

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

Cr. Acquittal. Appeal.No.D- 193 of 1995

Present:-

Mr. Justice Naimatullah Phulpoto.

Mr. Justice Muhammad Karim Khan Agha.

Date of hearing: 25.05.2017.

Date of judgment: 25.05.2017.

The State: Through Mr. Amjad Ali Sahito, Special Prosecutor ANF Hyderabad, for the State.

Respondent: Shahbaz Khan
(In person).

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Respondent Shahbaz Khan was tried by the Judicial Magistrate, Kotri in Criminal Case No. 81/1994 for offences u/s 3/4 of Prohibition of (Enforcement of Hadd) Order, 1979. Trial court after full dressed trial by judgment dated 8th day of January 1995 acquitted the respondent / accused. State through Advocate General Sindh filed the instant criminal acquittal appeal No.D-193/1995 against the judgment dated 08.01.1995 passed by the trial court.

2. Brief facts of the prosecution case as reflected from the FIR are that Khaliduddin who is Investigating Officer and posted as Field Investigating Officer of Narcotics Control Board Police Station

at Hyderabad, left Police Station along with his subordinate staff for patrolling towards Kotri. When they reached at Railway Crossing Kotri, he received spy information that one Anwar Khan Pathan (absconding accused) deals in "charas", which is lying at his house situated at Sikanderabad Kotri. On this information the I/O reached at the house of absconding accused Anwar Khan and knocked the door, from where one boy (Present accused) came out who raised cries and in the mean while another person escaped by climbing over the wall of the house. The raiding party arrested that boy (accused Shahbaz Khan) and also secured 200 Nylon bags, containing 4000/- Kilograms of "charas" from the room and Varandah of the house. Hence the case was registered and after investigation the accused Shahbaz Khan was challaned as mentioned above.

3. We have carefully heard learned Counsel for the parties, scanned the entire prosecution evidence and perused the impugned Judgment.

4. Syed Meeral Shah appearing on behalf of the State argued that the prosecution produced sufficient evidence against the respondents/accused to connect him in the commission of offence but the trial court did not appreciate the evidence according to settled principle of law. Learned A.P.G. referred to the evidence of complainant and other prosecution witnesses in support of appeal.

5. Mr. _____, Advocate appeared on behalf of the respondent argued that the trial court for the sound reasons while appreciating the evidence recorded acquitted in favour of the accused. He further argued that scope of appeal against acquittal is

narrow and the judgment of the trial court is based upon the proper appreciation of the evidence and requires no interference.

6. After hearing the learned counsel for the parties, we have carefully perused the judgment dated 08.01.1995 passed by the trial court. The relevant paragraph is reproduced as under:-

I am of the view that prosecution has not proved the view that prosecution has not proved the case against present accused Shahbaz Khan without reasonable doubts on the following reasons:-

1. All the three P.Ws have stated that they received spy information regarding accused Anwar Khan alias Sardar Khan (Now absconding) that he was dealing in Charas but they caught the boy (Present accused) who opened the door of the house from where recovery was effected. According to prosecution the main accused Anwar Khan alias Sardar Khan made his escape good by climbing over the wall of the raided house. The I/O further stated that accused Shahbaz Khan disclosed before him that the recovered Charas belonged to his father Anwar Khan who escaped by climbing over the wall but I/O failed to get the statement of accused recorded before any Magistrate. And the confession before police officer is inadmissible under article 38 of Qanun-e-Shahadat. Except the above evidence there is no other evidence against him (accused Shahbaz) that recovered Charas was recovered from his exclusive possession or any other evidence that accused Shahbaz Khan kept the Charas for selling the same.

The I/O in his deposition (Ex.No.6) has stated that Charas was recovered from the house of accused Anwar Khan but he has not clarified whether in whose exclusive possession the Charas was lying? Hence the prosecution has miserably failed to ascertain the exclusive possession of the alleged recovered property viz Charas because the burden of proof lies upon prosecution. There is no evidence on record that the property was recovered from the exclusive possession of accused Shahbaz Khan.

Logically all family members cannot be held responsible for the act of one individual.

2. The both mashirs in their depositions (Ex.No.7) and (Ex.No.8) have also not deposed upon the point of exclusive possession of Charas by present accused Shahbaz Khan.
3. The provisions of Section 103 Cr.P.C. have not been observed by the I/O which is 'mandatory' as the place searched was a dwelling house. No respectable persons of the locality were taken as mashirs which makes the prosecution case doubtful.
4. The complainant Khaliduddin who is also I/O stated in his Examination in Chief (Ex.No.6) that he received spy information at Railway Crossing Kotri while in his Cross Examination, he replied that he had received spy information on telephone at his office. This is quite material contradiction which cannot be overlooked and makes the prosecution story doubtful.

Under the circumstances I giving the benefit of doubt, acquit the accused Shahbaz Khan in this case under section 245(ii) Cr.P.C. He is on bail. His bail bond stands discharged. The case against absconding accused is kept on dormant file.”

7. In our considered view, trial court on the basis of material contradictions in the prosecution evidence and other defects rightly acquitted the accused. The judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculating and ridiculous as held by the Honourable Supreme Court in the case of The State v. Abdul Khaliq and others (PLD 2011 Supreme Court 554). Moreover, 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 above referred judgment. The relevant para of the same 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.”

8. 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 merits and the same is dismissed.

JUDGE

JUDGE

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