

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

Criminal Acquittal Appeal No.D-20 of 2020

Present:-

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Amjad Ali Sahito

Appellant: Qurban Ali is present represented by his counsel Mr. Aijaz Shaikh, Advocate.

Respondents: Mohammad Ali respondent is called absent while the State through Mr. Shahid Ahmed Shaikh, Additional Prosecutor General, Sindh.

Date of hearing: 27.10.2021.

Date of judgment: .11.2021

J U D G M E N T

AMJAD ALI SAHITO, J:- This Acquittal Appeal is directed against the judgment dated 14.01.2020, passed by the learned Model Criminal Trial Court-I, Hyderabad in Sessions Case No.547/2016 arising out of FIR No.38/2016 for an offence under sections 302, 324 P.P.C registered at P.S. Bhitai Nagar, Hyderabad whereby the learned trial Court had acquitted the accused/respondent by extending him the benefit of the doubt. The appellant/complainant being aggrieved and dissatisfied with the aforesaid impugned judgment has filed the instant acquittal appeal.

2. According to the complainant Qurban Ali on 10.04.2016 during night time in Nursery located near Old Filter Plant Jamshoro, co-accused Javed with shard edged weapon at the instigation of acquitted accused Muhammad Ali intentionally, deliberately and knowingly committed Qatl-e-Amd of complainant's brother deceased Zafar alias Muhammad Boota by causing him injuries on his person so also attacked upon injured PW Muhammad Sufiyan with the intention to commit

his murder thereby caused injuries on his head, hence this F.I.R was registered.

3. After completing the investigation of the case, the report under Section 173 Cr. P.C (Challan) was submitted by the investigating officer against the above named accused before the concerned Magistrate.

4. The trial Court framed the charge against the Mohammad Ali respondent/accused and co-accused Javed Ali, to which they pleaded not guilty and claimed to be tried. To establish accusation against the accused, the prosecution examined as many as 09 witnesses, PW-01 complainant Qurban Ali at Ex:3, who produced FIR at Ex:3/A and his further statement recorded on 19.04.2016 at Ex:3/B; PW-2 injured eye witness Abu Sufyan at Ex:4; PW-3 Muhammad Akram at Ex:5, who produced receipt of receiving dead body at Ex:5/A and memo of recovery of hatchet at Ex:5/B; PW-4 Sajjad at Ex:6; PW-5 mashir Bhoora Masih at Ex:7, who produced memo of site inspection at Ex:7/A, memo of clothes of deceased at Ex:7/B, memo of injuries of injured Abu Sufyan at Ex:7/C, memo of arrest of accused Javed Ali and recovery at Ex:7/D, memo of arrest of accused Muhammad Ali at Ex:7/E and Danishtnama was also taken on record at Ex:7/F; PW-6 Dr. Waseem Khan at Ex:8, who provisional as well as final medicolegal certificates of injured Abu Sufyan at Ex:8/A & Ex:8/B, post-mortem report of deceased Zafar alias Boota, lash chakas form at Ex:8/C & D, police letters at Ex:8/E & Ex:8/F; PW-7 I.O Malik Sher Ali at Ex:9, who produced letter of SSP at Ex:9/A, copy of entry No.34 at Ex:9/B, entry No.15 at Ex:9/C, entry No.18 at Ex:9/D, entry No.20 at Ex:9/E, entry No.21 at Ex:9/F, entry No.22 at Ex:9/G, entry No.24 at Ex:9/H, entry No.27 at Ex:9/I, entry No.26 at Ex:9/J, entry No.32 at Ex:9/K, entry No.48 at Ex:9/L, receiving letter of chemical examiner at Ex:9/M and entry No.18 at Ex:9/N, application for recording

164 Cr.P.C statement of eye witness Abu Sufyan at Ex:9/O and chemical examiner report at Ex:9/P; PW-8 Zahoor Ahmed at Ex:10, who produced entry No.5 at Ex:10/A, six pictures of place of incident at Ex:10/B, entry No.13 at Ex:10/C, entry No.29 at Ex:10/D and entry No.33 at Ex:10/E and PW-9 Muqtader Ali Khan at Ex:11, who produced sealed envelope at Ex:11/A, original confessional statement of accused Muhammad Ali at Ex:11/B and confessional statement of accused Javed Ahmed at Ex:11/C, application moved by I.O for recording statements of accused under section 164 Cr.P.C at Ex:11/D, application for recording 164 Cr.P.C statement of eye witness Abu Sufyan and his recorded statement at Ex:11/F however witness Tapedar was given up by the learned DDPP vide statement and the prosecution closed its side vide statement at Ex:12. Statements of the accused were recorded under section 342 Cr. P.C at Ex:13 & 14, wherein they denied the prosecution allegations leveled against them and claimed their innocence. However, they neither examined themselves on oath under section 340(2) Cr. P.C nor led any evidence in their defence.

5. After hearing learned counsel for the respective parties, the trial Court acquitted the respondent/accused by extending him the benefit of doubt vides impugned judgment. Hence, the appellant filed this appeal.

6. We have heard learned counsel for parties and with their assistance have gone through the evidence produced by the prosecution at the trial.

7. Learned counsel for the appellant has contended that the learned trial Court has not appreciated the evidence so produced by the prosecution while acquitting respondent No.1 ignoring the material available against him; that there is no major contradiction in between the statements of the witnesses came on record and the minor contradiction if any is no reason for acquittal of the respondent/accused. He

lastly contended that the impugned judgment may be set aside and the accused/ respondent No.1 may be convicted.

8. On the other hand learned Additional Prosecutor General, Sindh appearing for the State supported the impugned judgment and contended that the learned trial Court rightly extended benefit of the doubt in favour of respondent No.1/accused.

9. It is a matter of record that respondent No.1 has been implicated by the complainant after registration of F.I.R in his further statement recorded on 19.04.2016 which even after a delay of about nine (09) days from his F.I.R alleging him to be abettor of the crime on whose saying co-accused Javed Ahmed allegedly murdered deceased. It appears that after a full-fledged trial the aforesaid respondent has been acquitted by the learned Trial Court by giving him the benefit of doubt. Moreover, on re-appraisal of material brought before us, we find that no tangible evidence is/was against respondent No.1 to connect him in the commission of the alleged offence, therefore, the learned Trial Court had rightly acquitted him from the charge. It is not out of context to make here necessary clarification that an appeal against acquittal has distinctive features and the approach to the appeal against conviction because the presumption of double innocence is attached in the former case. We have also carefully perused the record of the case and feel no hesitation to observe that impugned judgment is speaking one and elaborate which does not suffer from any illegality, gross irregularity, infirmity, hence, it does not require any interference by this Court. It is a well-settled principle of law that for creating a shadow of a doubt, it doesn't need to be many circumstances. If a single circumstance creates a reasonable doubt in the prudent mind, then its benefit is to be extended in favour of the accused not as a matter of grace or concession, but as a matter of right. The reliance is placed on the case of ***Muhammad Masha v. The State***

(2018 SCMR-772), wherein the Hon'ble Supreme Court of Pakistan has held that:

4.--- Needles to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of accused, then accused would be entitled to the benefit of such doubt, not as a matter of grace and concession but as a matter of right. It is based on the maxim, "it is better that ten guilt persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR-1345), Ghulam Qadir and 2 others v. The State (2008 SCMR-1221), Muhammad Akram v. The State (2009 SCMR-230) and Muhammad Zaman v. The State (2014 SCMR-749).

10. It is also a well-settled law that after earning the acquittal from the trial Court, the double presumption of innocence is earned by the accused. The Court sitting in appeal against acquittal always remains slow in reversing the judgment of acquittal, unless it is found to be arbitrary, fanciful and capricious on the face of it or is the result of bare misreading or non-reading of any material evidence. In the case of **Muhammad Mansha Kousar v. Muhammad Asghar and others (2003 SCMR 477)**, the Honourable Apex Court observed as under:-

"that the law relating to a reappraisal of evidence in appeals against acquittal is stringent in that the presumption of innocence is doubled and multiplied after a finding of not guilty recorded by a competent court of law. Such findings cannot be reversed, upset and disturbed except when the judgment is found to be perverse, shocking, alarming, artificial and suffering from error of jurisdiction or misreading, non-reading of evidence... Law requires that a judgment of acquittal shall not be disturbed even though second opinion may be reasonably possible".

11. Similar view was reiterated by the Honourable Apex Court in the case of ***Muhammad Tasaweer v. Zulkarnain and 2 others*** (PLD 2009 SC 53), in the following words:-

“Needless to emphasize that when an accused person is acquitted from the charge by a Court of competent jurisdiction then, the double presumption of innocence is attached to its order, with which the superior courts do not interfere unless the impugned order is arbitrary, capricious, fanciful and against the record.”

12. The upshot of the above discussion is that the impugned judgment is well-founded and well-reasoned, based on proper appraisal of the evidence and thus it calls for no interference by this Court. Even otherwise, it is re-iterated that the acquittal recorded by the Court of competent jurisdiction, would not be disturbed until there is any misreading or non-reading of the evidence resulting in miscarriage of justice, which, as elaborated above, has not been noticed here. Consequently, the instant acquittal appeal is dismissed accordingly.

JUDGE

JUDGE