IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Acquittal Appeal No.D-19 of 2018

Present:
Justice Khadim Hussain Tunio
Justice Tasneem Sultana

Appellant:	Zafar through **Mr. Irfan Ahmed Qureshi, advocate**.
Respondent No.1:	The State through **Mr. Shawak Rathore, Deputy Prosecutor General, Sindh**.
Respondents No.2, 3, 4, 5 & 9:	**2**. Mst. Hira **3**. Arman **4**. Farhan **5**. Faisal **9**. Dr. Hotomal Through **Raja Jawad Ali Sahar, advocate**.
Respondents No.6, 7 & 8:	**Nemo.**
Date of hearing:	02.09.2025
Date of judgment:	02.09.2025

J U D G M E N T

TASNEEM SULTANA, J: Through this Criminal Acquittal Appeal, the appellant/complainant has assailed the judgment dated 23.07.2018, passed by learned 1st Additional Sessions Judge, Hyderabad, in Sessions Case No.158 of 2012, outcome of FIR No.50/2011, under Sections 302, 109, 120-B, 201, 218 & 34 PPC, registered at PS City, Hyderabad, whereby the private respondents/ accused were acquitted by extending them benefit of doubt.

2. Brief facts of the prosecution case, as disclosed in the FIR, are that complainant Zafar s/o Muhammad Ameer Arain lodged FIR on 08.04.2011 alleging that he runs business under the name and style of U.K. Fast Food in Latifabad No.6, Hyderabad. On the same day at about 1:30 p.m., while present at his house, he received a phone call from his former neighbour informing him that his son Junaid had committed suicide in a house situated near Bachal Shah Masjid, Islamic Chowk, and that he had been shifted to Civil Hospital by neighbours. Upon receiving this information, the complainant immediately reached the mortuary of Civil Hospital, where he saw the dead body of his son Junaid, aged about 24/25 years. On seeing the dead body, the complainant suspected that his son had not committed suicide but had, in fact, been murdered.

He further stated that upon inquiry, he came to know that his son Junaid had been murdered by his brother Akhtar (who was also father-in-law of Junaid), along with Akhtar's sons Faisal and Asif, and Mst. Hira (wife of Junaid), as well as his son's friends, namely Farhan and Arman. He also alleged that the entire plan was prepared by his brothers Maqbool and Shakeel, who were also involved in the murder of his son. Thereafter, the complainant appeared at the police station and lodged the report against all above-named accused. Hence, the FIR was registered.

3. After usual investigation, the I.O. submitted challan against the private respondents/accused persons. Necessary case papers were supplied, and a formal charge was framed at Exh.3 to which they pleaded not guilty and claimed trial. Thereafter, an amended charge was also framed at Exh.13, to which again they pleaded not guilty and claimed trial.

4. The prosecution examined Complainant Zafar as PW-1 at Exh.22, who produced a carbon copy of the FIR as Exh.22/A. Witness Arshad Ali was examined as PW-2 at Exh.23, who produced the memo of arrest as Exh.23/A. ASI Nusrat Ali appeared as PW-3 at Exh.24 and produced the memo of site inspection as Exh.24/A. Witness Imran Khan was examined as PW-4 at Exh.25 and produced another memo of site inspection as Exh.25/A. Witness Naveed Zafar was examined as PW-5 at Exh.26. Inspector Aftab Ahmed appeared as PW-6 at Exh.27 and produced letter No. SHK/MED/1191/138/40 dated 07.01.2012 and the proceedings of the medical board as Exh.27/A and Exh.27/B1 to Exh.27/B3. Witness Asif Iqbal was examined as PW-7 at Exh.29, and Muhammad Aqeel as PW-8 at Exh.30. Mashir Asghar Ali was examined as PW-9 at Exh.31 and produced the memo of dead body danistnama (inquest report) and memo of clothes as Exh.31/A to Exh.31/C. Inspector Zulfiqar Ahmed was examined as PW-10 at Exh.32 and produced a letter dated 20.04.2011. Dr. Muhammad Aslam was examined as PW-11 at Exh.33 and produced office orders dated 08.12.2011 and 16.12.2011 as Exh.33/A and Exh.33/B. Dr. Junaid Ashraf was examined as PW-13 at Exh.36 and produced a letter dated 07.12.2011, postmortem examination report, chemical examination report, and copy of final report dated 08.06.2011 as Exh.36/A to Exh.36/D. Lastly, Dr. Farhat Hussain Mirza was examined as PW-14 at Exh.37 and produced a photocopy of his statement as Exh.37/A. Thereafter, the learned DPP closed the prosecution side vide statement at Exh.38.

5. Statements under Section 342 Cr.P.C. of the private respondents/accused were recorded at Exh.39 to Exh.46. In their statements they denied all the

allegations, claimed innocence, and neither examined themselves on oath nor produced defence evidence.

6. After appraisal of the material available, the learned Trial Court acquitted the private respondents vide judgment dated 23.07.2018; holding that the prosecution had failed to prove its case beyond reasonable doubt; hence, extending benefit of doubt to all respondents including Dr. Hotomal, which resulted in their acquittal; against which the instant criminal acquittal appeal has been preferred.

7. Learned counsel for the appellant/complainant contended that the impugned judgment is contrary to law, facts, and equity, as the trial Court failed to apply a judicious mind while evaluating the material on record. He argued that respondents were acquitted without cogent reasoning; that Dr. Hotomal deliberately misrepresented medical evidence and mala fidely declared the death a suicide to extend favour to co-accused; that the complainant had clearly nominated the accused in the FIR for the murder of his son; yet the trial Court wrongly observed that only suspicion was raised. He further argued that charges under Sections 201 and 218 PPC were specifically framed against Dr. Hotomal for concealing the cause of death but the trial Court failed to appreciate this aspect. He prayed that the impugned judgment be set aside and the respondents convicted.

8. Conversely, learned counsel for respondents No.2, 3, 4, 5 and 9 supported the impugned judgment and argued that the trial Court rightly appreciated evidence, noticed material contradictions and lacunae in the prosecution case, and acquitted the accused/private respondents by rightly extending benefit of doubt. He submitted that when two views are possible, the one favourable to the accused must prevail; that the prosecution failed to prove guilt beyond reasonable doubt; and that no illegality or perversity was shown in the judgment, hence interference was unwarranted.

9. Learned DPG has also supported the impugned judgment and prayed for dismissal of instant acquittal appeal.

10. We have heard learned counsel for the parties at length and carefully examined the record.

11. While recording acquittal of the respondents No.2 to 9, the learned Trial Court took into account serious discrepancies which cast material doubt upon the prosecution case. It was observed that although the complainant, in the FIR, had merely expressed suspicion that his son Junaid had been murdered instead of

having committed suicide, he failed to disclose any solid basis, sign of violence, or particular circumstance to justify such suspicion. His evidence in examination-in-chief also remained silent about any specific feature pointing towards homicide. The assertion that Dr. Hotomal (the MLO) had in fact declared the death to be murder and not suicide was not mentioned at the initial stage either in the FIR or in his first statement, but was introduced later during investigation by Inspector Aftab Ahmed. Such belated improvements, not being part of the earliest version, inherently weaken the veracity of the allegation and do not inspire confidence.

12. The Trial Court also remarked that the investigation record itself was marred by conflicting findings. On one hand, some officials including ASI Nusrat Baloch, Inspector Abdul Khaliq, and ASI Zahid Iqbal Chandio categorized the case under "C" class as suicide, whereas others reached a contrary conclusion of murder. This divergence in the views of investigating officials clearly reflected lack of uniformity in the prosecution's own case. Similarly, PW Naveed Zafar claimed that the provisional medical certificate differed from the final one, yet no such documents were ever produced before the Court to substantiate this claim. Most importantly, no independent or credible witness came forward to corroborate the allegation that Dr. Hotomal had advised the complainant to lodge an FIR alleging murder. In the absence of reliable corroboration, such oral assertions could not be safely relied upon.

13. The Trial Court also scrutinized the report of the Special Medical Board, which declared the final postmortem report of Dr. Hotomal "incorrect." However, it was noted that the Board prepared its report without examining the dead body, relying instead on photographs and documents which were never produced before the Court. Contradictions and infirmities in the testimonies of the Board members further undermined the sanctity of its findings. Consequently, the Court held that although certain medical negligence might be attributable to Dr. Hotomal, no evidence of mala fide intent or false reporting was established. In light of such discrepancies and contradictions in the prosecution evidence, the Trial Court concluded that the case against the respondents, including Dr. Hotomal, was not proved beyond reasonable doubt, which ultimately led to their acquittal. On cumulative assessment of these contradictions and infirmities, the Trial Court concluded that the prosecution had failed to prove its case beyond reasonable doubt and, applying the settled principle that benefit of doubt must go to the accused, acquitted the respondent. The Hon'ble Supreme Court of Pakistan in the case of *Muhammad Riaz versus Khurram Shehzad and another (2024 SCMR 51*) has held as under:-

> *"10. The aforesaid set of circumstances creates misgivings and suspicions regarding the presence of the prosecution witnesses at the scene of the crime, and the discrepancies and defects in the investigation and the prosecution case pointed out by the learned High Court in the impugned judgment also colors the case in doubt and improbability. Therefore, the learned High Court rightly held that the prosecution badly failed to substantiate the case against the respondent No. 1, and the learned Trial Court was not justified in convicting him on the strength of untrustworthy or uncorroborated evidence which was full of material contradictions, especially contradictions in the ocular and medical evidence. It is a well-settled exposition of law that in an appeal against acquittal, the Court would not ordinarily interfere and would instead give due weight and consideration to the findings of the Court acquitting the accused which carries a double presumption of innocence, i.e. the initial presumption that an accused is innocent until found guilty, which is then fortified by a second presumption once the Court below confirms the assumption of innocence, which cannot be displaced lightly."*

14. It is well settled by now that the scope of appeal against acquittal is very narrow and there exists a double presumption of innocence in favour of the accused, and that the Courts generally do not interfere with the impugned judgment unless they find the reasoning in the same to be perverse, arbitrary, foolish, artificial, speculative or ridiculous, as was held by the Honourable Supreme Court in the case of *State versus Abdul Khaliq and others (PLD 2011 SC 554*), wherein the Hon'ble Supreme Court has held as under:

> *"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 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. 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."

15. For the foregoing reasons, on cumulative evaluation of the entire evidence and settled principles of law, we find no illegality or irregularity in the impugned judgment warranting interference. The Trial Court rightly pointed out contradictions, applied the principle of benefit of doubt, and acquitted the respondents. Once doubt arises, however minor, it must go to the accused, as it is better that ten guilty persons escape than one innocent be wrongly convicted. In light of the narrow scope of interference in acquittal appeals reaffirmed by the Honourable Supreme Court, we are not persuaded to disturb the findings of the Trial Court. Consequently, this Criminal Acquittal Appeal was dismissed vide our short order dated 02.09.2025, and these detailed reasons are recorded in support thereof.

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Irfan Ali