JUDGMENT SHEET

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

Cr.Acquittal.Appeal.No.D- 18 of 2017

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

Date of hearing: 03.04.2018.
Date of judgment: 03.04.2018.

Mr. Muhammad Jameel Ahmed, Advocate for appellant.
Mr. Karamullah Memon, Advocate for respondents No.1 and 2.
Syed Meeral Shah, A.P.G. for the State.

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Respondents/accused Kaniyo and Roshan Lal @ Vishno were tried by learned Additional Sessions Judge, Shahdadpur in Sessions Case No.193 of 2014 for offences u/s 302, 34 PPC registered at P.S. Sarhari. By judgment dated 28.04.2017, the respondents/accused were acquitted of the charge by extending them benefit of doubt. Hence, instant Criminal Acquittal Appeal was filed by the complainant / appellant.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 02.04.2014 at 0100 hours, the complainant Arjun lodged an FIR at Police Station Sarhari stating therein that his sister Ramoorhi, aged about 25 years was married with Kanhio about 10 years back. Out of the wedlock, she had born one son and one daughter. His sister had complaints about her husband about behavior. It is further stated that on

28.03.2014, a relative of complainant informed him on phone that his sister Ramoorhi has expired. On receiving such information, he, his brother Gamo and cousin Bejo proceeded from Nawabshah and went at the house of his sister, situated at Sarhari town where they saw dead body of his sister lying on a cot. It is alleged that one injury was visible on her left side of forehead. On enquiry, Kaniyo and his brother Roshan Lal @ Wisho disclosed that ceiling fan had fallen on her due to such injury she expired. Thereafter, it is alleged that community people gathered there. They buried the dead body of his sister. It is further alleged that PWs Khemoon and Prem informed complainant that on 27.03.2014 at 4.00 a.m they saw that accused Kanhiyo and his brother Roshan Lal were dragging away his sister (now deceased) by maltreating her from the marriage ceremony at their house. Complainant was further informed that she had neither received any electric shock nor any ceiling fan had fallen on her but she was killed by accused persons. On receiving such information, the complainant went to the P.S. and lodged the FIR against the above named accused persons. It was recorded vide Crime No.14/2014, u/s 302, 34 PPC at P.S Sarhari.

3. After usual investigation, challan was submitted against the respondents/accused Kaniyo and Roshan Lal @ Vishno.

4. Trial court framed charge against the respondents/accused under the above referred sections, to which they pleaded not guilty and claimed to be tried.

5. At the trial, prosecution examined 09 PWs who produced the relevant documents/reports. Thereafter, prosecution side was closed.

6. Statements of accused were recorded u/s 342 Cr.P.C. in which accused claimed false implication in this case and denied the prosecution allegations.

7. Trial court after hearing the learned counsel for the parties and assessment of evidence, acquitted the accused/respondents by judgment dated 28.04.2017.

8. Complainant filed Appeal against acquittal on 26.03.2017. Notices were issued to the respondents and they have been represented by their counsel.

9. We have heard learned counsel for the appellant, learned counsel for respondents No.1 and 2 as well as A.P.G. for the State and scanned the entire evidence available on record. Trial court has recorded acquittal in favour of the respondents/accused, mainly for the following reasons:-

> ***"It is also worth to mention here that per prosecution story, PW Kheemo was also an important witness of the case because per prosecution story, he was also present at marriage ceremony, however, I am astonished to note that on 15/07/2015, the said PW had filed an application before this Court wherein, he mentioned that he has no knowledge about the incident and his name has been given by the complainant without his consent. Not only this, I am surprised to note that such application was also endorsed by the complainant of the case. Thereafter, on such application, the learned ADPP for the State has given up him vide statement as Ex. 5. The said witness was also a star witness of this incident. However, said marginal witness was not examined by the prosecution. Not only this, the prosecution has also given up PW Ghomoo (real brother of complainant and deceased) vide statement at Ex. 16. The said witnesses were very important because as per prosecution story, one was present at the marriage ceremony, wherefrom, the accused persons had beaten & dragged the sister of complainant and second was come with the complainant from Shaheed Benazir Abad. It is well settled principal of law that if a best piece of evidence is available with the party and the same is not produced in court then it can be presumed that the party had some ulterior and sinister motive behind it, therefore, presumption under illustration (g) of article 129 of Qanun-e-Shahdat, 1984 can fairly be drawn that the said evidence, if it has been***

produced, it would have been un-favorable to the said party. I relied upon the case law cited as "RIAZ AHMED VERSUS THE STATE" (2010 SCMR 846). In this regard, I could also lay my hands on the case law cited as "BAKHT SHAD VERSUS THE STATE (2017 P.CR. L.J. 235)".

Another important aspect of the case is that the incident said to have taken place on 28.03.2014 while the F.I.R was lodged on 02.04.2014 with delay of about 04 days for which the prosecution has not furnished any explanation. If such incident had taken place then FIR should have immediately registered at the PS, however, there is no justification to get the F.I.R registered with such a shocking delay. Thus, the false implication of the accused could not be ruled out. In this regard, I relied upon the case law cited as "MUHAMMAD SADIQ VERSUS THE STATE (2017 SCMR 144)". Besides, I could lay my hand in case law cited as "SUHBAT KHAN Versus THE STATE (2017 Y L R 775) [Federal Shariat Court]"

More-so, the evidence of PW-3 witness namely Beejo, PW-04 Mashir namely Mohan, PW-05 Lodging Officer ASI Lakhmir, PW-06 Mashir of arrest namely PC Arbab and PW-08 Tapedar namely Arshad are general in nature, therefore, their evidence are not necessary to discuss here in detail. However, it is matter of record that their evidence is also not up to mark nor consistent. Perusing of evidence of said witnesses reveal that the police party has failed to produce roznamcha entry before the Court, on which, they left the PS for patrolling and during such patrolling, the apprehended the accused persons. Besides, said police party has also failed to join a private person of locality as mashir of memo of arrest. Another important aspect of the case the police party did not recover any crime weapon from the possession of the accused.

Not only this, the investigation of this case was also conducted in hasty and mechanical manner. It is admitted fact that neither I.O. of the case has recorded the statement of private person of the locality to find out the truth nor recorded the statement of persons, who were attended the marriage ceremony. The Investigating Officer has also failed to join a private person of the locality as mashir of Memo of place of incident. Thus, everyone can see that how investigation was conducted in heinous offence.

Furthermore, the evidence of PW-07 Medical Officer namely Dr. Abdul Ghani as Ex. 13 is of no avail to the prosecution as the medical evidence is not the substitute of direct evidence. It is only a source of corroboration in respect of nature and seat of injury, kind of weapon used, duration of injury. It might confirm ocular account to limited extent but could not establish the identity of accused or connect him with the commission of offence. My view finds support from the authority reported in 2006 SCMR 1786. Besides, it is matter of record that per contents of FIR and evidence of PWs, the deceased had received injury at left side of the face while Post Mortem Report of dated 30.04.2014 reveals the said injury was at right side of the face. More-so, PW Premo has stated in his evidence that due to dragging, the deceased had abrasion on other part of body, however, Medical Report is completely silent on this point. Thus, it

proves that the medical evidence is also not supportive for prosecution.

Another important aspect of the case is that the deceased Ramoorhi was died in the house of her husband, however, no eye witness is of the incident. Both the accused have stated in their statements recorded u/s 342 Cr.P.C that the deceased Ramoohri was died due to falling down of ceiling fan on her and they have falsely been implicated in this case by the complainant. It is to be noted that the sketch of place of incident is showing that one fan was lying at the distance of two and half feet from the place where the dead body of Shrimati Ramoori was lying. It is a murder case but both the Investigating Officers have not collected any material evidence against the accused persons to prove that they have committed the murder of Shrimati Ramoori. The SIP Mukhtiar Ahmed has admitted in his cross-examination that he has not recorded the statement of any private person from the house where the marriage ceremony was going on. Surprisingly, he has not visited the house where the marriage ceremony was going on and he admitted that there is long distance in between the house of accused persons and the house where the marriage ceremony was going on. He further admitted that he has not recorded the statement of any private person of the locality where the house of accused persons was situated. It may be true that it has been held by Honourable Supreme Court in the cases of Arshad Mehmood v. The State (2005 SCMR 1524) and Saeed Ahmed v. The State (2015 SCMR 710) that in such cases some part of the onus lies on the accused person to explain as to how and in which circumstances the accused person's wife had died an unnatural death inside the confines of the matrimonial home but at the same time it has also been clarified by the Honourable Supreme Court in the case of Abdul Majeed v. The State (2011 SCMR 941) that where the prosecution completely fails to discharge its initial onus there no part of the onus shifts to the accused person at all. My views are fortified from the case law cited as "ARSHAD KHAN Versus THE STATE (2017 S C M R 564)".

Thus, it reveals that none of the PWs have seen the accused persons while committing the alleged offence. The Investigating Officers have also failed to show the role of accused persons in the incident. Moreover, all the PWs in their respective evidence failed to describe the role of accused persons. Thus, the crux of above discussion is that the incident was un-witnessed, therefore, it needed very strong and consistent circumstantial evidence to prove the guilt against the accused persons, which element is lacking in this case. Therefore, in such situation and by relying upon the case law cited as "Mohabbat versus The State, reported as (1990 PCr.LJ 73)" and "SUHBAT KHAN Versus THE STATE (2017 YLR 775) [Federal Shariat Court]" I am of the considered view that prosecution has failed to prove the charge against the accused beyond shadow of reasonable doubt. Keeping the above facts and circumstances, I am also of the view that the prosecution case is stuffed with material contradictions/discrepancies. The requirement of a criminal case is that prosecution is duty bound to prove its case beyond any reasonable doubt. As per dictum of the Honourable Apex Court, there is no need of so many doubts

in the prosecution case, rather any reasonable doubt arising out of the prosecution evidence, pricking the judicial mind is sufficient for acquittal of the accused. Reliance can be placed on case titled as "TARIQ PERVEZ VERSUS THE STATE" reported in 1995 S C M R 1345 and case titled as "MUHAMMAD AKRAM VERSUS THE STATE" report in 2009 SCMR 230. In the above judgments, it has been observed by the Honourable Apex Court that it is an axiomatic principle of law that in case of doubt, the benefit thereof must occurred in favour of the accused as a matter of right and not of grace, which principles are in consonance with a famous maxim that "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". The case law cited by the advocate for complainant are distinguished from the facts of present case.

The cumulative effect of the above discussion is that the prosecution has miserably failed to prove the case against the accused persons and the prosecution story in the instant case is full of doubts from beginning to end and conviction cannot be based on such doubtful story, therefore, the point under discussion stand decided as "Doubtful".

POINT NO. 3

In view of my findings on points Nos. 1 & 2, it is established that the prosecution has failed to establish its case against the present accused beyond any shadow of doubt, therefore, the present accused namely Kaniyo and Roshan both sons of Lakhoo are extended benefit of doubt and are acquitted from this case U/S 265-H(i) Cr.P.C. The accused are produced by District Jail, Sanghar and remanded back with release order to be released forthwith if no more required in any case/crime."

10. Learned counsel for the appellant contended that the learned trial court had not appreciated the evidence available on record in its true perspective and recorded the judgment without applying its judicial mind. He further contended that there were minor contradictions in the evidence of prosecution witnesses, which could have been ignored. He lastly contended that the judgment of the trial court is perverse and is not sustainable under the law, same may be set aside. In support of his contentions learned counsel has placed reliance on the cases reported as Farmanullah v. Qadeem Khan and another (2001 SCMR 1474), Ghazanfar Abbas and others v. The State and others (2002 SCMR

1403), Binyamin alias Khari and others v . The State (2007 SCMR 778) and Muhammad Akhtar v. The State (2007 SCMR 876).

11. On the other hand, learned counsel for respondents No.1 and 2 as well as learned A.P.G. supported the impugned judgment and argued that the prosecution had failed to establish its case against the respondents / accused and the trial court has rightly acquitted the respondents / accused.

12. We have carefully perused the prosecution evidence and impugned judgment passed by the trial court dated 28.04.2017. 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. 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):-

> **“It is also settled position of law that the appreciation of evidence in the case of appeal against conviction and appeal against acquittal are entirely different. Additional P.G has rightly relied upon the case of Muhammad Usman and 2 others v. The State 1992 SCMR 489, the principles of considering the acquittal appeal have been laid down by honourable Supreme Court as follows:**
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> > **It is true that the High Court was considering an acquittal appeal and, therefore, the principles**

which require consideration to decide such appeal were to be kept in mind. In this regard several authorities have been referred in the impugned judgment to explain the principles for deciding an acquittal appeal. In the impugned judgment reference has been made to Niaz v. The State PLD 1960 SC (Pak.) 387, which was reconsidered and explained in Nazir and others v. The State PLD 1962 SC 269. Reference was also made to Ghulam Sikandar and another v. Mamaraz Khan and others PLD 1985 SC 11 and Khan and 6 others v. The Crown 1971 SCMR 264. The learned counsel has referred to a recent judgment of this Court in Yar Mohammad and 3 others v. The State in Criminal Appeal No.9-K of 1989, decided on 2nd July, 1991, in which besides referring to the cases of Niaz and Nazir reference has been made to Shoe Swarup v. King-Emperor AIR 1934 Privy Council 227 (1), Ahmed v. The Crown PLD 1951 Federal Court 107, Abdul Majid v. Superintendent of Legal Affairs, Government of Pakistan PLD 1964 SC 426, Ghulam Mohammad v. Mohammad Sharif and another PLD 1969 SC 398, Faizullah Khan v. The State 1972 SCMR 672, Khalid Sahgal v. The State PLD 1962 SC 495, Gul Nawaz v. The State 1968 SCMR 1182, Qazi Rehman Gul v. The State 1970 SCMR 755, Abdul Rasheed v. The State 1971 SCMR 521, Billu alias Inayatullah v. The State PLD 1979 SC 956. The principles of considering the acquittal appeal have been stated in Ghulam Sikandar's case which are as follows:-

"However, notwithstanding the diversity of facts and circumstances of each case, amongst others, some of the important and consistently followed principles can be clearly visualised from the cited and other cases-law on the question of setting aside an acquittal by this Court. They are as follows:-

(1) In an appeal against acquittal the Supreme Court would not on principle ordinarily interfere and instead would give due weight and consideration to the findings of Court acquitting, the accused. This approach is slightly different than that in an appeal against conviction when leave is granted only for the reappraisement of evidence which then is undertaken so as to see that benefit of every reasonable doubt should be extended to the accused. This difference of approach is mainly conditioned by the fact that the acquittal carries with it the two well accepted presumptions: One initial, that till found guilty, the accused is innocent; and two that again after the trial a Court below confirmed the assumption of innocence.

(2) The acquittal will not carry the second presumption and will also thus lose the first one if on points having conclusive effect on the end result the Court below: (a) disregarded material evidence; (b) misread such evidence; (c) received such evidence illegally.

(3) In either case the well-known principles of reappraisement of evidence will have to be kept in view when examining the strength of the views expressed by the Court below. They will not be brushed aside lightly on mere assumptions keeping always in view that a departure from the normal principle must be necessitated by obligatory observances of some higher principle as noted above and, for no other reason.

(4) The Court would not interfere with acquittal merely because on reappraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If, however, the conclusion reached by that Court was such that no reasonable person would conceivably reach the same and was impossible then this Court would interfere in exceptional cases on overwhelming proof resulting in conclusion and irresistible conclusion; and that too with a view only to avoid grave miscarriage of justice and for no other purpose. The important test visualized in these cases, in this behalf was that the finding sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous."

13. In another case of State/Government of Sindh through Advocate General Sindh, Karachi v. Sobharo (1993 SCMR 585), it is held as follows.

"14. We are fully satisfied with appraisal of evidence done by the trial Court and we are of the view that while evaluating the evidence, difference is to be maintained in appeal from conviction and acquittal and in the latter case interference is to be made only when there is gross misreading of evidence resulting in miscarriage of justice. Reference can be made to the case of Yar Muhammad and others v. The State (1992 SCMR 96). In consequence this appeal has no merits and is dismissed."

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 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 case of The State and others v. Abdul Khaliq and others (PLD 2011 Supreme Court 554). 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:**
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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).**
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> **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."

15. 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 is without merits and the same is dismissed.

JUDGE

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