IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr.Acq.Appeal No.D- 70 of 2010

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

Appellant/Complainant:	Jarar son of Nazar Ali Dal, Through Mr. Muhammad Jameel Ahmed, Advocate.
Private Respondents:	Through Mr. Afzal Karim, Advocate.
Respondent:	The State, through Ms. Sobia Bhatti, A.P.G.
Date of hearing:	30-10-2019.
Date of decision:	30-10-2019.

J U D G M E N T

IRSHAD ALI SHAH, J; The facts in brief necessary for disposal of instant acquittal appeal are that; FIR crime No.43 of 2004 under Section 302, 147, 148, 149, 114 PPC was lodged by appellant / complainant with PS Nangarparkar, alleging therein that the private respondents after having formed an unlawful assembly have committed murder of his father Nazar Ali by causing him fire shot injury. Being dissatisfied with the investigation conducted by the police, the appellant / complainant filed a direct complaint of the incident before the learned Magistrate having jurisdiction. It was brought on record after preliminary enquiry by learned Sessions Judge, Tharparkar at Mithi.

2. The private respondents joined the trial and after due trial they were acquitted of the offence for which they were charged by learned trial Court vide judgment dated 28.01.2010, which is impugned by the appellant / complainant before this Court by preferring the instant acquittal appeal.

3. It is contended by learned counsel for the appellant / complainant that the complainant was able to prove its case against the private respondents beyond shadow of doubt through cogent evidence, which has not been believed by learned trial Court without lawful justification. By contending so, he sought for adequate action against the private respondents.

4. Learned A.P.G for the State and learned counsel for the private respondents by supporting the impugned judgment have sought for dismissal of instant acquittal appeal.

5. We have considered the above arguments and perused the record.

6. On being dissatisfied, with the investigation conducted by the police, on his FIR, the appellant / complainant lodged direct complaint of the incident, same as said above was brought on record by learned trial Court after preliminary enquiry. In that situation, the appellant / complainant was hardly having a connection with the State case outcome of FIR. It was disowned by him indeed. The acquittal of the private respondents, if any, which is to be examined would be on direct complaint. Acquittal of any

person, if is recorded on direct complaint as per sub-section (2) to section 417 Cr.P.C, is only to be challenged after grant of ***special leave to appeal***. No special leave to appeal is sought for by the appellant / complainant to bring the instant acquittal appeal before this Court. Sub-section (4) to section 417 Cr.P.C prescribes that when ***special leave to appeal*** is refused then no appeal from the order of acquittal shall lie. In the instant case as said above, no ***special leave to appeal*** is sought for by the appellant / complainant before filing of the instant acquittal appeal. What to talk of its grant or refusal. Such omission has made the instant acquittal appeal liable to its dismissal on such score alone.

7. If for the sake of arguments, it is believed that no ***special leave to appeal*** is necessary to examine the acquittal of the private respondents in case like the present one, even then the appellant / complainant is hardly having a case on merit, for the reasons that the direct complaint has been filed on 20.10.2004 with delay of about one month to the incident. Such delay having not been explained plausibly could not be overlooked. The witnesses have been examined by the complainant in preliminary enquiry on 02.11.2004, with delay of about 12 days to filing of the direct complaint by the appellant / complainant. Such delay in recording statements of the witnesses in preliminary enquiry having not been explained plausibly by the appellant / complainant, could not be lost sight of. Appellant / complainant admittedly is not an eye

witness of the incident. It was respondent Muhammad Soomar, who alone has been attributed role of causing fire shot injury to deceased Nazar Ali, which he has denied by stating that he went at the place of incident to discharge his lawful duty as public servant to apprehend Abdul Rasheed, which was prevented by him and his associates by indulging to scuffle for that an FIR was also lodged by him against them. By stating so, he denied causing death of deceased Nazar Ali with fire arm. Evidence produced in defence it is settled by now is to be considered in juxta position. If defence plea of respondent Soomar is taken into consideration then it could not be ignored. In these circumstances, learned trial Court was right to record acquittal of the private respondents by extending them benefit of doubt.

8. In case of ***Muhammad Asif vs the State (2008 SCMR 1001),*** it has been held by Hon'ble apex Court that;

> "*Delay of about two hours in lodging FIR had not been explained—FIRs which were not recorded at the Police Station, suffered from the inherent presumption that same were recorded after due deliberation."*

9. In case of **Abdul Khaliq vs. the State (1996 SCMR 1553**), it was observed by Hon'ble Court that;

> "----S.161---Late recording of statements of the prosecution witnesses under section 161 Cr.P.C. Reduces its value to nil unless delay is plausibly explained."

10. In case of ***Tariq Pervaiz vs the State (1995 SCMR 1345)***. It has been held by the Hon'ble Supreme Court that:-

> *"For giving benefit of doubt to an accused, it is not necessary that there should be many circumstances creating reasonable doubt in a prudent mind about the guilt of accused, then he would be entitled to such benefit not as a matter of grace and concession but of right."*

11. Acquittals of the accused could only be examined when those have been find to be perverse or arbitrary as has been held to be in case of ***State and others vs. Abdul Khaliq and others (PLD 2011 SC-554),*** by Hon'ble apex Court by making observation 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".*

12. Nothing has been brought on record by learned counsel for the appellant / complainant or by learned A.P.G for the State, which may suggest that the acquittal of the private respondent has been recorded by learned trial Court, was perverse or arbitrary, which may justify this Court to make interference with his acquittal by way of instant Acquittal Appeal, it is dismissed.

JUDGE

JUDGE

Ahmed/Pa