

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

Cr.Acquittal.Appeal.No.S- 72 of 2016

Date of hearing: 18.05.2018.

Date of judgment: 18.05.2018.

None present for the appellant.
Syed Meeral Shah, A.P.G. for the State.

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Respondents/accused Abdul Waheed and others were tried by learned Civil Judge & Judicial Magistrate-II Matli in Cr. Case No.157 of 2014 for offences u/s 147, 148, 149, 337-H(ii), 504 PPC. On the conclusion of trial, vide judgment dated 21.03.2016, the respondents/accused were acquitted of the charge.

2. Appellant/complainant being aggrieved and dissatisfied with above judgment, filed this Criminal Acquittal Appeal on 15.04.2016. Thereafter, never appeared. Complainant and his counsel are called absent today. Cause list reflects that the name of the counsel for the appellant transpires in the list who is local advocate of Hyderabad. To avoid further delay, I have heard Syed Meeral Shah, A.P.G. for the State and with his assistance peruse the entire evidence available on record.

3. Brief facts leading to filing of appeal against acquittal are that on 03.09.2014 complainant Muhammad Ayub lodged FIR at police station Tando Ghulam Ali, stating therein that on 03.09.2014 at about 1900

hours the respondents/accused in furtherance of their common intention armed with repeater, pistol, spade and hatchet came at the land of Dr. Raza Khalique where the complainant/Hari Muhammad Ayub s/o Muhammad Siddique Rahimoon was present at water course No.289 Deh Kangni taluka Matli. It is alleged that accused asked complainant that it was their turn of water on that complainant reported that it was his turn of water. It caused annoyance to accused Abdul Waheed Arain, Farhan Arain and Muhammad Reehan Arain, they made aerial firing. It is further alleged that accused Saifullah Arain, Loung Kaloi and Vikio Kolhi caused butt blows of hatchet to complainant. Thereafter, accused went away, the complainant lodged FIR. It was recorded vide crime No.136/2014 P.S. Tando Ghulam Ali u/s 147, 148, 149, 337-H(ii), 504 PPC.

4. After usual investigation, challan was submitted against the present accused/respondents under the above referred Sections.

5. Trial court framed charge against the respondents/accused, to which they pleaded not guilty and claimed to be tried.

6. At the trial, prosecution examined 05 PWs who produced the relevant documents/reports. Thereafter, prosecution side was closed.

7. Statements of respondents/accused were recorded u/s 342 Cr.P.C. in which they claimed false implication in this case and denied the prosecution allegations. However, neither they examined themselves on oath nor led any evidence in their defence.

8. Trial court after hearing the learned counsel for the parties and on assessment of evidence, vide judgment dated 21.03.2016 acquitted the respondents/accused, hence this acquittal appeal is filed.

9. Syed Meeral Shah, learned A.P.G. read out the prosecution evidence and argued that the prosecution had failed to substantiate the charge against the respondents/accused. Learned A.P.G. has also pointed out the material contradictions in the evidence of the prosecution witnesses and argued that the judgment of the trial court requires no interference and the respondents were rightly acquitted by the trial court.

10. In order to appreciate the prosecution evidence and the submissions of the learned A.P.G, the relevant portion of judgment of acquittal recorded by the trial court is reproduced as under:-

“Moreover in the present case it is admitted position that prior to this FIR accused Farhan lodged FIR against the landlord of the complainant namely Raza Khalique and his brother Sohail, his nephew Farhan and his farmers Urs and Long on same P.S Tando Tando Ghulam Ali u/s 324 PPC of same incident and such case is pending in the Hon: Court of Additional Sessions Judge Matli and complainant has admitted such fact in his cross examination that “It is correct to say that, “Prior to his FIR accused Farhan lodged FIR against my landlord Raza Khalique and his brother Sohail, his nephew Farhan and his farmers Urs and Long” and it is also admitted position that there is dispute of Dr. Raza Khalique fellows and accused fellows over supplying water to their lands which is very much clear from FIR and deposition of complainant. So enmity between the parties is admitted. Moreover, complainant has also admitted in his cross examination that, “I am formers of Land of landlord Raza Khalique from two years. I reside in his land with family. Further he has also admitted in his cross examination that, “It is correct to say that I lodged FIR against accused persons on the saying of my landlord.” So in the circumstance above false involvement of accused cannot be ruled out due to enmity.

Furthermore, in the present case there are many contradictions between the prosecution witnesses which creates serious doubt in the prosecution case.

CONTRADICTIONS

1) Mashir namely Tarique Aziz has deposed in his cross examination that, "Mashirnama of recovery of hatchet was made on 04.09.2014." but from perusing the mashirnama of recovery it is clear that mashirnama bears the date of 10.08.2014.

2) Mashir namely Tarique Aziz deposed in his cross examination that, "Mashirnama was written by ASI Bakhshal Mallah by standing position", but in this regard ASI Bakhshal Mallah has deposed in his cross examination that, "Mashirnama was made by me inside the vehicle.

3) Mashir namely Tarique Aziz has deposed in his cross examination that, "No person gathered at place of incident", but in this regard ASI Bakhshal Mallah deposed that, "Many people gathered at the place of incident."

4.) Both the witnesses namely Eiso and Khamiso Bheel have stated in their cross examination that, complainant Muhammad Ayoub after incident become unconscious, but complainant Ayoub in this regard has not stated anywhere that whether after incident he became unconscious.

In the present case I rely upon 2009 SCMR 230 in which Double Bench of Honourable Supreme Court has given remarks that, "Benefit of doubt---Principle. In the case of doubt, the benefit thereof must be given to accused as a matter of right and not as a matter of grace." Further it is stated that, "For giving the benefit of doubt it is not necessary that there should be many circumstances creating doubt---Single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefit, not as matter of grace and concession, but as a matter of right.

After such statements of prosecution witnesses coupled with legal flaws, story as narrated by PWs cannot be believed to be trustworthy. Hence, I am of the considered view that the prosecution has failed to prove the charge against accused beyond shadow of reasonable doubt. Hence point No.1 is answered as not proved.

Point No.02.

In view of above position the accused namely Abdul Waheed s/o Shoukat Ali Arain, Farhan Ali s/o Shoukat Ali Arain, Muhammad Reehan s/o Shoukat Ali Arain, Saifullah s/o Mehboob Hussain Arin, Loung s/o Muhammad Uris Kali, Vikio s/o Harkho Kolhi are acquitted of the charge as required u/s 245(i) Cr.P.C.

Accused are present on bail therefore bail bond stand cancelled and surety discharged.”

11. From the close scrutiny of evidence, I have come to the conclusion that prosecution had failed to prove its' case against the respondents/accused for the reasons that there were material contradictions in the evidence of prosecution witnesses. Trial court has rightly highlighted the same which are as under:-

1) Mashir namely Tarique Aziz has deposed in his cross examination that, “Mashirnama of recovery of hatchet was made on 04.09.2014.” but from perusing the mashirnama of recovery it is clear that mashirnama bears the date of 10.08.2014.

2) Mashir namely Tarique Aziz deposed in his cross examination that, “Mashirnama was written by ASI Bakhshal Mallah by standing position”, but in this regard ASI Bakhshal Mallah has deposed in his cross examination that, “Mashirnama was made by me inside the vehicle.

3) Mashir namely Tarique Aziz has deposed in his cross examination that, “No person gathered at place of incident”, but in this regard ASI Bakhshal Mallah deposed that, “Many people gathered at the place of incident.”

4) Both the witnesses namely Eiso and Khamiso Bheel have stated in their cross examination that, complainant Muhammad Ayoub after incident become unconscious, but complainant Ayoub in this regard has not stated anywhere that whether after incident he became unconscious.

12. Moreover, from the evidence, offences were not made out. Finding of acquittal recorded by the trial court in favour of respondents/accused was neither perverse nor ridiculous. There were multiple infirmities in the prosecution case which created reasonable doubt in the prosecution case. Therefore, benefit of doubt was rightly extended in favour of the respondents/accused.

13. Moreover, appreciation of evidence in the case of appeal against conviction and appeal against acquittal are entirely different. As held in the case of Ghaus Bux v. Saleem and 3 others (2017 P.Cr.L.J 836).

14. Judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous. The scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence as the accused shall be presumed to be innocent until proved guilty. In other words, the presumption of innocence is doubled as held by the Honourable Supreme Court of Pakistan in the case of The State and others v. Abdul Khaliq and others (PLD 2011 Supreme Court 554).

15. For the above stated reasons, there is no merit in the appeal against acquittal. Acquittal recorded by trial Court in favour of respondents/accused was based upon sound reasons, which requires no interference. As such, the appeal against acquittal being without merits is dismissed.

JUDGE

Tufail