JUDGMENT SHEET

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

Cr.Acquittal.Appeal.No.D- 99 of 2007

Present:-
Mr. Justice Naimatullah Phulpoto.
Mr. Justice Mohammad Karim Khan Aga.

Date of hearing: 19.05.2017.
Date of judgment: 19.05.2017.

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 Nadir Ali, Lal Khan and Jehangir Khan were tried by the learned Special Judge for CNS, Hyderabad in Special Case No.154 of 2004 for the offence u/s 9 (c) of CNS Act, 1997. Trial Court heard learned counsel for the parties. By judgment dated 11.12.2006, the respondents/accused were acquitted of the charge by extending them benefit of doubt. Hence the instant Criminal Acquittal Appeal filed by the State.

2. Notices were issued to the respondents but despite issuance notices, none appeared.

3. We have heard Syed Meeral Shah, Additional Prosecutor General Sindh 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 respondent / accused on minor contradictions and did not appreciate the evidence in accordance with the settled principles of law.

5. We have perused the prosecution evidence and impugned judgment passed by the trial court dated 11.12.2006. The relevant portion whereof is reproduced hereunder:-

> ***"As mentioned in the foregoing paras, the case of the prosecution is based on the evidence of the official witnesses as no private witness was joined in the recovery proceeding. As per settled principle of the Superior Courts that the evidence of official witnesses is to be examined with all care and cautious especially in the circumstances when the place of the recovery is a thickly populated area, but no attempt was made to associate any private witness. Both witnesses have deposed as per facts of the case as narrated above but the fatal discrepancy in the case of prosecution is that it is not certain that which samples were sent to the Chemical Examiner for the purpose of examination and certificate in respect of which the report Ex.14-C was produced because these witnesses have only deposed that the narcotic recovered from the accused persons were sealed separately after taking samples from each one of them and they were marked as A, B, C, D, E & F. Such fact is also mentioned in the mashirnama Ex.12-A, but the samples which were received in the Chemical Laboratory were not so marked, but they wre marked as 1, 2, 3, & 4 and there is no clarification as to how these numerical numbers were available when the same were not written by these witnesses at the time of recovery.***
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> ***Furthermore the prosecution did not produce the wrapper in which the samples were sealed separately and sent to the Chemical Examiner for examination and report to certify that these wrappers were the same in which the samples of the incriminating narcotic was sealed in their presence at the place of recovery. There is no explanation in this regard. If the same has not been recalled by the prosecution, the same maybed with certain purpose. However, it is not possible for this Court to ignore such fatal discrepancy in the case of the prosecution and the benefit of this must go to the accused. It is settled view that if there is a single doubt in the case of the prosecution, it's benefit must go to the accused. Reliance is placed on Tariq Pervez Vs. The State (1995 SCMR 1345).***
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> ***In view of the above, I hold that the prosecution has failed to prove this point and the same is decided in negative."***

6. We have come to the conclusion that trial court has assigned sound reasons while acquitting the accused persons. Learned A.P.G. could not satisfy the court about the safe custody of narcotics at Malkhana so also the safe transit. He also could not explain the discrepancies with regard to the sample sent by the police to the

chemical examiner. 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. 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."

8. 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.

9. These are the reasons of our short order dated 19.05.2017, whereby the instant Criminal Acquittal Appeal was dismissed.

JUDGE

JUDGE

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