

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

Cr. Acquittal Appeal No. S-28 of 2010.

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Appellant                      HAFIZ Mohammad Ilyas Magsi through  
Mr. Ghayoor Abbas Shahani, Advocate.

Respondents                  Amir Bux Magsi & others, through Mr. Altaf  
Hussain Surahio, Advocate for respondents  
No.1 to 5.

Mr. Khadim Hussain Khooharo, Additional  
Prosecutor General.

Date of Hearing:              28.09.2018.

Date of Decision:          28.09.2018.

**J U D G M E N T**

**Zafar Ahmed Rajput -J.** The instant criminal acquittal appeal is directed against the judgment dated 14.04.2010, passed by the learned Civil Judge & Judicial Magistrate-II, Kamber, in Criminal Case No.240 of 2009 (Re: State v/s Amir Bux Magsi & others) emanated from Crime/FIR No.60 of 2009, registered at Police Station Kamber, District Kamber-Shahdadkot at Kambr, for offence under Sections 295, 337-F(v), 147, 149, PPC, whereby respondents No.1 to 5, namely, 1. Amir Bux son of Yaqoob Magsi, 2. Sono son of Haji Mohammad Pannah Magsi, 3. Asghar son of Mohammad Yaqoob Magsi, 4. Rahib son of Sono Magsi and 5. Amin alias Mohammad Amin son of Mohammad Yaqoob Magsi, were acquitted of the charge.

2. Briefly, the facts of the prosecution case are that on 03.3.2009 complainant Hafiz Mohammad Ilyas lodged FIR at P.S Kamber, alleging therein that on 19.8.2009 he along with P.Ws Abdul Fatah and Haji Haneef was present in the Hussaini Mosque, when accused Rahib, Amir Bux, Asghar, Sono and 10 unidentified persons, out of whom two were talking in Pashto and five in Arabic languages, posing themselves as preachers of Islam (Tableegi); they after offering sunset prayer, demanded keys of Mosque from

that they had to do some work, but suspecting

keys, which resulted in harsh conversations between them and then accused<sup>103</sup> attacked upon the complainant and uprooted his beard, but above-named witnesses intervened and rescued him. It is also alleged that the accused persons also broken and damaged the foundation stone with the name of their "Murshid" and some verses, names of Holy Prophet etc. were written thereon. They also extended threats of dire consequences. Thereafter, complainant approached the Sessions Court and after taking directions from there he went to police station and lodged the FIR.

3. After completion of formalities, a formal charge was framed by the learned trial Court against the above-named respondents/accused for offence punishable under section 295, 337-F(v), PPC, to which they pleaded 'not guilty' and claimed to be tried.

4. The prosecution to substantiate the charge, examined PW-1 complainant Hafiz Mohammad Ilyas at Exh.8, he produced order of Sessions Court and FIR at Exh.8-A & B respectively; PW-2 Mohammad Haneef at Exh.9; PW-3 ASI Munawar Ali at Exh.10; PW-4 Abdul Wahab (Mashir) at Exh.11, he produced mashirnama of vardhat and arrest at Exh.11-A & 11-B respectively; and PW-5 ASI Mukhtiar Ahmed Chandio (I.O. of the case) at Exh.12. 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 respondents did not examine themselves on oath; however, they examined DW-1 Abdul Kareem and DW-2 Mohammad Ali in their defence in terms of Section 340(2), Cr.P.C. On conclusion of trial, the learned trial Court acquitted the respondents/accused of the charge extending them benefit of doubt vide judgment dated 14.04.2010. It is against that judgment, that instant Criminal Acquittal Appeal has been maintained by the appellant/ complainant.

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

6. Mr. Ghayoor Abbas Shahani, learned Counsel for the appellant, has contended that the respondents/accused were identified at the spot and were nominated in the FIR with specific role; that the complainant and eyewitness, namely, Mohammad Haneef examined during trial have fully supported the prosecution case and ocular testimony based on their evidence is worthy of credence, which was fully corroborated by the circumstantial evidence of mashir Abdul Wahab and I.O ASI Mukhtiar Ahmed Chandio; that the learned trial Court has not properly assessed the prosecution evidence in true perspective and has recorded findings of acquittal in favour of respondents No.1 to 5 on the basis of minor discrepancies in the evidence; that sufficient evidence is available on record to believe that the respondents No.1 to 5 have committed the alleged offence, therefore, they are liable to be convicted.

7. On the other hand, learned Counsel for the respondents No.1 to 5 and learned APG, while controverting the learned Counsel for the appellant, have fully supported the impugned judgment. They unanimously contended that the learned trial 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 in its appellate jurisdiction.

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

9. It appears that the learned trial Court while assessing the evidence on record has observed that it is an admitted position that the houses of accused are located adjacent to the said Mosque, while the house of complainant is located after the houses of accused; that complainant in his evidence stated that the accused persons used hammers in the commission of offence, which facts is not mentioned in the FIR; that in cross-examination the

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complainant stated that HC Arbab Wadho along with two constables visited the place of vardhat, while there is no mention in the prosecution case about HC Arbab Wadho; that the above admissions were also made by PW Mohammad Haneef in his evidence. The learned trial Court has also observed that no independent person was cited as a witness of the alleged incident though 30/40 persons of locality including the people who had come to offer 'Maghrib' prayer and were available in the said Mosque; that eye-witness Abdul Fatah was not examined by the prosecution, therefore, there was no independent corroboration; that mashir Abdul Wahab has nullified the version of complainant Mohammad Ilyas and PW Mohammad Haneef by deposing that there was dispute between the complainant and accused Sono over matrimonial affairs, which indicated that both parties were on inimical terms; that I.O ASI Mukhtiar Ali admitted that both the mashirs of vardhat and recovery were relatives of complainant.

10. Apart from infirmities observed by the learned trial Court, the learned Counsel for the appellant/complainant when confronted candidly conceded that there is absolutely no evidence on record to establish the charge against the respondents/accused under Sections 295 and 337-F(v), PPC and the alleged Mosque belongs to respondents/accused party, as admitted by the appellant/complainant in his deposition. If so, no question of demanding keys from the appellant/complainant by the respondents/accused arises. Hence, I feel no hesitation to hold the prosecution has failed to bring home guilt of respondents / accused beyond a reasonable doubt. It is well-settled principle of law that for basing conviction against an accused there should be strong evidence before the trial Court and if the doubt, even slightest, arises in the prudent mind as to the guilt of the accused, benefit of the same has to be extended in his favour.

11. The learned trial Court has recorded valid reasons for its order of acquittal, which are based on correct appraisal evidence on record and the conclusion drawn by the learned trial Court as to the innocence of the



respondents/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 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 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."*

12. Upshot of the above discussion is that I have come to an irresistible conclusion that the impugned judgment dated 14.4.2010 passed by the learned trial 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