

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

Cr. Acquittal Appeal No.D-122 of 2011

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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Before:

Mr. Justice Muhammad Iqbal Mahar
Mr. Justice Irshad Ali Shah.

For hearing of main case.

Appellant: Saleem Khan son of Ahmed Ali Khan
Kaimkhani, through Mr. Rao Faisal Ali,
Advocate

Respondents No.1 to 4: Haji Khalid & Others, through
Mr. Hidayatullah Abbasi, Advocate.

The State: through Mr. Shahzado Saleem Nahiyoon,
Deputy Prosecutor General.

Date of hearing : 21.08.2019.

Date of judgment. : 21.08.2019.

J U D G M E N T

Muhammad Iqbal Mahar, J- This acquittal appeal has been filed under Section 417 (2-A) Cr.P.C against the order dated 21.02.2011, passed by learned Ist Additional Sessions Judge, Mirpurkhas in Sessions Case No.21/2009 emanating from Crime No.47/2009 registered at P.S Mirpur Old for offence U/Ss 302, 427, 147, 148 149 PPC, whereby respondents No.1 to 4 have been acquitted of the charge.

2. The brief facts of the prosecution case are that the appellant-complainant is a contractor, he and his brothers used to manage Adda of Vans, running from Mirpurkhas to Naukot, at Mirpurkhas Terminal which

was objected by respondents No. 1 to 4. On 13.09.2009 the appellant-complainant and his brother Abdul Kaleem went to Mirpurkhas Motors in their car. At about 1830 hours one black colour corolla car came there and stood near their car. Respondents Haji Mehmood, Haji Khalid Arain, Nisar, Rana Saleem, all having T.T pistol in their hands and two unknown persons, also having T.T pistol, got down from the Car. In the meantime, Waseem and Rizwan Kaimkhani, the brothers of appellant-complainant also came there on motorcycle. It is alleged that respondents Haji Mehmood and Haji Khalid challenged the complainant's brother that he was asked to close Adda. Saying so all the accused persons fired upon appellant-complainant's brother and went away in their car. The appellant-complainant party went over Abdul Kaleem and found sustaining fire are injuries and was bleeding. The appellant-complainant party shifted Abdul Kaleem to Civil Hospital, Mirpurkhas but he succumbed to the injuries. Thereafter, the appellant-complainant leaving Waseem and Rizwan over the dead body himself went at Police Station and lodged the F.I.R.

3. The Police after completing investigation submitted final report before concerned Court showing respondents-accused as absconders. Later on they appeared before learned trial Court and the learned trial Court after completing legal formalities framed the charge to which respondents-accused pleaded not guilty and claimed trial. In the meantime learned counsel for respondents-accused filed an application u/s 265-K Cr.P.C which was allowed and the respondents-accused were acquitted.

4. Learned counsel for the appellant-complainant contended that the impugned order passed by learned trial Court is illegal, void and malafide,

which is not sustainable under the law as the learned trial Court while passing the impugned order has not verified the documents from concerned department that actually on the date and time the accused Haji Khalid was present in PNS Shifa and accused Haji Rana Saleem Akhtar was out of Sindh Province; that learned trial Court has not considered the seriousness of the offence in which an innocent person has lost his life and the acquittal of respondents is nothing but a serious miscarriage of justice; that the learned trial Court while passing the impugned order has not considered the fact of calling the witnesses and recording their evidence; that learned trial Court has also not considered the fact that admittedly that brother of complainant has been murdered and the accused are named in the F.I.R, therefore, the order passed by learned trial Court is against the law resulting in injustice, hence the same is the result of miscarriage of justice. By contending so, learned Counsel prayed for adequate punishment to respondents No.1 to 4.

4. We have considered the submissions made by learned counsel for the appellant-complainant, learned counsel for respondents No.1 to 4, learned D.P.G for the State and have perused the record minutely. As per prosecution case, the allegation against respondents No.1 to 4 is that they in collusion with each other murdered complainant's brother Abdul Kaleem. Perusal of record reveals that there is no circumstantial evidence available on record which may connect respondents No.1 to 4 with the commission of offence. It also reveals from the record that on the date and time of incident, respondent-accused Haji Khalid was available at PNS Shifa, Karachi, wherefrom he received dead body of his relative Muhammad Sarwar, who died due to cardiac arrest and during investigation such fact has been endorsed by Investigating Officer, who produced certificates / documents duly verified

from PNS Shifa. This aspect of the case has made the prosecution story doubtful. Record further reveals that the parties were already disputing with each other over Transport Adda and such fact has been admitted by the complainant himself in the F.I.R, therefore, false implication of the respondents-accused cannot be ruled out. It is pertinent to mention that if an accused is charged with murder by the complainant then there should be brought cogent and trustworthy circumstances which may warrant the trial court as well as this court to take notice of but in fact no such circumstances appears rely upon.

5. After considering the material available in the file, we have come to the conclusion that the impugned order passed by learned trial Court is proper and in accordance with law, which is not fanciful or arbitrary. Needless to mention here that when an accused person is acquitted by a Court of competent jurisdiction, then double presumption of innocence is attached to its judgment / order, with which the superior Courts do not interfere unless the impugned judgment / order appears to be vague, perverse and arbitrary or against the record. In this regard, reliance can be placed upon judgment delivered by honourable Supreme Court in case of **THE STATE & OTHERS V. ABDUL KHALIQ & OTHERS (PLD 2011 SC 554)**, wherein the Honourable Supreme Court has observed 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 double. 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 of wholly artificial or a shocking conclusion has been drawn. Judgment of acquittal should not be interjected until the findings are perverse, arbitrary, foolishly, 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 conclusion, should not be upset, except when palpably perverse, suffering from serious and material factual infirmities.”

6. For what has been discussed herein above, we are of the considered view that the impugned order passed by learned trial Court is proper, hence, does not call for interference by this Court. Accordingly, instant criminal acquittal appeal being devoid of merits is dismissed.

JUDGE

JUDGE