

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

Cr.Acquittal.Appeal.No.D- 14 of 2016

Present:-
Mr. Justice Naimatullah Phulpoto.
Mr. Justice Shamsuddin Abbasi.

Date of hearing: 30.04.2018.
Date of judgment: 30.04.2018.

Mr. Ghulamullah Chang, Advocate for appellant.
Mr. Muhammad Ishaque Khoso, Advocate for respondents
No.1 to 5.
Syed Meeral Shah, A.P.G. for the State.
Respondents are present in person.

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Respondents/accused Zahid Ali and others were charged, prosecuted and acquitted u/s 302, 34 PPC. The trial was conducted by Mr. Tarique Mehmood Khoso, Sessions Judge, Badin who passed the judgment of acquittal on 27.04.2016. Feeling aggrieved by the aforesaid judgment of acquittal, complainant Muhammad Saleh filed this Criminal Acquittal Appeal No.D-14/2016

2. The prosecution case as emerged from the recitals contained in first information report and the evidence adduced during the trial is as under:-

3. The facts of the prosecution case, as per FIR, lodged by complainant Muhammad Saleh Chandio at P.S Badin on 12.01.2014 at

1910 hours are that, he used to run his cabin at Dargah Shaikh Umer. His elder brother Nabi Bux aged about 33 years was working with him his cabin and was also looking after the Dargah Shaikh Umer. On 02.01.2014, he and his brother Nabi Bux were sitting at the cabin when at about 06:00 P.M, accused Ayaz Mallah called his brother on telephone to come at his village as he had some work with him. Nabi Bux asked his brother that he was going to his friend accused Ayaz Mallah as he has telephoned him. It is alleged that Nabi Bux took Rs. 150/- from the complainant, further disclosed to complainant that accused Nathan son of Hashim and Zahid Ali son of Khan Muhammad Junejo had issued threats to him that they would see him. It is further alleged that Nabi Bux further disclosed to complainant that if any wrong was done with him, then accused Nathan and Zahid might be responsible. Saying so, Nabi Bux (now deceased) proceeded towards Ayaz. After about half an hour, accused Ayaz Mallah telephoned complainant on his mobile and asked whether Nabi Bux would come or not, on which the complainant replied him that Nabi Bux has left for him and was about to reach to him. Complainant waited but Nabi Bux did not return on that night. On 02.01.2014, at about 08-00 A.M, complainant inquired from accused Ayaz Mallah on phone regarding his brother Nabi Bux, to which accused Ayaz Ali replied the complainant that Nabi Bux had not come to him. Thereafter, he alongwith his cousins namely Muhammad Sulleman and Zulfiquar left for search of Nabi Bux and reached at Mir Wah at about 08-30 A.M where they found Shalwar, shoes, blanket and NIC of Nabi Bux lying there. Complainant party found the dead body of deceased Nabi Bux was also lying in water of Mir Wah adjacent village Saleh Junejo at about 2-30 P.M. Thereafter, other relatives also came over there. The complainant party informed

the police and took out the dead body from water and kept it on a cot. Then police reached there and dispatched the dead body to civil hospital Badin where postmortem of deceased was conducted. Thereafter, dead body was handed over to the complainant for burial and after burial of deceased, the complainant went to P.S and lodged the F.I.R. It was recorded vide Crime No.22 of 2014 u/s 302, 34 PPC at P.S. Badin. After usual investigation challan was submitted against the accused under the above referred sections.

4. Trial court framed charge against the respondents/accused at Ex.8. Accused pleaded not guilty and claimed to be tried.

5. In order to prove it's case, prosecution examined 07 witnesses. Thereafter, prosecution side was closed.

6. Statements of respondents/accused were recorded u/s 342 Cr.P.C in which they claimed false implication in this case and denied the prosecution allegations. Accused neither examined themselves on Oath nor they led any evidence in their defence in disproof of the prosecution allegations.

7. Trial court after hearing the learned counsel for the parties and on assessment of evidence, by judgment dated 27.04.2016 acquitted the accused/respondents as stated above. Hence, this appeal.

8. Mr. Ghulamullah Chang, learned advocate for the appellant contended that the deceased was lastly seen by PWs in the company of respondents and they were responsible for committing offence with which they were charged. He further contended that the trial court did not appreciate the evidence according to the settled principles of law.

Lastly, it is submitted that this acquittal may be converted into conviction.

9. On the other hand, Syed Meeral Shah, A.P.G. for the State argued that only piece of evidence against the respondents was last seen and it was not corroborated by some other piece of evidence. He has submitted that the judgment of acquittal is based upon sound reasons and argued that the appeal is without merit.

10. After hearing the learned counsel for the parties, we have perused the judgment of trial court. The relevant portion is reproduced hereunder:-

“In this case the deceased was statedly last seen in the company of accused by PW Gohram but he has not mentioned the exact time. According to prosecution death of deceased had occurred on 2.1.2014 from 1800 hours to the mid night of 3.01.2014. The accused in their 342 Cr.P.C statements have denied allegations of the prosecution and claimed themselves to be innocent and declared the prosecution case to be an afterthought story. The burden to prove guilt of the accused is upon the prosecution and in this case the prosecution has failed to discharge this burden, therefore, this point is answered as doubtful.”

11. We have come to the conclusion that prosecution has failed to prove its case against the accused/respondents for the reasons that only piece of evidence against the accused/respondents was that the deceased was lastly seen in company of the respondents by PWs Khan Muhammad and Gohram. No other piece of evidence was collected against the accused. At the trial prosecution failed to examine PW Khan Muhammad. Only PW Gohram has been examined but his evidence has not been corroborated by other pieces of evidence. It is settled principle of law that last seen evidence is a weak type of evidence and could not be relied upon unless it is corroborated by other strong circumstantial

evidence which are lacking in this case. PW Khan Muhammad has also not been examined. Non-examination of such material witness would be favourable circumstance to the accused/respondents. In the case of *Altaf Hussain v. Fakhar Hussain and others* (2008 SCMR 1103), it is held that the last seen evidence is a weak type of evidence unless corroborated with some other piece of evidence. This is a case of circumstantial evidence. To sustain the conviction, evidence must be unimpeachable and trustworthy but the prosecution has utterly failed to prove its' case.

12. We have carefully perused the prosecution evidence and impugned judgment passed by the trial court dated 27.04.2016. We have come to the conclusion that the trial court rightly acquitted the accused for the reasons that actual incident was un-witnessed. Evidence of last seen was weak piece of evidence. PWs were closely related to the deceased and interested. Prosecution failed to produce reliable evidence before trial court. Trial court for sound reasons disbelieved prosecution evidence. There were several circumstances in the case which had created reasonable doubt in the prosecution case. In the cases of circumstantial evidence strong evidence is required for convicting the accused, which is lacking in this case.

13. Moreover, appreciation of evidence in the case of appeal against conviction and appeal against acquittal are entirely different as held in the case of *Ghous Bux v. Saleem and 3 others* (2017 P.Cr.L.J 836).

14. Judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous. The scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of 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 case of *The State and others v. Abdul Khaliq and others* (PLD 2011 Supreme Court 554).

15. It is well settled that High Court can only interfere in an appeal against acquittal if the view of learned trial judge is either manifestly perverse on facts or vitiated in law. If the view taken by the trial judge can reasonable be said to be arrived at, this court does not substitute it with its own view as held in the case of *The State v. Abdul Khaliq and others* (PLD 2011 Supreme Court 554). Moreover, principles for appreciation of evidence in appeal against acquittal are different from the appeal against conviction.

16. 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. As such, the appeal against acquittal being without merits was dismissed by our short order dated 30.04.2018 and these are the reasons whereof.

JUDGE

JUDGE

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