

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Acquittal Appeal No. 30 of 2024

PRESENT:

Mr. Justice Amjad Ali Sahito

Mr. Justice Jan Ali Junejo

The appellant: Abdul Raheem Khan, through
Mr. Altaf Hussain Surahiyo, Advocate

Date of hearing: 15.04.2025

Date of Short order: 15.04.2025

J U D G M E N T

AMJAD ALI SAHITO, J.- Being aggrieved and dissatisfied with the Judgment dated 17.10.2024, passed by the learned Additional Sessions Judge/Model Criminal Trial Court (MCTC), Kashmore, in Sessions Case No.149/2024, arising out of the FIR No.30/2024, registered under sections 302,34 PPC at Police Station Kashmore; whereby the Respondents No.1 was acquitted of the charge. The appellant/complainant files this acquittal appeal with a prayer to convict the respondent/accused following the law.

2. Brief facts of the prosecution case, as per the F.I.R lodged by complainant Abdul Raheem Khan Golo is that on 06.12.2023 he along with his cousins Jot Ali, Ahmed and uncle Qamaruddin aged about 65 years after attending the Court proceedings were returning to home, when they reached near Gate of Taluka Hospital Kashmore, at about 03:00 pm accused Muhammad Sharif, Saifuddin came there on a bike and caught hold Qamaruddin who fall down thereafter co-accused Saifuddin caused stones on his face and lip and accused Muhammad Sharif put cloth in his mouth to which complainant raised cries therefore, accused fled away.

3. After lodging of the F.I.R, investigation was carried out, the I.O recorded statement of PWs under section 161 Cr.PC as well as recorded statements of DWs. After completing investigation he submitted final report before the learned Magistrate under "C" class, on the ground of negative postmortem having natural cause of death as well as on the basis of statements of DWs, Being not agreed with the report of I.O, learned Magistrate took the

cognizance, vide order dated 19.03.2024. A formal charge was framed against accused at Ex.6, to which he pleaded not guilty and claimed to be tried, such plea was recorded at Ex.6/A.

4. In order to prove its case, prosecution examined as many as 10 prosecution witnesses and produced relevant documents, thereafter the learned A.D.P.P closed the prosecution side vide statement at Ex.17.

5. Statement of accused was recorded under section 342 Cr.P.C. at Ex.18, wherein he denied the allegations leveled against him by the prosecution and claimed his innocence. However, he did not produce any defense witness nor examined himself on oath.

6. Learned trial court after hearing the learned counsel for the parties and appreciation of the evidence acquitted the respondent/accused vide impugned judgment dated 17.10.2024.

7. Learned counsel for the appellant has mainly contended that the judgment passed by learned trial Court is perverse and the reasons recorded by the learned trial Court are artificial and without appreciating the evidence; that the grounds on which learned trial Court proceeded to acquit the respondent No.1 is not supportable from the evidence on record; that the ocular evidence is supported by the medical evidence, but same was not considered by the learned trial Court, therefore, under these circumstances, the respondent is liable to be dealt with in accordance with the law. He lastly prayed for allowing the instant appeal.

8. We have heard the arguments of respective parties and have gone through the relevant record. Through the instant acquittal appeal, the appellant has questioned the acquittal judgment in favour of Respondent No.2. After meticulous examination of entire evidence, we have found some critical contradictions due to which the trial court obliged to give its verdict in favour of the accused. It is considered expedient to reproduce the relevant except of the impugned Judgment and the same is delineated hereunder:-

"To prove this point prosecution has no independent witness of occurrence, however it has relied upon evidence of complainant at Exh.08 & one eyewitness Jot Ali at Exh.09, hence their evidence has to be seen whether they have supported the case of

prosecution respecting manner of incident or otherwise. Complainant in his examination in chief deposed that on the date of incident at about 03:00 pm he forthwith moved his uncle to hospital, but during cross examination he himself contradicted that at about 10:00 am they reached at hospital for treatment where his uncle died, on other hand M.O during examination in chief deposed that Qamardin was brought dead at Taluka Hospital Kashmore. In respect of above fact eyewitness Jot Ali at Exh.09 he deposed in his examination-in- chief, but during his cross he also contradicted the time and deposed that after incident they reached at hospital at about 04:00 pm.

Further during examination in chief complainant changed his version as narrated in the FIR by deposed that "when they came adjacent to my uncle both alighted from the bike physically assaulted him severely beaten him, while accused Saifdin injured my uncle through stone which were available on the road, accused Muhammad Sharif also put cloth into his mouth for suffocation meanwhile we intervened, both accused escaped away on same bike. Same lines were also deposed by witness, though in the FIR there is no disclosure about severally beat of accused to the deceased and in the FIR it is stated that deceased was fallen on the ground then accused caused him injures, but deposition of both eyewitnesses are totally silent about such fact. In the FIR complainant stated that stones were caused on the face of deceased, but medical evidence is silent about any injury on the person of deceased, even I.O during cross deposed that during postmortem no any injury notice on the dead body. Due to the contradictions as discussed hereinabove between witnesses of the occurrence respecting to the manner at very place has made their presence doubtful, which has further doubted the story of incident as introduced by them in examination-in-chief, so also FIR. Thus their evidence is not only inconsistent, but stands shattered through cross examination, hence they have lost credence".

8. It is a well-settled principle of law that a criminal case is to be decided based on the totality of impressions gathered from the circumstances of the case and not on the narrow ground of cross-examination or otherwise of a witness on a particular fact stated by him. A similar view had been expressed by the Honourable Supreme Court of Pakistan in the case ***of State v. Rab Nawaz and another (PLD 1974 SC 87)*** wherein Honourable Supreme Court has observed that a criminal case is to be decided based on the totality of circumstances and not based on a single element.

9. It is noteworthy that in the impugned judgment the learned trial Judge has pointed out some other material contradictions, which are sufficient to declare that the prosecution could not establish the case against the

respondent/accused beyond reasonable doubt and where a single circumstance creating reasonable doubt in the prudent mind about the guilt of the accused, then accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right. In this regard, reliance is placed on the cases of **Tariq Pervaiz v. The State [1995 SCMR 1345]** **Muhammad Akram v. The State [2009 SCMR 230]** and **LalBux alias Lal v. the State (2023 YLR 321) (authored by Zulfiqar Ahmed Khan J.)**

10. It is an important to note that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from appeal against acquittal, as presumption of double innocence is attached in the latter case. Reliance is placed on the case of **'Inayatullah Butt v. Muhammad Javed and 2 others' [PLD 2003 SC 562]**. Until and unless the judgment of the trial Court is perverse, completely illegal and on perusal of evidence no other decision can be given except that the accused is guilty or there has been complete misreading of evidence leading to miscarriage of justice, the Court will not exercise jurisdiction under section 417, Cr.P.C.

11. It is well settled by now that the scope of appeal against acquittal is very narrow and there is a double presumption of innocence and that the Courts generally do not interfere with the same unless they find the reasoning in the impugned judgment to be perverse, arbitrary, foolish, artificial, speculative and ridiculous as was held by the Supreme Court in the case of **State v. Abdul Khaliq and others (PLD 2011 SC 554)**.

12. In these circumstances, we are of the opinion that the quality and standard of evidence is lacking, which is required to establish a criminal case for justifying conviction and sentence. Hence, we are of the view that the instant criminal acquittal appeal is not meritorious, as such, the same is dismissed in limine.

JUDGE

JUDGE

S.Ashfaq/=