

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Acquittal Appeal No.S- 68 of 2019

Before:-**Mr.Justice Irshad Ali Shah**

- Appellant** : Sultan Ahmed,
Through Mr. Murtaza Babar, Advocate
- Respondents** : 1. Sadam Hussain son of Zaman Jamali
2. Haji Iqbal son of Muhammad Saleh Jamali
3. Zaman son of Muhammad Saleh Jamali
- Date of hearing** : **24-06-2019.**
- Date of decision** : **24-06-2019.**

J U D G M E N T

IRSHAD ALI SHAH, J.- The appellant/complainant by way of Instant Cr. Acquittal Appeal has impugned judgment dated 03.04.2019, passed by learned Illrd Additional Sessions Judge, Dadu, whereby he has acquitted the private respondents of the offence for which they were charged.

2. The fact in brief necessary for disposal of instant Cr. Acquittal Appeal are that the private respondents allegedly in furtherance of their common intention fired at appellant / complainant with intention to commit his murder and then went away by committing criminal intimidation by issuing threats of murder to complainant party and causing lathi blows to appellant / complainant, P.Ws. Majid Ali and Muhammad Hassan, for that the present case was registered.

3. At trial the private respondents did not plead guilty to the charge and prosecution to prove it examined PW/1 appellant/complainant at (Ex. 7), he produced FIR of the present case, PW/2 Majid Ali at (Ex. 8),

PW/3 Mashir Manik @ Mir Muhammad at (Ex.9), he produced memo of place of incident, PW/4 SIO / ASI Ghulam Muhammad at (Ex.10) and then closed the side.

4. The private respondents in their statements recorded u/s 342 Cr.P.C denied the prosecution allegation by pleading innocence by stating that they have been involved in this case falsely by the appellant / complainant in order to settle his dispute with them over landed property. They did not examine themselves on oath or anyone in their defence.

5. On evaluation of evidence, so produced by the prosecution, the learned trial Court acquitted the private respondents of the offence, for which they were charged by way of the judgment which is impugned by the appellant/complainant before this Court by way of instant Cr. Acquittal Appeal.

6. It is contended by learned counsel of the appellant/complainant that the prosecution has been able to prove its case against the private respondents beyond shadow of doubt, yet they have been acquitted by learned trial Court without lawful justification on the basis of improper assessment of the evidence. By contending so he sought for adequate action against the private respondents/accused.

7. I have considered the above arguments and perused the record.

8. The fire allegedly made at the appellant / complainant with intention to commit his murder proved to be ineffective one. The parties are already disputed over landed property. The FIR of the incident has

been lodged with delay of about nineteen days; such delay apparently is reflecting consultation.

9. In case of **Mehmood Ahmed & others vs. the State & another (1995 SCMR-127)**, it was observed by the Hon'ble Court that;

“Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.

10. The very case on investigation was recommended by the police to be disposed of under `C` class. In these circumstances, learned trial court was right to record the acquittal of the private respondents by extending benefit of doubt by making following observations;

“This is a case of no evidence against the accused and there are material discrepancies in prosecution evidence, which creates doubt in the prosecution story. It is held in 2009 SCMR 230 placitum C that a single circumstance creating reasonable doubt in a prudent mind about the guilt of the accused makes them entitled to its benefit, not as a matter of grace and concession, but as a matter of right. In the case in hand there are many circumstances quoted above or creating doubt in the mind of the court. The evidence available on record is not inspiring confidence, trustworthy. The prosecution has failed to prove the charge against the accused.”

11. In case of **Tarique Pervez vs. The State (1995 SCMR 1345)**, it has been held by Hon'ble Apex Court that;

“For giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt- if a simple

circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right.”

12. Admittedly the principal for hearing appeal against conviction and acquittal are different. The acquittal could only be examined when it is found to have been recorded in arbitrary and cursory manner.

13. In case of **State & ors vs. Abdul Khaliq & ors (PLD 2011 SC-554)**, it has been held by the Hon’ble Apex Court 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. 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. Judgment of acquittal should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous. The Court of appeal should not interfere simply for the reason that on the reappraisal 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”.

14. Nothing has been brought on record, which may suggest that the private respondents have been acquitted by trial Court in arbitrary or cursory manner, which may justify making interfere with the acquittal of the private respondents, by way of instant Cr. Acquittal Appeal. It is dismissed accordingly without notice to other side.

JUDGE