

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Acquittal Appeal No.45 of 2012

Date	Order with signature of Judge
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For hearing of main case.

Present: Mr. Justice Nazar Akbar

Appellant : Syed Jawed Raza,
Mr. Aqeel, advocate holds brief for
Mr. Muhammad Ali Waris Lari,
Advocate for the appellant.

Versus

Respondent No.1 : Muhammad Ibrahim S/O Sirajuddin,
Respondent No.2 : Muhammad Farooq S/O Nazeer Ahmed,
Respondent No.3 : Ghulam Muhammad Sarwar
S/O Jan Muhammad;
Respondent No.4 : The learned Court of Vth Addl. Sessions
Judge, Central, City Courts, at Karachi.
Respondent No.5 : The State.
Ms. Amna Ansari, Additional P.G.
Date of hearing : **04.03.2019**
Date of decision : **04.03.2019**

JUDGMENT

NAZAR AKBAR, J:- This Crl. Acq. Appeal is directed against the Judgment dated **09.09.2011** passed by the learned V-Additional Sessions Judge, Central Karachi in Sessions Case No.281/2006 arising out of FIR No.220/2006 under Sections 302/392/34 PPC registered at P.S Nazimabad, Karachi whereby learned trial Court had acquitted the accused/Respondents No.1 to 3 by extending them benefit of doubt.

2. Brief facts of the case are that on **25.8.2006** FIR was registered on the basis of statement of complainant/appellant under Section

154 Cr.P.C wherein he stated that at night at about 1:30 a.m. he alongwith his family members went to sleep and at about 6:00 a.m. his sister Dr. Syeda Yasmin Hussain got awaked him by stating that some suspicious persons are present at the main gate of the house and his mother also directed him to awake his father. He then saw that outer door of drawing room was opened but his father was not present there. He then saw that his father was lying in the kitchen whose both hands were tied on back and his both feet were tied and his face was also covered with cloth. He then immediately informed other family members and untied the hands of his father but his father has expired. He then informed police on helpline 15 upon which one police mobile came there and thereafter he took the dead body of his father to Abbasi Shaheed Hospital in his car along with police. His mother and sister informed him that 3/4 armed persons have entered into the house and one armed person was guarded on his mother and all the house hold articles were found scattered. At about 6:00 a.m. when their maid servant came, upon which, those persons left away, therefore, FIR was lodged. After registration of the case police arrest the accused/respondents No.1 to 3.

3. Formal charge was framed against accused persons to which they pleaded not guilty and claimed to be tried.

4. In order to prove its case, prosecution examined Pw-1 Barkat Ali Khan as Ex.6, who produced memo of pointation of place of incident by the accused and their arrest as Ex:6/A. PW-2 Mst. Tahira Begum Zaidi was as Ex.11, she produced memo of identification parade as Ex.11/A. P.W-3 S.I Muhammad Razzak was examined as Wx.16, who produced Roznamcha entry No.41 as Ex:16/A and letter issued to MLO Abbasi Shaheed Hospital by him for ascertaining the cause of death of deceased as Ex:16/B, who produced memo of

inspection of dead body as Ex;16-C, Inquest report as Ex.16/D, statement of the complainant Syed Javed Raza as Ex.16/E and memo of handing over the dead body of the deceased to complainant as Ex.16/F. PW-4 ASI Mushtaq Ahmed was examined as Ex.17, who produced FIR as Ex.17/A. PW-5 complainant Syed Javed Raza was examined as Ex:18, who produced memo of site inspection as Ex.18/A. PW-6 Syeda Yasmin Husain was examined as Ex.19. PW-7 MLO Dr. Shiraz Ali was examined as Ex.22, who produced post mortem report of deceased as Ex.22/A, he also issued cause of death certificate on the application of S.I Muhammad Razzak on 25.8.2006. PW-8 Investigation Officer Inspector Manzoor Hussain was examined as Ex.22/A and 23/B. He also produced copy of application moved to concerned Magistrate for handing identification parade of accused Muhammad Ibrahim and Muhammad Farooq as Ex.22/D. He also produced photocopy of letter issued by him to Chemical Examiner as Ex.22/E. He produced report of Chemical Examiner as Ex.23/F and thereafter prosecution closed its side as Ex.24.

5. After examination of witnesses and hearing learned counsel for the parties, learned trial Court acquitted accused/ Respondents No.1 to 3 by extending them benefit of doubt. Thereafter the complainant/ appellant filed instant Cr. Acq. Appeal against the said order.

6. The record shows that after filing instant Criminal Acquittal Appeal, which is pending since 2012, the counsel for the appellant on most of the dates of hearing chosen to remain absent or only brief was held on his behalf. Therefore, I have heard learned Additional P.G and perused the record.

7. Learned Additional P.G. representing the State supports the impugned judgment. She contended that the impugned judgment has been passed in accordance with the law.

8. It is settled law that ordinary scope of acquittal appeal is considerably narrow and limited as opposed to the approach for dealing with the appeal against the conviction because presumption of double innocence of accused is attached on the order of acquittal. In the case of Zaheer Din Vs. The State (1993 S.C.M.R 1628), following guiding principles have been laid down for deciding an acquittal appeal in a criminal case:-

“However, notwithstanding the diversity of facts and circumstances of each case, amongst others, some of the important and consistently followed principles can be clearly visualized from the cited and other cases-law on the question of setting aside an acquittal by this Court. They are as follows:-

- (1) *In an appeal against acquittal the Supreme Court would not on principle ordinarily interfere and instead would give due weight and consideration to the findings of Court acquitting the accused. This approach is slightly different than that in an appeal against conviction when leave is granted only for re-appraisal of evidence which then is undertaken so as to see that benefit of every reasonable doubt should be extended to the accused. This difference of approach is mainly conditioned by the fact that the acquittal carries with it the two well accepted presumptions: One initial, that, till found guilty, the accused is innocent; and two that again after the trial a Court below confirmed the assumption of innocence.*
- (2) *The acquittal will not carry the second presumption and will also thus lose the first one if on points having conclusive effect on the end result the Court below: (a) disregarded material evidence; (b) misread such evidence; (c) received such evidence illegally.*
- (3) *In either case the well-known principles of re-appraisal of evidence will have to be kept in view while examining the strength of the views expressed by the Court below. They will not be brushed aside lightly on mere assumptions keeping always in view that a departure from the normal principle must be necessitated by obligatory observations of some higher principle as noted above and for no other reason.*

- (4) *The Court would not interfere with acquittal merely because on reappraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If however, the conclusion reached by that Court was such that no reasonable person would conceivably reach the same and was impossible then this Court would interfere in exceptional cases on overwhelming proof resulting in conclusion and irresistible conclusion; and that too with a view only to avoid grave miscarriage of justice and for no other purpose. The important test visualized in these cases, in this behalf was that the finding sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous.”*

9. Keeping in view the above guiding principles and adverting to the merits of the case, I have scanned the prosecution evidence. It transpires that there are material contradictions in their evidence so also certain admissions have been made by them which create doubt in the prosecution case as discussed in the impugned Judgment. Admittedly one of the accused namely Ghulam Sarwar was working as Driver with the complainant party and all the family members of the deceased were well known to him but name of accused Ghulam Sarwar was not disclosed by any member of the family to police till submission of charge sheet and this fact has been admitted by the complainant Javed Raza in his cross examination that her mother did not disclose the name of accused Ghulam Sarwar to him. PW Mst. Tahira Begum Zaidi (mother of complainant) in her evidence before the Court has stated that police had come for 5/6 times at her home and recorded her statement but she has never disclosed the name of accused Ghulam Sarwar in her any statement before police. According to PW Dr. Syeda Yasmeen Hussain (sister of the complainant) on 25.8.2006 at about 06:00 a.m. she has seen the accused Ghulam Sarwar after commission of offence when accused

were sitting in the car outside the door of their house and accused Sarwar who was their driver also sitting in the said car but this witness has also not disclosed the name of accused Ghulam Sarwar in her statement before the police that he was present at the time of commission of offence. Beside PW SIP Manzoor Hussain in his evidence during cross has clearly stated that no application was moved by the complainant party for nominating any accused in this case till submission of charge sheet. No incriminating articles were recovered from the possession of the accused or on their pointation after their arrest during investigation.

10. The above discussion shows that more than one discrepancy have come on record in the story of prosecution and of course the manner and method in which the complainant has attempted to prove his case to fix the respondents in a criminal case. Unfortunately, he has failed since the requirement of law in criminal jurisprudence is that the guilt of the accused has to be proved beyond shadow of doubt. By now it is settled law that even one discrepancy or dent in the prosecution story is more than enough to give benefit of doubt to the accused. In this case, there are number of infirmities and contradictions in evidence of the prosecution witnesses.

11. It is also a settled principle of law that the superior Courts act slowly in interfering with an order of acquittal, unless grounds for acquittal are perverse or wholly illogical or unreasonable. In the case reported as Yar Mohammad and 3 others Vs. The State (1992 SCMR 96) Honourable Supreme Court observed as under:

“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, there has been complete misreading of evidence leading to miscarriage of justice, the High

Court will not exercise jurisdiction under section 417, Cr. P.C. In exercising this jurisdiction the High Court is always slow unless it feels that gross injustice has been done in the administration of criminal justice.”

12. In view of the contradictions and lacunas / flaws in the prosecution case, it can safely be held that the prosecution has not succeeded in proving its case against the accused / respondents beyond shadow of reasonable doubt, as such the trial Court has rightly acquitted the respondents / accused by extending them benefit of doubt. Even an accused cannot be deprived of benefit of doubt merely because there is only one circumstance which creates doubt in the prosecution story. Needless to emphasize the well settled principle of law that the accused is entitled to be extended benefit of doubt as a matter of right and not as a grace or concession. In the case of Tariq Pervaiz vs. The State reported as **1995 SCMR 1345** the Hon’ble Supreme Court held as under:-

“The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a 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.”

13. The upshot of the above discussion is that aforesaid factors and contradictions create serious doubts in the prosecution case and the trial Court rightly extended such benefit to the respondents/ accused. Consequently, instant Cr. Acquittal Appeal was dismissed and the impugned judgment of acquittal was upheld by a short order dated **04.03.2019** and above are the reasons for the same.

JUDGE

Karachi
Dated: 09.03.2019

Ayaz Gul