

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

Cr.Acquittal.Appeal.No.D- 30 of 2001

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

Date of hearing: 11.04.2018.
Date of judgment: 11.04.2018.

Syed Tarique Ahmed Shah, Advocate for appellant.
Syed Madad Ali Shah, Advocate for respondent.
Mr. Shahzado Saleem Nahiyoon, D.P.G. for the State.

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Respondent / accused Roshan Ali alongwith co-accused Liaquat Ali and Abdul Razzak was tried by learned Illrd Additional Sessions Judge, Dadu in Sessions Case No.48 of 1988 for offences u/s 302, 114, 34 PPC. After full-dressed trial, vide judgment dated 27.02.2001 Liaquat Ali and Abdul Razak were convicted u/s 304 PPC and sentenced to 14 years R.I each and to pay the fine of Rs.25,000/- each, if recovered to be paid to the legal heirs of deceased Khair Muhammad. Respondent / accused Roshan Ali was acquitted. It may be mentioned here that Liaquat Ali and Abdul Razak filed Criminal Appeal No.D-38/2001 against their conviction and sentence recorded by the trial court. Complainant Mst. Hajran Khatoon filed criminal acquittal appeal No.D-30/2001 against the acquittal in favour of accused Roshan

Ali. During pendency of the appeal against conviction, Liaquat Ali expired and the proceedings against him were abated vide order dated 25.09.2013 and the appeal filed by Abdul Razak was dismissed as not pressed.

2. Brief facts of the prosecution case as unfolded in the FIR are that on 05.03.1988 at 11-30 a.m, accused Liaquat Ali and Abdul Razak gave Danda blows to the deceased Khair Muhammad and the allegation against accused/respondent Roshan Ali was that he caught hold the deceased Khair Muhammad and facilitated co-accused for committing the murder. FIR of the incident was recorded vide Crime No.11 of 1988 for the offences u/s 302, 114, 34 PPC at P.S. Rukkan.

3. After usual investigation, challan was submitted against the accused under the above referred sections.

4. Trial court framed charge against the accused, to which they pleaded not guilty and claimed to be tried.

5. In order to prove its case prosecution examined in as much as 10 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 the evidence vide judgment dated 27.02.2001 convicted co-accused Liaquat Ali and Abdul Razak u/s 304 PPC and sentenced 14 years R.I each and to pay the fine of Rs.25,000/- each, if recovered to be paid to the legal heirs of deceased Khair Muhammad. However,

respondent/accused Roshan Ali was extended benefit of doubt and was acquitted of the charge as mentioned above. Hence this appeal.

8. We have heard Syed Tarique Ahmed Shah, learned advocate for the appellant, Syed Madad Ali Shah, learned advocate for the respondent and Mr. Shahzad Saleem Nahiyoan, learned D.P.G. for the State and scanned the entire evidence available on record.

9. Syed Tarique Ahmed Shah, learned advocate for the appellant/complainant has mainly contended that the trial court believed the prosecution evidence and convicted the co-accused Liaquat Ali and Abdul Razak but trial court committed error while extending the benefit of doubt to the respondent/accused Roshan Ali. Learned advocate for the appellant further contended that co-accused inflicted lathi blows to the deceased as accused/respondent Roshan Ali caught hold the deceased at the time of incident and shared the common intention with the principal accused in the commission of offence. It is further contended that a common intention could be developed at the spur of moment. In support of his contentions, reliance has been placed on the cases reported as Rasool Bakhsh v. The State (PLD 1970 Supreme Court 316) and Khair Muhammad alias Khairoo v. The State (PLD 1975 Supreme Court 351).

10. On the other hand, Syed Madad Ali Shah, learned advocate for the respondent/accused Roshan Ali argued that part assigned to respondent/accused Roshan Ali was that he held the deceased in his Japha when the co-accused inflicted him lathi blows. It is submitted that Roshan Ali did not receive injury in the incident. The part assigned to him has not been established by cogent evidence. It is also argued that the deceased was closely related to the eye witnesses but no one tried

to chase or apprehend the accused. Such conduct of the complainant party was un-natural and presence of the eye witnesses at the spot could not be believed. It is also argued that principle for appreciation of evidence in the appeal against acquittal and appeal against conviction are entirely different. Lastly, it is submitted that after acquittal presumption of innocence is doubled. In support of his contentions, learned counsel has placed reliance on the cases reported as Shahib Abbas v. Shahbaz and others (2009 SCMR 237), Pathan v. The State (2015 SCMR 315), Muhammad Haroon Rashid and 2 others v. The State (1975 P.Cr.L.J 264) and Mushtaq Ali and 2 others v. The State (1999 MLD 506).

11. Mr. Shahzado Saleem Nahiyoan, learned D.P.G. argued that the co-accused were convicted by the trial court and the acquittal of the respondent on the same set of evidence by the trial court was not justified. He has submitted that judgment of the trial court to the extent of respondent/accused was perverse.

12. Trial court has recorded acquittal in favour of respondent/accused mainly for the following reasons:-

“The prosecution witnesses have corroborated each other on the point that accused Liaquat Ali and Abdul Razak had caused the death of deceased Khair Muhammad by causing him ‘Danda’ blows. The incriminating articles viz. Dandas were recovered by the Investigation Officer and have been proved through evidence during trial. The Medical Officer has certified that both the injuries were sufficient to cause death. The deceased was referred to hospital and died later on. No question was put to the Medical Officer as to whether the death of deceased Khair Muhammad was not a result of injuries caused to him by ‘Dandas’. The death of deceased was therefore result of ‘Danda’ blows inflicted by accused Liaquat Ali and Abdul Razak. The prosecution has failed to prove beyond reasonable shadow of doubt that accused Roshan Ali had grappled with the deceased in order to facilitate the co-accused for causing his death. The prosecution has

itself admitted rather it is the case of prosecution that the incident was a result of sudden flare-up. It is no where the case of prosecution that the death of deceased Khair Muhammad was previously arranged or a result of any previous enmity. No motive except sudden flare-up has been brought on record by the prosecution which caused the death of deceased Khair Muhammad. The case of prosecution therefore does not fall u/s 302 P.P.C but the same falls u/s 304 P.P.C, as no doubt circumstances show that the fight was sudden and the death was caused without any previous intention but the causing of 'Dandas' on the vital part of the body of the deceased Khair Muhammad by accused Liaquat Ali and Abdul Razak as well in knowledge of these accused persons that the injuries might cause death existed in the circumstances when the injuries were being inflicted on the vital part of the body of deceased.

Accused Liaquat Ali and Abdul Razzak are therefore found guilty for having committed offence punishable u/s 304 PPC and I sentence them to suffer RI for 14 years each and to pay fine of Rs.25000/- (Twenty five thousand) each, if recovered to be paid to the legal heirs of the deceased. Accused Liaquat Ali and Abdul Razzak are present on bail. Their bail bond are cancelled and sureties discharged. They are taken into custody and remanded to Central Prison Hyderabad through District Jail, Dadu under a 'Pacca' warrant to carry out the aforesaid sentence. The accused shall be given benefit u/s 382-B Cr.P.C.

Co-accused Roshan Ali is given benefit of doubt and is acquitted from the charge. He is present on bail, his bail bond is cancelled and surety discharged."

13. We have carefully heard the learned counsel for the parties and perused the evidence minutely.

14. As regards to the contention of Syed Tarique Ahmed Shah, learned advocate for the appellant with regard the conviction of co-accused Liaquat Ali and Abdul Razak is concerned, case/role of respondent/accused Roshan Ali was entirely different. The role attributed to the respondent/accused Roshan was that he had held the deceased in his Japha when the co-accused inflicted lathi blows to the deceased. If it is believed for the argument that the respondent/accused

held the deceased in his Japha and the co-accused caused him lathi blows then certainly the blood might have been found on the clothes of the respondent/accused but during investigation no blood stained clothes of the respondent/accused were recovered. Even no injury was found on the person of the deceased at the time of incident. The conduct of the prosecution witnesses who claimed to be the eye witnesses was also un-natural. All the prosecution witnesses were closely related to the deceased but no one tried to chase or apprehend any of the accused at the time of incident. No words were exchanged between the principal accused and the respondent/accused at the time of attack. As such provisions of Section 34 PPC were not attracted. Section 34 PPC declares a rule of criminal liability and does not create distinct offence. In order to determine common intention regard must be had not only to a particular act but all the acts that were done. Rightly reliance has been placed upon the case of Mushtaque Ali (supra).

15. 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).

16. It is settled law that a 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).

17. For the above stated reasons finding of acquittal recorded by the trial court is neither artificial nor ridiculous. In our considered view there is no merit in the appeal against acquittal. Acquittal recorded by trial Court in favour of respondent/accused is based upon sound reasons, which requires no interference. As such, the appeal against acquittal being without merits was dismissed by our short order dated 11.04.2018 and these are the reasons whereof.

JUDGE

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