

Judgment Sheet
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Cr. Acq. Appeal No. D- 51 of 2020

Before:

Mr. Justice Nazar Akbar
Mr. Justice Khadim Hussain Tunio

Appellant : Ghulam Sarwar through
Mr. Faiz Muhammad S. Chandio, Advocate

Respondents : Nemo

Date of Hearing & Decision : 12.01.2021

JUDGMENT

NAZAR AKBAR, J. - Through this Appeal against Acquittal the Appellant / Complainant has assailed the Judgment dated 12.3.2020 passed by learned Vth Additional Sessions Judge / MCTC Shaheed Benazirabad in S.C. No. 295 of 2018 (re- The State v. Ali Jan and others) whereby the learned Judge convicted two accused namely Muhammad Afzal & Ali Jan and acquitted four respondents namely Mst. Seema, Sain Bux, Muhammad Siddique and Irshad in the following terms:-

“ In view of my above findings, on points No.01 & 02, I am of the humble view that the prosecution has proved its case / charge against the accused persons namely Muhammad Afzal & Ali Jan both sons of Muhammad Usman Otho beyond reasonable shadow of doubt, through cogent evidence, hence, they are found guilty of offence of kidnapping & committing Murder / Qatal-i-amd of deceased Ghulam Mustafa & burying his dead body to disappear the evidence. However, there are certain mitigating circumstances which cannot be over looked such as per case of prosecution, the PWs have not seen the said accused persons while committing the murder of deceased and case is also based on circumstantial evidence. Therefore, in exercise of powers conferred by section 265-H(ii) Cr.P.C., the both accused persons Muhammad Afzal & Ali Jan both sons of Muhammad Usman Otho are convicted for offence punishable under section 302(b) PPC and sentenced them with imprisonment of life. The above named convicted accused persons Muhammad Afzal & Ali Jan are also directed to pay compensation of Rs.100,000/- each payable to the legal heirs of the deceased under section 544-A Cr.P.C. & failing which the convict shall undergo further simple imprisonment of six months. The both accused

are also convicted for offence under Section 364 PPC and sentenced for the period of 10 years RI and fine Rs. 50,000/- (Rupees fifty thousand only) each & failing which the convict shall undergo further simple imprisonment of 04 months. The accused are also convicted for offence Under Section 201 PPC and sentenced for the period of 05 years RI and fine Rs.20,000/- each & failing which the convict shall undergo further simple imprisonment of three months. The all sentences awarded to accused persons shall run concurrently and the benefit of 382(b) Cr.P.C. is also extended to the accused persons, while they along with remaining accused persons Mst. Seema wife of Amir Ali Solangi, Sain Bux s/o Moula Bux Otho, Muhammad Siddique s/o Muhabat Otho and Irshad S/o Sajjan Mahar are acquitted from the remaining charges. The both accused persons Muhammad Afzal and Ali Jan both sons of Muhammad Usman Otho are present before the Court in custody and they are remanded back to jail with warrant of conviction to serve out the sentence awarded to them. The other accused persons Mst. Seema, Sain Bux, Muhammad Siddique and Irshad are also present before the Court on bail, their bail bonds cancelled and sureties discharged.”

2. The appellant claims that the trial court without taking into consideration the evidence of prosecution witnesses had acquitted the respondents from the charge of heinous crime; therefore, the impugned Judgment is not sustainable under the law. He further submits that the P.Ws who were examined before the trial court have supported the prosecution case even then their evidence was not considered, hence by acquitting the respondents, the trial court has caused miscarriage of Justice.

3. We have heard learned counsel for appellant and perused the record minutely.

4. Learned counsel has attempted to refer any cogent evidence against the respondents that may take the case of respondents beyond a case of iota of doubt against them. After going through the evidence we have noticed that the following observations of the Trial Court in respect of the respondents are unimpeachable.

“ While the case of accused Mst. Seema, Sain Bux, Siddique & Irshad Mahar is different from the above named accused persons as the accused Mst. Seema though she is nominated in FIR but neither any motive has been disclosed by the Complainant & PWs against her nor there is any circumstantial evidence against her and in this regard the complainant and I.O had admitted that nothing has been recovered from the possession or pointation of accused Mst. Seema relating to this case whereas accused Sain Bux, Siddique & Irshad Mahar are concern, neither they are nominated in the FIR nor there is any satisfactory circumstantial evidence against them which connect the accused with the alleged charge and even the Complainant at the time of his examination in chief had disclosed that on 14.6.2018 I.O arrested the

accused Sain Bux who disclosed the name of accused Siddique and cross Complainant had disclosed that on 11.6.2018 they come to know about accused Sain Bux when accused Seema was interrogated by the police and Complainant had further admitted that neither in his examination in chief nor in his further statement he had disclosed that accused Seema had disclosed the name of accused Sain Bux nor he had disclosed the source of information in his further statement regarding the alleged involvement of accused Sain Bux and it is further disclosed by the Complainant in his examination in chief that accused Sain Bux admitted before the I.O that he caused head injury to the deceased with iron handle of hand-pump but doctor during his examination in his chief had not disclosed any external head injury upon the dead body of deceased with hard and blunt substance, therefore, such kind of recovery of handle of hand pump is not sufficient / satisfactory to connect the said accused with the charge, whereas the charge against the accused Irshad Mahar was pertaining to retaining of GLI Car of deceased but it is also matter of record that police had shown the recovery of said GLI Car of deceased from the possession / pointation of accused Muhammad Afzal and nothing has been recovered from the exclusive possession / pointation of accused Irshad Mahar pertaining to this case, which shows that the evidence of prosecution is insufficient against the accused persons namely Mst. Seema, Sain Bux, Siddique & Irshad Mahar. In the circumstances, the evidence adduced by prosecution witnesses regarding involvement of accused persons namely Mst. Seema, Sain Bux, Siddique & Irshad Mahar in commission of instant offence is not enough to burden them with liability of kidnapping & murder of deceased Ghulam Mustafa and even it has also become the general practice of the parties in our society that people are used to involve the maximum number of persons of accused party. Accordingly the prosecution has failed to bring home the guilt of accused persons namely Mst. Seema, Sain Bux, Siddique & Irshad Mahar beyond reasonable shadow of doubt, therefore, the case against is not free from doubt.

5. It is well settled principle of law that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from appeal against acquittal, because presumption of double innocence is attached in the latter case. An order of acquittal can only be interfered with when it is found on the face of it as capricious, perverse, arbitrary or foolish in nature, which are lacking in this case. Reliance is placed on **Inayat Ullah Butt v. Muhammad Javed etc.** (PLD 2003 SC 562).

6. In the above context, we are also fortified with the case law laid down by Hon'ble Apex Court in the case of **State vs. Abdul Khaliq** reported in PLD 2011 Supreme Court 554 and relevant observation is as under:-

“ **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. Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the courts below. Supreme Court observed that it was expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals.”**

7. In view of the above, we reached at the conclusion that the acquittal of private respondents do not suffer from any illegality so as to call for our interference with the impugned Order. According to golden principle of benefit of doubt, one substantial doubt is enough to acquit the accused. The learned trial Judge has advanced valid and cogent reasons while passing a finding of acquittal in favour of respondents and we see no legal justification to disturb the same. Resultantly, the appeal having no merits for consideration is hereby dismissed in limine.

JUDGE

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