

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

Cr. Acquittal.Appeal.No.D- 44 of 2004

Present:-

Mr. Justice Naimatullah Phulpoto.

Mr. Justice Zulfiqar Ahmed Khan.

Date of hearing: 26.04.2017.

Date of judgment: 26.04.2017.

None present for appellant.

Mr. Hidayatullah Abbasi, Advocate for respondents
alongwith respondents Muhammad Nawaz, Vikio, Ahmed
and Shahbaz.

Syed Meeral Shah, D.P.G. for the State.

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Appellant / complainant Allah Jurio s/o Bacho has filed the instant appeal against acquittal recorded by the learned Ist Additional Sessions Judge, Badin in Sessions Case No.93/1996. By Judgment dated 06.02.2004, accused / respondents 1. Muneer Ahmed s/o Muhammad Nawaz, 2. Muhammad Nawaz s/o Lal Khan, 3. Muhammad Aslam s/o Maqti, 4. Allah Jurio s/o Natho, 5. Vikio s/o Allah Jurio, 6. Ahmed s/o Natho and 7. Shahbaz s/o Lal Khan were acquitted by the trial court.

2. After filing of the appeal against acquittal, notices were issued against the respondents. On the last date of hearing it was pointed out that Mr. Zafar Ahmed Rajput counsel for the appellant has been elevated to the Bench. Notice was issued to the appellant / complainant Allah Jurio s/o Bachoo. SHO PS Shaheed Fazil Rahoo has returned the notice with endorsement that the

complainant has expired and he has recorded the statements of the legal heirs of the complainant namely Tanveer Ahmed and Qadeer Ahmed but today the legal heirs of the appellant have also not appeared before this court.

3. Mr. Hidayatullah Abbasi, learned advocate for the respondents before arguing the appeal has pointed out that respondent No.1 Muneer Ahmed s/o Muhammad Nawaz and respondent No.4 Allah Jurio s/o Natho have also expired.

4. Trial court acquitted the accused by judgment dated 06.02.2014. Since the appeal is old one, there is no justification to adjourn it any more.

5. With the assistance of learned D.P.G. we have heard the appeal. Learned D.P.G. after going through the evidence and judgment of the trial court argued that the trial court had found the conflict between the ocular and medical evidence, and that there were improvements in the evidence of the prosecution witnesses; recovery was disbelieved and for these valid and sound reasons, the accused were acquitted by the trial court.

6. Mr. Hidayatullah Abbasi, counsel for the respondents argued that the trial court rightly appreciated the evidence in accordance with the settled principles of law and for the sound reasons recorded acquittal in favour of the accused. Mr. Abbasi further submits that it is matter of record that there was conflict between the ocular and medical evidence and the prosecution evidence was full of exaggeration and improvements and the recovery of the incriminating weapon was also disbelieved by the trial court and the report of the Ballistic Expert was also negative, motive was also not proved. Lastly, it is contended that the scope of appeal against acquittal is limited and narrow. In support of his contentions, learned counsel has placed reliance on the case of

The State v. Abdul Khaliq and others (PLD 2011 Supreme Court 554), in which the Honourable Supreme Court has held as under:-

“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.”

7. For the above stated reasons, there is no merit in the appeal against acquittal. Finding of the innocence recorded against the respondents / accused by the trial Court are based upon sound reasons which require no interference at all. As such, the appeal against acquittal is without merit and the same is dismissed.

JUDGE

JUDGE

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