JUDGMENT SHEET

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

Cr.Acquittal.Appeal.No.D- 82 of 2007

Present:-
Mr. Justice Naimatullah Phulpoto.
Mr. Justice Zulfiqar Ahmad Khan.

Date of hearing: 22.05.2017.
Date of judgment: 22.05.2017.

Syed Meeral Shah,Addl:P.G. for the appellant / State.
None present for respondents.

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Respondents/accused Abdul Sattar and Shehzad were tried by learned Special Judge for CNS, Hyderabad in Special Case No.112 of 2005 for the offence u/s 9 (c) of CNS Act, 1997. By judgment dated 05.01.2007, the respondents/accused were acquitted of the charge by extending them benefit of doubt.

2. Learned Additional Advocate General filed the Criminal Acquittal Appeal No.D-82/2007 against the respondents Abdul Sattar and Shehzad. Notices were issued against the respondents and the appeal was admitted for regular hearing. Notices were returned unserved. BWs were issued against the respondents but always returned unexecuted. This Court vide order dated 02.12.2009 directed the Additional Prosecutor General to satisfy the court as to how this criminal acquittal appeal was maintainable as it was time barred. This court vide order

dated 29.11.2011 issued perpetual warrants against the respondents. This is old criminal appeal.

3. We have heard Syed Meeral Shah, Additional Prosecutor General for the State and examined the entire evidence available on record.

4. Learned A.P.G. appearing on behalf of the State argued that the trial court has acquitted the respondents / accused without appreciating the evidence in accordance with law. It is submitted that the contradictions in the evidence are minor in nature. Trial court gave much importance to the minor contradictions and on the basis of such contradictions recorded acquittal of the accused. It is submitted that acquittal appeal merits consideration and the impugned judgment is not sustainable in the law.

5. With the assistance of learned A.P.G. we have perused the evidence as well as the impugned judgment. It appears that the trial court by judgment dated 05.01.2007 for the following reasons acquitted the accused.

> ***"POINT NO.01:- As mentioned above, the prosecution examined the two official witnesses though admittedly, inspite of the fact that the place of the incident, which is a Petrol Pump at Giddu Chowk, was a thoroughfare and the traffic remained plying till late hours of the night. Secondly, when the sais witnesses had prior information about the accused, therefore they had arrived to apprehend them but not a single private person was either taken or even requested to be witness of the recovery. Both the above officials have tried to implicate the accused in their evidence, but certain important contradictions crept up in their statements for example, both have given different version when they were asked as to who was driving the official vehicle at the time of incident, similarly they made contradiction with regard to taking weight of the incriminating charas. It is also surprising to note that it is the case of the prosecution that 10 grams of narcotic was separated out of total narcotic recovered from the accused persons, but not from each of the two thellies, therefore, there is doubt with regard to the substance recovered from the accused that each thelli was***

containing narcotic. It is also to be observed that the samples, which were separated and sealed separately in two different wrappers and sent to the Chemical Examiner in sealed parcel but it is not mentioned in his report that how many pieces of the incriminating narcotic were received in the Laboratory to certify that the same was narcotic. It is only mentioned that a piece was examined from each sample, i.e. only one piece weighing 10 grams was examined therefore, it is not certain that whether the Chemical Examiner examined the same substance which was secured from the possession of accused. Hence, it cannot be said that the substance recovered from the possession of accused was the narcotic. It is well settled law that even a single doubt is sufficient to declare the entire case of the prosecution as doubtful. In this regard, reliance is placed upon 1995 SCMR-1345 (Tarique v. the State).

Besides above discrepancy another important and unavoidable defect in the evidence of this complainant Inspector Mir Muhammad is that he has been earlier found giving false evidence by this court, although he has not been convicted for such offence but such observation made by this court in the case relied upon by the ld. Counsel for the accused was neither challenged nor expunged as such corroboration from an independent source is necessary for the safe administration of a justice in a cr. case.

It is not out of place to mention here that this FIR U/S 154 Cr.P.C. was registered at Police Station Excise Divisional Squad without any legal sanction in this regard for the said Office has not been declared as a Police Station by the Government of Sindh as defined in Section 4 (8) of the Criminal Procedure Code. In this regard, a letter bearing No.Ex/DSS-4355 dated 23.12.20606 was received by this Court and copy of which is placed on record that Excise Department has moved the Government of Sindh to notify the said place as Police Station. Until and unless, such Notification is issued, no report u/s 154 Cr.P.C. can be registered by any officer, therefore, I am of the view that the said complainant was to competent to register the said FIR against the accused and to investigate the case under Criminal Procedure Code. If the narcotic had been secured from the accused, it was his duty that after his arrest, he was to be produced at the nearest Police Station as provided under Section 59 of the Criminal Procedure Code.

In view of the above facts and circumstances, it is clear that the case of the prosecution is not free from doubt, but also illegal and therefore, the point is decided in negative.

POINT NO.02:- In view of the findings on Point No.01, I hold that the prosecution has failed to prove the offence against the accused hence they are acquitted

U/S 265-H (i) Cr.P.C. Both the accused are in custody, they should be released forthwith in this case."

6. The scrutiny of the evidence reflected that there were contradictions in the evidence of the prosecution. Both the prosecution witnesses have given different version when they were asked who was driving the official vehicle at the time of incident. There was also contradiction with regard to taking the weight of the incriminating charas. According to the case of prosecution 10 grams of the narcotic substance was separated out of total narcotics recovered from the possession of accused but not from each of that two Thelies. There is doubt with regard to the substance recovered from the accused from each Theli. We have also noticed that the samples which were separated and sealed separately in two different wrappers and sent to the chemical examiner but it was not mentioned in the report that how many pieces of the incriminating narcotic were received in the Laboratory to certify that the same was narcotic. In such circumstances, there was no evidence that the narcotic was safely transmitted to the chemical examiner. Safe transit of the narcotics has not been established at the trial. In this regard reference can be made to the case of *IKRAMULLAH & OTHERS V/S. THE STATE (2015 SCMR 1002), the relevant portion is reproduced hereunder:-*

> *"*5. In the case in hand not only the report submitted by the Chemical Examiner was legally laconic but safe custody of the recovered substance as well as safe transmission of the separated samples to the office of the Chemical Examiner had also not been established by the prosecution. It is not disputed that the investigating officer appearing before the learned trial court had failed to even to mention the name of the police official who had taken the samples to the office of the Chemical Examiner and admittedly no such police official had been produced before the learned trial Court to depose about safe custody of the samples entrusted to him for being deposited in the office of the Chemical Examiner. In this view of the matter the prosecution had not been able to establish that after the alleged recovery the substance so recovered was either kept in safe custody or that the samples taken from the recovered substance had safely been transmitted to the office of the Chemical Examiner

> without the same being tampered with or replaced while in transit."

7. Moreover it is settled law that several circumstances are not required for extending the benefit of doubt. The case of prosecution is doubtful. It is settled law that single doubt is sufficient to believe the entire case of the prosecution as doubtful. In this regard reference is made to the case of *Tariq Pervez V/s. The State (1995 SCMR 1345), in which* the Honourable Supreme Court has observed as follows:-

> ***"It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right."***

8. It is settled law that judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous as held by the Honourable Supreme Court in the case of The State v. Abdul Khaliq and others (PLD 2011 Supreme Court 554). Moreover, the scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of the innocence is significantly added to the cordinal 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 above referred judgment. The relevant para is reproduced hereunder:-

> **"16. We have heard this case at a considerable length stretching on quite a number of dates, and with the able assistance of the learned counsel for the parties, have thoroughly scanned every material piece of evidence available on the record; an exercise primarily necessitated with reference to the conviction appeal, and also to ascertain if the conclusions of the Courts below are against the evidence on the record and/or in violation of the law. In any event, before embarking upon scrutiny of the various pleas of law and fact raised from both the sides, it may be mentioned that both the learned counsel agreed that the criteria of interference in**

the judgment against ' acquittal is not the same, as against cases involving a conviction. In this behalf, it shall be relevant to mention that the following precedents provide a fair, settled and consistent view of the superior Courts about the rules which should be followed in such cases; the dicta are:

> **Bashir Ahmad v. Fida Hussain and 3 others (2010 SCMR 495), Noor Mali Khan v. Mir Shah Jehan and another (2005 PCr.LJ 352), Imtiaz Asad v. Zain-ul-Abidin and another (2005 PCr.LJ 393), Rashid Ahmed v. Muhammad Nawaz and others (2006 SCMR 1152), Barkat Ali v. Shaukat Ali and others (2004 SCMR 249), Mulazim Hussain v. The State and another (2010 PCr.LJ 926), Muhammad Tasweer v. Hafiz Zulkarnain and 2 others (PLD 2009 SC 53), Farhat Azeem v. Asmat ullah and 6 others (2008 SCMR 1285), Rehmat Shah and 2 others v. Amir Gul and 3 others (1995 SCMR 139), The State v. Muhammad Sharif and 3 others (1995 SCMR 635), Ayaz Ahmed and another v. Dr. Nazir Ahmed and another (2003 PCr.LJ 1935), Muhammad Aslam v. Muhammad Zafar and 2 others (PLD 1992 SC 1), Allah Bakhsh and another v. Ghulam Rasool and 4 others (1999 SCMR 223), Najaf Saleem v. Lady Dr. Tasneem and others (2004 YLR 407), Agha Wazir Abbas and others v. The State and others (2005 SCMR 1175), Mukhtar Ahmed v. The State (1994 SCMR 2311), Rahimullah Jan v. Kashif and another (PLD 2008 SC 298), 2004 SCMR 249, Khan v. Sajjad and 2 others (2004 SCMR 215), Shafique Ahmad v. Muhammad Ramzan and another (1995 SCMR 855), The State v. Abdul Ghaffar (1996 SCMR 678) and Mst. Saira Bibi v. Muhammad Asif and others (2009 SCMR 946).**

From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced 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. It has been categorically held in a plethora of judgments that 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. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the re-appraisal 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. It is averred in The State v. Muhammad Sharif (1995 SCMR 635) and Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and

imperative that the above criteria and the guidelines should be followed in deciding these appeals."

9. For the above stated reasons, there is no merit in the appeal against acquittal. Acquittal recorded by trial Court in favour of respondents /accused is based upon sound reasons, which require no interference at all. As such, the appeal against acquittal is without merit and the same is dismissed.

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