

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

Cr. Acquittal. Appeal.No.D- 215 of 2006

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

Date of hearing: 07.04.2017.
Date of judgment: 21.04.2017.

None present for the appellant.
Mr. Ghulam Murtaza Leghari, Advocate for respondent No.1
Muhammad Iqbal.
Syed Meeral Shah, D.P.G. for the State.

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Respondent/accused Muhammad Iqbal alongwith co-accused Qadir was tried by the learned 2nd Additional Sessions Judge Mirpurkhas for offence u/s 302, 34 PPC. By judgment dated 23.09.2006 respondent Muhammad Iqbal was acquitted of the charge. However, accused Qadir was convicted u/s 302(b) PPC and sentenced to imprisonment for life. Appellant/complainant Abdul Rasheed has filed appeal against acquittal of respondent/accused Muhammad Iqbal.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 06.08.1998 at 2215 hours complainant Abdul Rasheed lodged his report alleging therein that they are four brothers. The names of three brothers are Nadeem, Anwar Adil (now deceased) and Muhammad

Saleem. It is stated that complainant and Anwar Adil were watch makers and used to work in the same shop. About five months prior to this incident, it is alleged that Muhammad Saleem contracted love marriage with Mst. Farheen Iqbal. Thereafter, Iqbal lodged FIR bearing Crime No.14/1998 against Muhammad Saleem and Anwar Adil u/s 16 offence against Zina (Enforcement of Hudood Ordinance), 1979 at PS Digri. Over such matrimonial dispute, it is alleged that Iqbal and his relative Qadir (present accused) became on inimical terms with the complainant party. It is further alleged that on 06.08.1998 complainant and his brother Anwar Adil after closing the shop left for their house through Shahi Bazar. On their way, Anwar Adil went to the shop of Abdul Shakoor for purchasing ice cream. The electricity was on at that time and one Yameen son of Ibrahim Qureshi was also standing there. At 2125 hours, it is alleged that accused Qadir s/o Ismail armed with pistol and Iqbal s/o Bashir Arain emerged in the street. It is alleged that accused Qadir directly fired from his country pistol at Anwer Adil with intention to kill him and fire hit him and he fell down. PWs raised cries and the accused ran away. Complainant and other persons saw that Anwer Adil was bleeding and he went unconscious. Thereafter, injured was brought to the hospital where he succumbed to the injuries. Complainant went to the Police Station and lodged his FIR against the accused Qadir and Iqbal. It was recorded vide crime No.98/1998 for offence u/s 302, 34 PPC.

3. During investigation, place of wardat was visited by the Investigation Officer, postmortem examination of the deceased was conducted, 161 Cr.P.C. statements of the PWs were recorded. Accused Muhammad Iqbal was arrested and on the conclusion of investigation challan was submitted against the accused Muhammad Iqbal and Qadir was shown as absconder. Case was sent up to the court of Sessions Mirpurkhas. Accused Qadir was declared as proclaimed offender.

4. Charge was framed against accused Iqbal on 02.03.1999. During trial accused Qadir surrendered himself before the trial court on 18.08.2000. Amended charge was framed at Ex.16 to which both the accused pleaded not guilty and claimed to be tried.

5. In order to prove its case, the prosecution examined PW Abdul Rasheed at Ex.18. He produced the FIR at Ex.18/A. PW-2 Muhammad Yamin at Ex.19. He has produced his statement u/s 164 Cr.P.C. recorded before the Magistrate at Ex.19/A. PW-3 Muhammad Saleem at Ex.20. He produced the memo of visit of dead body at Ex.20/A, memo of vardat at Ex.20/B, sketch of the place of incident at Ex.20/C, memo of recovery of clothes of deceased at Ex.20/D, mashirnama of arrest of accused Muhammad Iqbal at Ex.20/E and memo of documents produced by the complainant at Ex.20/F. PW-4 Dr. Muhammad Akram at Ex.22. He produced the postmortem report at Ex.22/A. PW-5 ASI Azeem at Ex.23. He produced the letter of MS for dead body clothes at Ex.24. PW-6 Sarang at Ex.24. He produced the copy of sketch at Ex.24/A and letter of SHO at Ex.24/B. PW-7 SIP/SHO Ghulam Nabi at Ex.26. He produced Danishtnama at Ex.26/A, Inquest report at Ex.26/B, photocopy of diary page of deceased Anwar Ali at Ex.26/C, order of the Honourable High Court of Sindh at Ex.26/D, photocopy of application given by the mother to DIG police at Ex.26/E, photocopy of petition dated 27.08.1998 at Ex.26/F and report of chemical examiner at Ex.26/G. Thereafter, the learned D.D.A. closed the side of prosecution vide statement at Ex.27.

6. The statements of accused were recorded u/s 342 Cr.P.C. in which both the accused denied the prosecution allegations and claimed their innocence. Accused Qadir has raised plea that he had enmity with police as he had also filed complaint and suit against police. Accused Iqbal submitted that he has been implicated falsely in this case due to

enmity as he had lodged FIR against PW Saleem & others for abduction of his daughter. Both the accused did not examine themselves on Oath however, learned counsel for accused Qadir examined 10 DWs in defence.

7. After hearing the learned counsel for the parties and examination of evidence trial court convicted accused Qadir u/s 302(b) PPC and sentenced to imprisonment for life whereas accused Iqbal was acquitted of the charge by trial Court. Against such acquittal the complainant Abdul Rasheed has filed the captioned Criminal Acquittal Appeal.

8. Record reflects that complainant / appellant Abdul Rasheed filed acquittal appeal against accused Muhammad Iqbal who has been acquitted by the learned IInd Additional Sessions Judge, Mirpurkhas by judgment dated 23.09.2006 mainly for the following reasons-

“From the perusal of evidence, it appears that nothing brought on record that accused Iqbal shared with co-accused in commission of offence. The eye witnesses have shown the presence of this accused but admittedly no any overt act has been alleged against him. Even having present on spot, neither he instigated to accused nor direction was given by him to co-accused and mere presence of accused Iqbal does not constitute the offence for the purpose of conviction when particularly there is no allegation against him that the murder was committed in furtherance of their commission intention or accused Iqbal shared in commission of offence, therefore, under the circumstances of case, this accused deserves the benefit of doubt and this point is answered as not proved.”

9. During pendency of appeal against acquittal Mr. Mukhtar Ahmed Khanzada advocate for appellant expired. Notices were issued to the appellant directly but returned unserved with the endorsement of SHO concerned that complainant has shifted to Karachi since long and statements of the persons of the neighbouring area have been recorded to that effect.

10. We have perused the evidence and judgment of trial court dated 23.09.2006 with the assistance of D.P.G. for the State.

11. We have come to the conclusion that no over act has been attributed to accused Iqbal. Mere presence of the appellant did not constitute an offence as alleged by the prosecution. Trial court has assigned sound reasons while acquitting the accused Iqbal and by distinguishing his case from the case of main accused Qadir who has been sentenced to imprisonment for life. In our considered view, 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 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 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.”

12. For the above stated reasons there is no merit in the appeal against acquittal. Acquittal recorded by trial Court in favour of respondent No.1 / accused is based upon the 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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