

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Cr. Acq. Appeal No. 325/2014

Syed Mehfooz Ali Hashmi

V

Masroor Alam and others

Date of hearing	08.06.2017
Date of judgment	08.06.2016
Appellant	None present.
Respondent No.1 to 3	None present.
The State	Through Mr. Zafar Ahmed Khan, Addl. P. G.

JUDGMENT

MUHAMMAD KARIM KHAN AGHA, J:- This is an appeal against the acquittal of respondents / accused persons namely Masroor Alam son of Syed Mehmood Ali, Mst. Shagufta Afroze and Mst. Shahina Afroze daughter of Syed Mehmood Ali (the Respondents) filed by the appellant/complainant Syed Mehfooz Ali Hashmi being dissatisfied with the judgment dated 28.10.2014 passed by the IX Civil Judge & Judicial Magistrate (West) Karachi whereby all the aforesaid respondents/accused were acquitted of the charge under section 420/506/34 PPC (the impugned judgment).

2. The brief facts of the prosecution case as per contents of the FIR are in essence that on 28.09.2009 the complainant reported that the Plot NO.436, Al Mustafa Colony and Plot No. No.B-238 Muhammad Chowk, Sector 11, situated in Orangi Town, Karachi, the said Plot No.436 and B-238 had been purchased by him in the year of 1988, 1989 and at that time the above said plot had not been leased, that the complainant was also residing in House NO.436 along with his brother Masroor Alam and in the Plot No.B-

238 constructed school which was approved by the government. The Incharge of this school was the complainant's sister Shagufta. In the year 1995 the complainant was transferred to Balochistan, District Turbat and in the above said house the complainants brother Masroor Alam was residing and thereafter the complainant found out that his brother was cheating and committing fraud against him along with his other family members and thereafter the complainant published the matter and also purchased a plot in the name of his mother and thereafter his mother transferred the said house in his name however he then became unwell and after recovering from his illness the complainant contacted his brother Masroor Alam on 10.05.2008 who told him that he had entered into a contract for the sale of the properties and plot No.B-238 situated at Muhammad Chowk, Sector 11, Orangi Town, Karachi which were sold out by the complainants brother Masroor Alam, Shagufta Afroze and Shaheen Afroze to Siddique through cheating, fraud and by extending threats.

3. Based on the above facts the complainant Syed Mehfooz Ali son of Syed Mehmood Ali lodged FIR No.447/2009 for an offence under Section 420/560/34 PPC at PS Mominabad against the Respondents/accused persons and thereafter filed a criminal case bearing No.4057 of 2009 before the Court of IX Civil Judge & Judicial Magistrate (West) Karachi where the Respondents faced trial; charge was framed against them on 24.05.2010 as Ex.2 in which Respondents / accused persons pleaded not guilty as Ex.2/A to 2/C. Prosecution examined PW-1 complainant namely Syed Mehfooz Ali as Ex.4, who produced the copy of publication, copy of transfer order, copy of two bills, copy of application addressed to SHO, FIR of present case, copy of agreement, site inspection Memo and three photographs as Ex.4/1 to 4/K-2, PW-2

Tanveer Abbas examined as Ex.5, PW-3 Tanveer Hussain Jaffery examined as Ex.11, PW-4 Sher Muhammad as Ex.12 and PW-5 HC Abdul Rasheed as Ex.13, thereafter prosecution side was closed on 08.5.2014.

4. The statement of Respondents / accused persons were recorded under Section 342 Cr.P.C. as Ex.14 & 15 in which they denied the prosecution allegation and also declined to be examined on oath or to lead any defense in their favour. After examining all the evidence on record the learned trial judge acquitted the Respondents through the impugned judgment

5. The appellant Syed Mehfooz Ali being dissatisfied with the impugned judgment has challenged the same through this instant appeal against acquittal.

6. There is no need to reproduce here the evidence lead before the trial court since the same finds an elaborate mention in the impugned judgment and the same would only amount to repetition

7. The appellant in this appeal against acquittal through his pleadings has mainly contended that the trial Court has acquitted the Respondents/accused persons without appreciating the evidence in accordance with the settled principles of law, that there has been a misreading and non reading of evidence and that there were no contradictions in the prosecution case and as such the impugned judgment should be set aside by this court. On the other hand the learned State counsel has supported the impugned judgment and has submitted that the impugned judgment is in accordance with law and that there are no legal infirmities which justify it being interfered with.

8. I have gone through the material and evidence available on record as well as examined the impugned judgment with the able assistance of learned Addl. Prosecutor General.

9. It appears that the trial Court through the impugned judgment has mainly acquitted the Respondents for the following reasons as set out in the impugned judgment below;

"The complainant has not initiated any criminal proceedings against the accused before any criminal court. It is a matter of record that there is nothing on record which shows that the plots were purchased by the complainant in the name of his father and mother. The FIR of the matter which is registered by the complainant it is stated that in the year 1995 he was transferred to Balochistan District Turbat and in the said house his brother Masroor Alam was residing and in his evidence on oath the complainant deposed that when he left for Turbat subsequent to his leaving the town the accused Masroor Alam broke open the lock of his house bearing No.KMC-268 and started to reside in it. The witness Tanveer Hussain Jaffery had deposed on oath in his evidence that the complainant had purchased the plot somewhere in the month of March 1978 and had also purchased mother house bearing No.268-B at Sector 11-B from one Ilyas against an amount of consideration of Rs.35,000/- in his presence and the receipts of payment and agreement were prepared in my presence and the witness had also signed the agreement. In his cross he had also deposed that he was not the witness of both agreement of presence of plot and the house. The receipts of payments and the agreements are not also on record and neither any witness of purchase of plots by complainant was produced by the complainant as their witness. The complainant had not produced any witness before the court in where presence the accused had given him threats. Section 420 PPC and 506 PPC are as under:-

Sec. 420 PPC -- Cheating and dishonestly inducing delivery of property. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person or to make alter or destroy the whole or any part of a valuable security or anything which is signed or sealed and which is capable or being converted into a valuable security shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

Sec. 506 PPC - Punishment for criminal intimidation. Whoever commit the offence of criminal intimidation shall be punished with imprisonment either description for a term which may extend to two years or with fine or with both.

On the entire perusal of the case record the evidence brought on record by the prosecution against the accused persons the sections 420 & 560 PPC **are not proved against the accused persons as there are many contradictions in the**

evidence of the prosecution which creates serious doubt. It is a well settled principle of law that the benefit of doubt always goes in favour of the accused. It is pertinent to mention that the complainant and the accused persons are real brothers and sisters. It seems like a family dispute between the parties regarding the property which resulted in this FIR" (bold added).

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. The relevant para is reproduced hereunder:-

"16. We have heard this case at a considerable length stretching on quite a number of dates, and with the able assistance of the learned counsel for the parties, have thoroughly scanned every material piece of evidence available on the record; an exercise primarily necessitated with reference to the conviction appeal, and also to ascertain if the conclusions of the Courts below are against the evidence on the record and/or in violation of the law. In any event, before embarking upon scrutiny of the various pleas of law and fact raised from both the sides, it may be mentioned that both the learned counsel agreed that the criteria of interference in the judgment against acquittal is not the same, as against cases involving a conviction. In this behalf, it shall be relevant to mention that the following precedents provide a fair, settled and consistent view of the superior Courts about the rules which should be followed in such cases; the dicta are:

Bashir Ahmed v. Fida Hussain and 3 others (2010 SCMR 495), Noor Mali Khan v. Mir Shah Jehan and another (2005 PCr.LJ 352), Imtiaz Asad v. Zain-ul-Abidin and another (2005 PCr.LJ 393), Rashid Ahmed v. Muhammad Nawaz and others (2006 SCMR 1152), Barkat Ali v. Shaukat Ali and others (2004 SCMR 249), Mulazim Hussain v. The State and another (2010 PCr.LJ 926), Muhammad Tasweer v. Hafiz Zulkarnain

and 02 others (PLD 2009 SC 53), Farhat Azeem v. Asmat Ullah and 6 others (2008 SCMR 1285), Rehmat Shah and 2 others v. Amir Gul and 3 others (1995 SCMR 139), The State v. Muhammad Sharif and 3 others (1995 SCMR 635), Ayaz Ahmed and another v. Dr. Nazir Ahmed and another (2003 PCr. LJ 1935), Muhammad Aslam v. Muhammad Zafar and 2 others (PLD 1992 SC 1), Allah Bakhsh and another v. Ghulam Rasool and 4 others (1999 SCMR 223), Najaf Saleem v. Lady Dr. Tasneem and others (2004 YLR 407), Agha Wazir Abbas and others v. The State and others (2005 SCMR 1175), Mukhtar Ahmed v. The State (1994 SCMR 2311), Rahimullah Jan v. Kashif and another (PLD 2008 SC 298), 2004 SCMR 249, Khan v. Sajjad and 2 others (2004 SCMR 215), Shafique Ahmad v. Muhammad Ramzan and another (1995 SCMR 855), The State v. Abdul Ghaffar (1996 SCMR 678) and Mst. Saira Bibi v. Muhammad Asif and others (2009 SCMR 946).

From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced that the scope of interference in appeal against acquittal is most narrow and limited, 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 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. It has been categorically held in a plethora of judgments that 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 or wholly artificial or a shocking conclusion has been drawn. *Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the re-appraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities. It is averred in The State v. Muhammad Sharif (1995 SCMR 635) and Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals.*" (bold and italics added)

11. Having gone through the evidence and the impugned judgment I find that there has been no misreading or non reading of evidence, that there are major contradictions in the prosecution evidence, that the impugned judgment is based on sound reasons and there is no question of the findings in the impugned judgment being perverse arbitrary, foolish, artificial, speculative and ridiculous especially as it is a well established principle of law that the accused is always entitled to the benefit of the doubt in criminal cases and as was held in the case of **Tariq Pervez V/s. The State** (1995 SCMR 1345), where the Honourable Supreme Court has observed as follows:-

"It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right."

12. As such in my view there is no merit in the instant appeal against acquittal. The Acquittal recorded by trial Court in favour of Respondents is based upon sound reasons, which require no interference at all. As such, the instant appeal against acquittal is dismissed.

13. These are the reasons for my short order of even date which reads as follows:

08.06.2017

*None present for the appellant.
Mr. Zafar Ahmed Khan, A.P.G.*

"On 13.01.2017, the following order was passed:

"Mr. Abdul Hafeez, advocate holding brief for Mr. Sharfuddin Mangi, advocate for the appellant requests for adjournment on the ground that latter has gone to his village for his personal work.

Mr. Mustafa Siayl advocate for respondents No.1 to 3.

As per diary dated 29.09.2016, a last chance was granted to Mr. Mangi to proceed with the matter. Once again he is cautioned to come prepared to proceed with the matter otherwise the matter will be decided with the assistance of learned DPG and learned counsel for the respondents No.1 to 3. Adjourned to be fixed in the third week of February, 2017 as per Roster."

Again today, when the learned counsel for the appellant was called none was in attendance without any intimation. As per order dated 13.01.2017 I have carefully gone through the record and the impugned judgment with the able assistance of learned A.P.G.

For the reasons to be recorded later, this Criminal Acquittal Appeal stands dismissed".