

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Acquittal Appeal No.D-90 of 2004

DATE	ORDER WITH SIGNATURE OF JUDGE
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For regular hearing.

31.05.2017

Syed Meeral Shah Bukhari, Additional P.G.

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This Criminal Acquittal Appeal No.D-90 of 2004 is directed against the judgment dated 18.09.2002, passed by learned Judge, Anti-Terrorism Court, Hyderabad, in Special Case No.09 of 2000, whereby the respondents were acquitted by the Trial Court. Appellant/State preferred this appeal for setting aside the impugned judgment and prayed for conviction of the accused. It may be mentioned here that Criminal Special Acquittal Appeal No.D-105 of 2002 was filed by the State against respondents Javed, Irfan, Qamar Zaman, Pir Mansoor and Raja alias Zulfiqar Chandio. This Court vide order dated 03.06.2004, passed the following order:-

“NBWs issued against respondents No.4 and 5 could not be executed for the reason stated in the reports of SHO Hussainabad Police Station and SIP Kalandar Bux, P.S Shah Latif Town Bin Qasim Karachi. Respondent No.4 Pir Mansoor is said to have migrated to Dubai and for respondent No.5, Raja alias Zulfiqar Chandio, it is reported that his father Mohammad Amin has severed all connection with him on account of his wrongful acts and that his whereabouts are unknown. Both the police officers who are in attendance today have made oral statement to the above effect, as well. In the circumstances, we order that permanent warrants be issued against them and their cases stand separated to be proceeded against them as and when they are arrested and brought before this Court. The office is directed to prepare a separate file in respect of above two respondents.”

Criminal Special Acquittal Appeal No.D-105 of 2002 (Re: The State through Additional Advocate General V/s. Javed, Irfan, Qamar Zaman, Pir Mansoor and Raj alias Zulfiqar Chandio) proceeded on 18.05.2017. By judgment dated 26.05.2017, the same was dismissed for the following reasons:-

“5. After hearing the learned counsel for the parties, we have carefully perused the judgment dated 18.09.2002 passed by the trial court. the relevant paragraph is reproduced as under:-

Point No.4.

In this connection the burden of proof lies upon the prosecution side, the prosecution side has adduced the evidence of P.Ws Manoj Kumar and Ayoub ASI and Shoaib ASI. Their contentions in evidence is that at the time of firing the accused Iran Rind alongwith other came in white colour Khyber Car and they were armed with Pistoal and there was also one man sitting in the car who was armed with K.K. and then they followed the culprits who had fired and went towards with them. About accused Qamar Zaman, the prosecution case is that he was making abetment of the offence through using of mobile telephone and were exchanging the talks to know the incident. In this connection, I have heard arguments of the learned defence counsel Mr. A. Sattar Kazi and learned SPP Mr. Atta Muhammad Learned SPP has clearly mentioned in his arguments that in 161 Cr.P.C statement of the P.Ws Muhammad Ayoub and Manoj Kumar, the fact of arrival of accused Irfan and other in white colour Khyber car has not been disclosed, but in a deposition it has been mentioned. According to learned SPP, there is contradictory versions between 161 Cr.P.C statements and depositions of these P.Ws, therefore, the allegations against accused Irfan has not been proved. The learned SPP has also further mentioned that allegation of abetment against accused Qamar Zaman has also not been proved because no any record exchange of talks have been furnished, therefore, from opinion of the learned SPP it is clear that the involvement of accused Irfan Rind and Qamar Zaman appears doubtful.

Mr. Kazi Sattar learned D.C has mentioned the same facts in his arguments.

I have given my considered view to the arguments advanced before, and I have considered the evidence and I find that Mr. Abrar I.O, mashir Mansoor in their respective on record Ex-32 and 33 respectively have mentioned that search was conducted from the houses of accused Irfan Rind and Qamar Zaman and nothing was recovered from their houses. I therefore, agree with the arguments of learned SPP and D.C and I hold that involvement of accused Qamar Zaman and Irfan are doubtful. Therefore, this point is answered accordingly.

Point No.5.

In view of the findings on the points Nos.1 to 4 I am of the considered view that the accused persons have been involved doubtfully, in this case and as such the prosecution case appears with full of doubt, the benefit of doubt must go to each of accused persons. It is also clear that act of terrorism has not been committed by the present accused persons and they had not created any sense of fear or insecurity in the society and locality in general. The accused persons on the ground of benefit of doubt including absconding accused persons are acquitted u/s 265-H(i)

Cr.P.C. Accused Javed is produced in custody, whereas accused Irfan Rind and Qamar Zaman are present on bail. Their bail bonds are cancelled and accused Javed Samoon is remanded to custody with the P.O that he shall be released forthwith if he is not required in any other case.”

In our considered view, trial court on the basis of material contradictions in the prosecution evidence and other defects rightly acquitted the accused. The judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous as held by the Honourable Supreme Court in the case of The State V/s. 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 Ahmad 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 2 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 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.”*

For the above stated reasons, there is no merit in the appeal against acquittal. Finding of the innocence recorded against the respondents/accused by the trial Court are based upon sound reasons which require no interference at all. As such, the appeal against acquittal is without merits and the same is dismissed.”

It will not be out of place to mention here that on 18.05.2017, respondent No.2 appeared and stated that respondents Javed and Qamar Zaman have expired during pendency of this acquittal appeal. File of Criminal Acquittal Appeal No.D-90 of 2004 was not traceable on the above mentioned date. Office was directed to trace it and fix for today.

Syed Meeral Shah Bukhari, learned Additional Prosecutor General submits that this Court vide order dated 03.06.2004 on the report of the SHO P.S Hyderabad has observed that respondents No.4 and 5 have migrated to Dubai. Additional P.G further states that Criminal Special Acquittal Appeal No.D-105 of 2002 against respondents Javed, Irfan, Qamar Zaman, Pir Mansoor and Raj alias Zulfiqar Chandio has already been dismissed.

In view of the above circumstances, learned Additional P.G did not press this acquittal appeal, therefore, the same is dismissed as not pressed.

JUDGE

JUDGE

Shahid