JUDGMENT SHEET

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

Cr. Acquittal. Appeal.No.D- 211 of 2003

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

Date of hearing: 12.04.2017.
Date of judgment: 12.04.2017.

Syed Meeral Shah, D.P.G. for the State.
Mr. Bilawal Ali Ghunio, Advocate for respondent No.1 Ghulam Rasool.

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Respondents Ghulam Rasool, Bhooro, Nooro and Mohib Ali were tried by the Special Judge STA/2nd Additional Sessions Judge Hyderabad in Special Case No. 01/2002 for offences u/s 365-A, 148, 149 PPC registered at Police Station Qazi Ahmed vide crime No.57/1992. Trial court after full dressed trial by judgment dated 07th July 2003 acquitted the respondents / accused. State through Advocate General Sindh filed the instant criminal acquittal appeal No.D-211/2003 against the judgment dated 07th July 2003 passed by the trial court.

2. Syed Meeral Shah appearing on behalf of the State argued that the prosecution produced sufficient evidence against the respondents/accused to connect them in the commission of offence but the trial court did not appreciate the evidence according to settled principle of law. He referred to the evidence of complainant and other prosecution witnesses. However,

frankly admitted that there was delay in lodging of the FIR and delay in holding of the identification parade of the accused without explanation.

3. Mr. Bilawal Ali Ghunio appeared on behalf of the respondent No.1 Ghulam Rasool and argued that the trial court for the sound reasons while appreciating the evidence recorded acquitted in favour of the accused. He further argued that scope of appeal against acquittal is narrow and the judgment of the trial court is based upon the proper appreciation of the evidence and requires no interference.

4. After hearing the learned counsel for the parties, we have carefully perused the judgment dated 07th July 2003 passed by the trial court. The relevant paragraph is reproduced as under-

> ***"While considering ocular testimony I would like to discuss firstly the evidence of complainant who deposed that he do not know present accused prior to the incident, but he has given name by police of present accused. The dacoits usually closed his eyes, but at the time of eating his eyes usually were opened by the dacoits. Further he has admitted suggestion put forth by the learned defence counsel on behalf of accused Mohib Ali that his identification test was not held with present accused. Further he deposed in his cross examination that he had identified present accused after 12 days of lodging of FIR so also after his kidnapping by the dacoits his father has lodged FIR though such FIR has not been produced in evidence by prosecution. As well as he has deposed during cross examination by admitting the suggestion that prior to this incident he do not know accused Ghulam Rasool, but he was available with other hands. Present accused were standing in the one row at the time of identification test of present accused. So far evidence of PW Wali Muhammad is concerned who has testified during cross examination in chief that out of nine dacoits he identified at the place of wardet i.e Ghulam Rasool Mirasi, Mour, Bhooro Pakhro, Nooro alias Noor Muhammad, Ghulam Rasool Chandio, Ilaho Zardari, Gulab Chandio and Porho Chandio. He in his cross examination has deposed that at the time of incident he went to police station for lodging report, again said that his brother went to the police station for lodging FIR and on the next date police appeared at wardat. He has also been examined by police u/s 161 Cr.P.C. and contents of said statement were read over to him and thereafter he became sick. His 164 Cr.P.C. statement was recorded by the Mukhtiarkar Daulat after 07***

months of incident in presence of ASI of P.S. Qazi Ahmed. Further PW Wali Muhammad has given statement u/s 164 Cr.P.C which is all together to the facts and circumstances deposed in his evidence in the court. More particularly in his 164 Cr.P.C. statement he has deposed that his son is working at Qazi Ahmed Town and residing in the house of his father in law, wherefrom accused Ghulam Rasool Maganhar crossed and his son identified the said Ghulam Rasool Maganhar that he was involved in kidnapping case. Ghulam Rasool residing and shifted at Qazi Ahmed Town. Thereafter, his son informed police and police called said Ghulam Rasool and investigated the case during investigation who disclosed that other accused were Mour, Noor and Bhooro Pakhiyo. Prosecution also examined PW Muhammad Sarang who is mashir of place of occurrence, arrest, recovery and identification. He has deposed that place of incident was situated in the land of Wadero Mitha Khan, but he did not know in which Deh it is situated. According to mashirnama of place of occurrence Ex.14, the place of incident is situated in the land of complainant in Deh Qazi Ahmed Taluka Daulatpur. He has further deposed that accused were standing in a row of 30 or 32 persons, but he can not say at which number they were standing.

So far recovery of guns and cartridges from accused Bhooro, Mour and Nooro is concerned, the mashirnama does not show that arms and ammunitions recovered from accused were sealed at the spot. Not only this but said mashir Sarang has not been cross examined by the learned defence counsel as his further examination in chief was reserved by the court on the request of learned SPP but said witness has not been examined further, nor cross examined by the defence.

PW Ali Nawaz Memon who was Mukhtiarkar has deposed that he had recorded the statement of PW u/s 161 Cr.P.C. but he has neither produced mashirnama of identification parade of accused persons in his evidence nor deposed any single word on the point of identification parade proceedings held under his supervision.

It has been held by the Honourable Superior Courts that number of dummies would be 09 to 10 persons of similar features and height be mixed up with each of the accused persons. According to the prosecution in all 32/30 persons were present at the time of identification of accused persons. In the identification by the complainant Abdul Karim and PW Wali Muhammad number of the dummies is lesser then the number prescribed by the Honourable Superior Courts for identification of the accused in the identification proceedings, which is fatal to the prosecution. Further more there is delay in lodging of FIR about 07 months. According to FIR this incident has taken place on 09.12.1991 and FIR has been lodged on 27.07.1992 at about 1215 hours. Whereas distance between place of occurrence and police station is about six kilometers. There is also delay in identification parade of about 12 days after the arrest of accused. In this case accused persons namely Ghulam Rasool, Bhooro, Nooro alias Noor Muhammad &

Mour were arrested on 28.07.1992, but identification parade was held on 08.08.1992 as stated above in the judgment and mashirnama of identification parade of accused persons has not been produced in evidence. So far identification of the accused persons in court is concerned complainant / victim himself deposed in his cross examination that he do not know accused persons prior to this but their names were given to him by the police. So also complainant / victim further deposed that he has been informed by police one day prior to holding of the identification parade that identification parade proceedings to be held on 08.08.1992. Lalteen which had not been recovered by police though it is prosecution case that lalteen was available with complainant Abdul Karim at the time of incident but the same was neither recovered by police nor produced. There is no recovery of ransom amount from the accused persons if any paid by PW Wali Muhammad, father of complainant/victim. Prosecution witnesses have not assigned specific part to each of the accused persons in the court. In this respect reliance may pleased be placed on case law reported in 1992 SCMR 2088 Re- Asghar Ali alias Sahab & others v. The State & others, 1995 P.Cr.L.J 1394 & PLD 1981 SC-142.

Further there are improvements and exaggerations incidence of complainant and PW Wali Muhammad. More particularly complainant has given different version in evidence which has not been disclosed in the FIR as well as PW Wali Muhammad also given different version in his evidence from the version of his 164 Cr.P.C. statement.

Since the prosecution has miserably failed to prove its case against accused thus points No.1&2 are answered in negative accordingly.

<u>Point No.3:</u>-

In view of findings and reasons recorded in points No.1 & 2 I am of the opinion that prosecution has miserably failed to prove the case against accused persons and prosecution case is not free from reasonable doubt. Therefore, accused namely Ghulam Rasool, Bhooro, Nooro alias Noor Muhammad, Mour and Mohib Ali are acquitted. Accused Ghulam Rasool, Bhooro, Nooro alias Noor Muhammad are present on bail their bail bond stands forfeited and surety discharged. Accused Mohib Ali is produced under custody in court camped at Central Prison Hyderabad. He is remanded jail to custody with direction that he shall be released forthwith if he is not required in any other custody case."

5. From perusal of impugned judgment it transpires that the trial court has mentioned that the incident occurred on 09.12.1991 but the FIR was lodged on 22.07.1992 and the delay in lodging of the FIR has not been fully explained. The trial court while appreciating the evidence on delay in holding

of the identification parade of the accused, has mentioned that the identification parade of the accused was held after 22 days of the arrest of accused. Such inordinate delay without explanation was fatal to the case of prosecution. It has also been noticed by the trial court that Lalteen/Lamp had also been recovered by the police but was not produced before the trial court, it created doubt in the case of prosecution. Trial court has recorded findings that dishonest improvements have been made in the prosecution evidence as such prosecution evidence was not reliable. In our considered view, the judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculating 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 of the same 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:**
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> > **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."

6. For the above stated reasons, there is no merit in the appeal against acquittal. Finding of the innocence recorded against the respondents / accused by the trial Court are based upon sound reasons which require no

interference at all. As such, the appeal against acquittal is without merits and the same is dismissed.

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