

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

Cr.Acquittal.Appeal.No.D- 24 of 2013

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

Date of hearing: 05.04.2018.  
Date of judgment: 09.04.2018.

Mr. Manzoor Hussain Subhopoto, Advocate for appellant.  
Syed Meeral Shah, A.P.G. for the State.  
Respondents are present.

**J U D G M E N T**

***NAIMATULLAH PHULPOTO, J:*** Respondents/accused Shah Bux and Zulfiqar Ali were tried by learned Sessions Judge, Tando Allahyar in Sessions Case No.275 of 2012 for offences u/s 302/34 PPC. By judgment dated 31.07.2013, the respondents/accused were acquitted of the charge by extending them benefit of doubt. Hence, instant Criminal Acquittal Appeal was filed by complainant Niaz Hussain Manganhar.

2. Brief facts of the prosecution case as disclosed in the FIR are that respondent / accused Shah Bux and Zulfiqar Ali committed Qatl-e-Amd of Deedar Hussain with rope on 07.01.2008 at about 0830 hours at the road leading from Talpur stop to Tando Soomro over the family dispute. FIR of the incident was lodged at P.S. Nasarpur on 08.01.2008 vide crime No. 03/2008 u/s 302/34 PPC.

3. After usual investigation, challan was submitted against the respondents/accused under the above referred Sections.
4. Trial court framed charge against the respondents/accused, to which they pleaded not guilty and claimed to be tried.
5. At the trial, prosecution examined in as much as 08 PWs who produced the relevant documents/reports thereafter the 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 on assessment of evidence, by judgment dated 31.07.2013 acquitted the accused hence this appeal is filed.
8. Mr. Manzoor Hussain Subhotpoto, learned counsel for appellant mainly contended that finding of the acquittal is not sacrosanct and reasons given by the trial court are speculative. It is further submitted that the finding of acquittal is the result of misreading of evidence which resulted miscarriage of justice. Counsel for the appellant / complainant has read over the evidence of prosecution witnesses and submitted that acquittal of respondents is perverse and is not sustainable in law. In support of his contentions, learned counsel has placed reliance on the cases reported as State through Advocate-General, Balochistan v. Abdul Sattar and 2 others (2000 MLD 605), Ashiq and others v. The State and others (1996 MLD 886) and Mst. Naseem Jan v. Khawaj Muhammad (PLD 2004 Peshawar 134).

9. Respondents/accused have been heard by us. They submit that they were falsely implicated in this case due to matrimonial dispute.

10. Syed Meeral Shah, learned A.P.G. supported the acquittal judgment and argued that the trial court rightly appreciated the evidence.

11. In order to appreciate the contentions of the counsel for the parties, the relevant portion of the judgment and the reasons of acquittal recorded by the trial court are reproduced as under:-

**“POINT No.2**

*The entire prosecution case carries allegation, against accused Shah Bux and Zulfiqar Ali, to have committed murder of deceased Deedar Hussain on 07.01.2008 at about 0830 hours at the road leading from Talpur Stand to Tando Soomro. They alleged to have strangulated the deceased through his neck with a rope. The prosecution tried to bring ocular, circumstantial and corroborative nature of evidence. All the above aspects are discussed herein blow separately.*

**OCULAR TESTIMONY**

*The complainant Niaz Hussain himself is not eye witness of the incident but the same was witnessed by PW Talib Hussain and Sharafat Ali, who claimed to have seen the accused persons while committing offence. The evidence of complainant Niaz Hussain thus false within the ambit of hearsay evidence.*

*PW Talib Hussain and Sharafat Ali were examined as PW-2 & 3 respectively. Both the witnesses tried to bring on record evidence against the accused Shah Bux and Zulfiqar Ali to have committed murder of deceased Deedar Hussain. So far as their evidence regarding the manners in which incident said to have taken place is concerned, they tried to bring more or less the same story corroborating each other's version. However, their claim to have seen the accused persons while strangulating the deceased does not transpires confidence at all. According to PW Talib Hussain on 07.1.2008, he alongwith PW Sharafat Ali was coming on foots from village Tando Soomro, when they reached at Halepota tube well they noticed a white colour car, which stopped near the Katchi Patri. He further*

*deposed that from the said car, two persons alighted and they identified them as accused Shah Bux and Zulifqar. According to him, they also took out Deedar Hussain from the Car. All of sudden they heard the voices and they proceeded ahead and noticed that both the accused were strangulating deceased Deedar Hussain with a rope through his neck. He further deposed that they tried to proceed towards them but the accused asked them not to come near to them. He further deposed that after some time, both the accused boarded in the car and went away. Similar type of evidence was given by PW Sharafat Ali.*

#### **STRANGE CONDUCT OF THE EYE WITNESSES.**

*It is pertinent to mention here that PW Talib Hussain and Sharafat Ali admitted during the course of their evidence that they did not see any weapons in the hands of accused persons. PW Talib Hussain claimed to have witnessed the incident from the distance of 200 passes. He also admitted that accused person remained for about 20/25 minutes at the place of incident. Now the question arises that when two young persons aged about 35 and 21 years with good health, built and height were seeing two persons while committing a heinous offence of murder, who were strangulating the deceased with a rope then what restrained them not to take any effort to rescue deceased, who was not stranger to them.*

*It is pertinent to mention here that deceased Deedar Hussain was the paternal cousin so also brother in law of PW Talib Hussain, with whose sister he had contracted first marriage and who was not divorce by him. The relationship of PW Sharafat Ali was also brought on record. During the course of his evidence, he admitted that complainant was his cousin. It is pertinent to mention here that the deceased Deedar Hussain was real brother of complainant Niaz Hussain.*

*The strange conduct of both PWs created several doubts upon credibility of their evidence. In the normal course, one cannot restrain himself from taking any action against the culprits, who were empty handed. For the sake of arguments if it is believe that due to grate fear, witnesses did not try to save the deceased, atleast they could have raised cries, could have thrown stones upon the accused persons. According to both witnesses, they remained silent, witnessing the incident, which remained continue for 20/25 minutes. Thus strange conduct of the witnesses does not attract to a prudent mind.*

#### **AVAILABLITIY OF EYE WITNESSES AT THE PLACE OF INCIDENT.**

**At one hand conduct of the eye witnesses have created several doubts about happening of such incident as narrated by them and appeared in the FIR, on the other hand they could not account satisfactorily for their presence at the place of incident. It is pertinent to mention that both the witnesses admitted during the course of their cross examination that they were not resident of village Tando Soomro as they were residing at village Bao Khan Pathan, Taluka and District Matiari, the native place of complainant, which was at the distance of about 22 KM from the place of incident. While answering to a question put to them during the course of their cross examination, the witnesses deposed that on 06.01.2008 they had come to village Tando Soomro to a person, with whom they had business terms and they purchased four goats but it was late evening, therefore, they stayed in village Tando Soomro and left in the next morning at about 0730 hours. They did not give the name of that person, to whom they had gone and purchased goats nor were they carrying goats with them as they claimed to have paid advance amount only. The prosecution did not examine that person to whom the eye witnesses had gone to purchase the goats. Though PW Talib Hussain had given the name of one Photo, with whom they had stayed a night but said Photo was not examined by the prosecution to establish that PW Talib Hussain and Sharafat Ali had stayed at night in his house and had left in the next morning viz on 07.01.2008.**

**LACK OF CORROBORATION.**

**At one hand the prosecution failed to produce supporting evidence on ocular account, lake of corroboration was also noticed. The eye witnesses claimed to have seen the accused persons while committing offences and within their sight accused left the place of incident and succeeded to escape away, the PWs did not leave the dead body and remained there till arrival of complainant and police. It means that dead body was not left un-attendant. Such fact however, does not find support from the memo of dead body which first of all does not say if anybody was present with dead body rather says that accused had thrown the dead body near the Tube Well of Halepota Stop at Link road leading to Talpur Stand to Tando Soomro. Memo of dead body at (Ex.08) says that dead body was lying in thrown away condition. Besides memo of dead body, memo of place of incident was also prepared by the police on 09.08.2008 and same was produced at Exh.10 by PW Sharafat Ali. In such memo, it is mentioned that according to complainant, dead body of his brother Deedar Hussain had been thrown away at the place of incident after committing his murder. The inquest report was also prepared and produced in the court at Exh.4. In column NO.6 which**

*refers at to when, where and in what condition the police saw the dead body, it is mentioned that on 07.01.2008 at about 1315 hours at the road leading from Talpur Stand near Tube Well of Halepota at Katchi path in the sugarcane crop, a dead body was lying in thrown away condition. In column No.5, which deals about the person, who had informed the police about dead body, it is mentioned that brother of deceased Niaz Hussain had seen the dead body and disclosed that the accused had strangled and murdered his brother and thrown away his dead body.*

**EVIDENCE OF COURT WITNESSES.**

*As quoted above, besides the evidence of prosecution witnesses, two Court Witnesses were also examined by the court. Now I discuss their evidence. CW-1 was correspondent of daily Kawish namely Rasool Bux Memon. According to him he had been working as journalist with daily Kawish for about last 12 years and on 08.01.2008, he had reported the matter in respect of murder of deceased Deedar Hussain. He produced original newspaper containing such news at Exh.35. According to CW Rasool Bux, on 07.01.2008, he had come to know that a dead body had been brought by the police at RHC, Nasarpur, he went there and inquired from the police to follow the news to which he was told that dead body of deceased was found in the sugarcane crop at Tando Soomro Link road and such information was given to the police by the grazers, therefore, the police had gone there, recovered the dead body and brought in the hospital. he further disclosed that Doctor disclosed to him that deceased was murdered by strangulation, whereas complainant Niaz Hussain had disclosed that they had no enmity with any person and that somebody had made great injustice with them.*

*CW-2 WHC Meeral Khan was examined for the purpose of production of Roznamcha entries. He produced entry No.8 at Exh.37. It is pertinent to mention here that reference of that entry No.8 is also given in memo of dead body available on record at Exh.8, which says that police had reached at the place of incident vide entry No.8 dated 07.01.2008 of 1300 hours.*

*Now what such entry No.8 dated 07.01.2008 says. The same was kept in the Roznamcha at about 1300 hours, which says that "at that time, one Niaz Hussain s/o Khair Mohammad, by caste Manganhar, R/o village Bao Khan Pathan, Taluka and District Matiari had appeared at PS and disclosed that his brother Deedar Hussain, who was court employee had been murdered by some unknown person at some unknown place and his dead body had been left at link road Talpur Stand.*

**He requested for completing codel formalities in respect of dead body.”**

**If we see the evidence of complainant Niaz Hussain, it reflected that on 07.01.2008, he was informed about the culprits and the manner in which the murder was committed by the accused persons. If such statement is true, then who had restrained him to inform the police about the culprits. Why he had disclosed before the police that some unknown person had committed murder of his brother at some unknown place and had thrown away his dead body at link road Talpur Stand. It is well settled law that Roznamcha entries have grate value as the same do not tell lie.**

**Besides whatsoever is the evidence of both eye witnesses Talib Hussain and Sharafat Ali, the same does not get support from any other document rather it is disproved from the Roznamcha entry and newspaper report. The conduct of the eye witnesses discussed above, have also made entire evidence of eye witnesses highly doubtful. In such circumstances, I, have been left with no other option except to answer the above point as doubtful/not proved.**

### **POINT NO.3**

**On the basis of what has been discussed above and in the circumstances, where the prosecution has failed to establish its case beyond any shadow of doubt, I am of the opinion that no offence has been committed by the accused persons. I, therefore answer the above point accordingly.”**

12. We have carefully perused the prosecution evidence and impugned judgment passed by the trial court dated 31.07.2013. We have come to the conclusion that the prosecution failed to establish its case against the accused/respondents for the reasons that prosecution story was highly un-natural and unbelievable. Complainant Niaz Hussain was not the eye witness of incident. PWs Talib Hussain and Sharafat Ali were the chance witnesses. They failed to explain their presence at the time of incident at the relevant time. Even otherwise, conduct of these two witnesses was un-natural and unbelievable. If they would have seen the incident, there were no circumstances which could have prevented them for rescue of the deceased. PWs were related to the deceased.

Their evidence required independent corroboration but it was lacking in the prosecution case. Trial court had examined two court witnesses CW-1 Rasool Bux Memon was the correspondent of daily Kawish who deposed before the trial court that on 08.01.2008 he had reported the matter in daily 'Kawish' that the dead body of deceased was brought to the police station which was lying in the sugarcane crop. CW-2 WHC Meeral Khan had made such entry and produced before the trial court. It appears that the trial court for the well and sound reasons had rightly relied upon the evidence of said court witnesses and disbelieved prosecution evidence and came to the conclusion that the prosecution failed to prove the charge against the respondents/accused. We have no hesitation to hold that the prosecution has failed to prove its case against the respondents/accused. Finding of acquittal recorded by the trial court in favour of respondents/accused is neither perverse nor ridiculous. There were also several circumstances in the case which had created reasonable doubt in the prosecution case. Therefore, doubt was extended rightly in favour of the accused.

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 Ghaus 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:**

**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 reappraisal 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 reappraisal 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 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). 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.”**

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

JUDGE