

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

Mr. Justice Abdul Maalik Gaddi

Mr. Justice Mohammad Karim Khan Agha

Cr. Acq. Appeal No.D-60 of 1998.

Kirar

Vs.

The State and others.

Appellant : Kirar	Through Mr. Pervaiz Tariq Tagar, Advocate
Respondent No.1: The State	Through Miss Safa Hisbani, A.P.G.
Respondents No.2 to 4 : Muhammad Ali, Ghulamoon and Ramzan	Through Mr. Hidayatullah Abbasi, Advocate
Amicus Curiae	Mr. Mumtaz Alam Laghari and Mr. Ashfaq Ali Khaskheli.
Date of hearing :	16.08.2018
Date of judgment :	16.08.2018

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.- This criminal acquittal appeal has been filed by appellant Kirar against the judgment dated 29.04.1998, passed by the learned Illrd Additional Sessions Judge, Dadu in Sessions Case No.301 of 1986 (re-The State Vs. Muhammad Ali and others) under Crime No.56 of 1986, registered at P.S Johi under sections 302, 114, 324/34 PPC, whereby the learned trial court after a full dressed trial acquitted the private respondents by giving them the benefit of the doubt. Since the appeal against acquittal was filed almost 20 years ago all the private respondents except Mohammed Ali have expired and hence this appeal against acquittal concerns only respondent Mohammed Ali.

2. Precisely, the brief facts of the prosecution case as disclosed in the FIR which was lodged on 16.06.1986 at 03:45 p.m. at police station Johi by complainant Kirar are as under:

"The complainant cultivates his land. About 3 days back i.e. on 14.06.1986, at noon time complainant's son Ali Hyder and cousin's son

Abbass fought with Ramzan and Ali Hyder had given Lathi blows to Ramzan and Ramzan had ran away, thereafter at the night time Ramzan had sent a message that his son has mis-behaved with him and had given Lathi blows to him and he would take revenge by killing him or his son Ali Hyder. Thereafter the complainant went to Ramzan and requested him for Faisla as the matter was between the neighbourers and he would apologize if they proved at fault. Thereafter Ramzan went away without listening properly. On 16.06.1986, at noon time, the complainant's son Ali Hyder and relative Abbass took their cattle for grazing towards the eastern side of drain and were returning back. There was a hand pump of complainant which was installed on at the inspection path at the eastern side of their village and western side of the drain, where the complainant Kandoo, Hajji Abdul Rasool were taking the water for cattle, complainant's son Ali Hyder and Abbass were going towards the hand pump alongwith the cattle, when at about 11:00 a.m. accused/applicant Ramzan, Muhammad Ali and Ghulamoon, all sons of Meero Jamali came running there. Out of whom applicant Ramzan and accused Muhammad Ali were armed with rifle while Ghulamoon was armed with a gun. The accused gave Hakals and told the complainant's son of Ali Hyder and relatives Abbass that now they should recite the Holy Quran as they would be killed because they had fought with them. On instigation of Ghulamoon, applicant/accused Ramzan fired from his licensed rifle, which hit Ali Hyder who raised cries and felt down. Accused Muhammad Ali fired from his rifle, which hit Abbass who raised cries, and fell down. Accused Ghulamoon straightly fired from his licensed gun towards the complainant party with the intention to kill them, but they took shelter in the ditches and the fires missed but due to fear they remained there. Accused Ghulamoon fired continuously for about 10 minutes towards the complainant party. Thereafter accused went away towards their houses. Thereafter complainant party went towards the injured and found that Ali Hyder had expired and Abbass was trembling due to injury and pain, who had rifle shot injury on his arm. Rasul Bux shifted his son injured Abbass for treatment to the hospital. Complainant left the said witnesses over the dead body of deceased Ali Hyder and proceeded by foot to police station and lodged the report that the above accused with their common intention had murdered Hyder and gave injuries to Abbass."

3. After usual investigation, challan of the case was submitted before the concerned Court. At trial, learned trial Court framed charge against the accused named above as Ex.04 to which they pleaded not guilty and claimed to be tried.

4. The prosecution in order to prove its case against the accused examined PW-1 Kirir at Ex.9 and he has produced FIR as Ex.9-A. Kandoo is examined at Ex.10. Rasool Bux is examined at Ex.11. Dr. Abdul Karim is examined at Ex.12-A. Abdul Qadir Tapedar is examined at Ex.13 and he has produced sketch at Ex.13-A. A Mashir Dodo is examined at Ex.14 and he has produced mashirnama of wardat at Ex.14-A. Inquest report of dead body of Ali Hyder at Ex.14-C, mashirnama of search of houses of all the 3 accused as Ex.14-D to F. Mashirnama of arrest of all the 3 accused as Ex.14G, mashirnama of recovery of gun and license from accused Ghulamoon as Ex.14-H. Dr. Ali Bux is examined at Ex.15 and he has produced Medicolegal Certificate in respect of injuries of the person of Abbass as Ex.15-A and final certificate as Ex.15-B. Muhammad Moosa Khokar is examined at Ex.16, and he has produced the receipt of handing over the dead body as Ex.16-A. Thereafter prosecution side was closed.

5. Accused Muhammad Ali in his statement under Section 342 Cr.P.C. had denied if on 14.06.1986 Ali Hyder and Abbass had fought with Ramzan and they had given Lathi blows to Ramzan and Ramzan had issued threats. He has also denied if on 16.06.1986, at 11:00 am on the western side of Wolwani Mori he in furtherance of common intention with co-accused committed the murder of Ali Hyder by giving fire arm injuries. He has also denied if in furtherance of common intention injuries given to Abbass with intention of murder him. He has stated that he voluntarily surrendered before police. He has stated that PWs have deposed against him due to enmity. He has opted to examine himself on oath and cited one Naraindas chief in Sui Gas company as witnesses. He has stated that he is innocent and on the day of incident he was at Karachi in Sui Gas company and he has produced such certificate issued by Managing Director Sui Transmission Company as Ex.18/A, he has stated that he is falsely implicated in this case. Accused Muhammad Ali was examined on oath as Ex.21. and thereafter learned defence advocate has closed the side of defence.

6. Trial Court framed the following points for consideration in this case:

1. Whether Ali Hyder has died un-natural death on 16.06.1986, at 11:00 am on the western side of Wolwani Mori?
2. Whether Abbass has received injuries on 16.06.1986 at 11:00 am at the same place?
3. Whether present accused persons have committed the murder of Ali Hyder and gave injuries to Abbass with intention to murder him?
4. What should be Judgment be?

7. The trial court after hearing the learned counsel for the parties and assessment of evidence, by impugned judgment acquitted the accused / respondents as stated in concluding para of the impugned judgment. Hence, this acquittal appeal has been filed by the appellant.

8. Mr. Pervaiz Tariq Taggar, learned Counsel for appellant contended that the judgment passed by the learned trial court is perverse and the reasons are artificial, vis-à-vis the evidence on record; that the grounds on which the trial court proceeded to acquit the respondents are not supportable from the evidence on record. He further submitted that the respondents have been directly charged and that the discrepancies in the statements of witnesses are not so material on the basis of which respondents could be acquitted. He further contended that the learned trial court has based its finding of acquittal merely on the basis of minor contradictions on non-vital points in the statements of prosecution witnesses and that the prosecution evidence has not been properly appreciated. Therefore, under the circumstances, he was of the view that this appeal may be allowed as prayed.

9. On the other hand learned counsel for the Mohammed Ali as well as the learned APG Sindh have supported the impugned judgment passed by learned trial court by arguing that the impugned judgment has been passed after due appreciation of evidence on record. They further argued that the alleged incident took place on 14.06.1986 and the same was reported at police station on 16.06.1986 after the delay of about 02 days for which no satisfactory explanation has been furnished, as such, according to them, false implication of the private respondents with due deliberation and consultation on this ground alone cannot be ruled out. They further argued that in this case there is no direct evidence available on record connecting the respondents in this crime. During course of arguments they have read the evidence of the prosecution witnesses including evidence of Dr. Abdul Karim and Dr. Ali Bux, who have not supported the prosecution case and the

learned trial court while delivering the acquittal judgment has attended to all the aspects involved in this case.

10. We have heard the learned Counsel for the parties and perused the evidence so brought on record alongwith impugned judgment with the able assistance of learned counsel.

11. At the outset the question of time bar arose since the appeal had been filed 4 days after the limitation for its filing had expired which was also pointed out in order sheet dated 01-09-1998. To assist the court in this respect Mr. Mumtaz Alam Laghari and Mr. Ashfaq Ali Khaskheli advocates were appointed by the court as amicus curiae. Learned counsel and amicus curiae all supported the conclusion that the appeal was time barred by 4 days. When learned counsel for the appellant was confronted with this situation he conceded that he had not filed any application for condonation of delay and could not explain the reason for each days delay in filing the appeal i.e 4 days. Thus on this ground alone we find that the appeal against acquittal is liable to be dismissed.

12. Even otherwise it is settled law that the grounds on which a criminal acquittal appeal will succeed are very narrow. A presumption of double innocence attaches to the respondents and even then for the appeal to succeed this court must be satisfied on the evidence that the impugned Judgment was arbitrary, capricious or against the principles of natural justice.

13. After considering the arguments of the parties and perusing the record, we are of the opinion that the prosecution has failed to prove its case against the respondents for the reasons that in this case all pieces of evidence produced by the prosecution are weak in nature and the whole case of the prosecution is based upon contradictory evidence adduced by the prosecution. There is no confidence inspiring and trustworthy evidence of Mohammed Ali causing injuries to Abbas, the two alleged eye witness are related to the deceased and themselves, had an enmity with the respondent had good reason to fix him in this false case and there evidence contradicts each other in many material aspects; no independent witness was examined despite many being available at the crime scene; that there are major and not minor contradictions in the evidence of the alleged eye witnesses; that the medical evidence contradicts the ocular evidence; that no recovery was made from the respondent; that the F.I.R. was filed after an unexplained delay of nearly 2 days; that other PW's also contradicted themselves; that the

respondent has an alibi that he was at work on the day of the incident for which he produced a certificate which was not disproved; that the prosecution story itself does not appeal to reason. For example if one of the deceased accused was firing at the complainant party for over 10 minutes more empty recoveries would have been made and the complainant party all of whom were unarmed would all have been killed or seriously injured; that the evidence tends to suggest that this is a cooked up story.

14. During the course of arguments, we have specifically asked the question from learned Counsel for appellant to point out / show any piece of evidence, which is not supportable from the evidence on record, no satisfactory answer was available with him. Thus, from a perusal of evidence recorded by trial court as well as the impugned judgment, it appears that the impugned judgment of the trial court is based upon sound reasons and does not require any interference especially as when mentioned above it is considered that the impugned judgment is neither perverse nor arbitrary and in this case there appear to be no legal infirmities in the impugned judgment. If anything the prosecutions evidence is unreliable and riddled with contradictions which cannot be safely relied upon by any stretch of the imagination. It is settled law that in a criminal case the accused is entitled to even the slightest benefit of doubt in the case against him. In this case there are many doubts in the prosecution evidence and the trial court has rightly extended the benefit of doubt to the private respondents in the impugned judgment.

15. For what has been discussed above, we are of the considered view that the impugned judgment is based upon valid and sound reasons and is entirely in consonance with the law and as such we find this Criminal Acquittal Appeal to be without merit and the same is dismissed along with any listed applications.

16. Above are the reasons for our short order dismissing this appeal against acquittal announced today in open court.