

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. ATA Acquittal Appeal No.D-83 of 2003

PRESENT

*Mr. Justice Naimatullah Phulpoto
Mr. Justice Muhammad Karim Khan Agha.*

Date of Hearing: 17.05.2017

Date of Judgment: 29.05.2017

Respondent: None present

*The State: Through Syed Meeral Shah Bukhari,
Deputy Prosecutor General, Sidnh*

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Respondent/accused Mohammad Dayyar was tried by the learned Judge, Anti-Terrorism Court, Hyderabad, in Special Case No.01 of 2003 arising out of Crime No.107 of 2000 registered at P.S Jamshoro for offence under Section 17(3) H.O & 6 of Anti-Terrorism Act, 1997. By judgment dated 14.04.2003, the respondent/accused was acquitted of the charge.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 08.11.2000 at 0830 a Toyota Corolla Car bearing No.U-5859 Model 1986 was hired by respondent Mohammad Dayyar and convict Muhammad Arif from the complainant namely Maqbool Ahmed for the purpose of going to Army Firing Range Butt behind Thermal Power House, Jamshoro. It is alleged that accused snatched the aforesaid car from the possession of complainant Maqbool Ahmed by show of

weapon. Thereafter, the complainant lodged FIR No.107 of 2000 at P.S Jamshoro for offence under Section 17(3) H.O. Thereafter, the Police of P.S Sehwan on receiving a wireless message from P.S Jamshoro arranged nakabandi at the bridge of Lal Bagh, Indus Highway, Sehwan. During nakabandi at about 1045 hours, the police party of P.S Sehwan recovered the said car from the accused and registered a case against respondent/accused Mohammad Dayyar and Muhammad Arif for offence under Section 412/ 34 PPC and a separate case under Section 13(d) of Arms Ordinance against accused Muhammad Arif was registered.

3. During investigation, 161 Cr.P.C. statements of the PWs were recorded. After finalization of the investigation, challan was submitted against both the accused under Section 412 & 34 PPC read with Section 6 of Anti-Terrorism Act, 1997.

4. Charge was framed against the accused. Both the accused pleaded not guilty and claimed to be tried.

5. In order to prove its case, prosecution examined PW -1 complainant Maqbool Ahmed At Ex-6, who produced copy of FIR at Ex-6/A and his previous deposition At Ex-6/B. P.W-2 Muhammad Ramzan was examined at Ex-7, who produced his previous deposition at Ex-7/A. P.W-3 was examined at Ex-8, who produced his previous deposition at Ex8/A. P.W-4 mashir Ahmed Nawaz was examined at Ex-9, who produced mashirnama of place of occurrence at Ex9/A, mashirnama of arrest and recovery at Ex-9/B & 9/C, mashirnama of identification test at Ex9/D and his previous deposition at Ex9/E. P.W-5

Rasool Bux Sial I.O was examined at Ex-10, who produced a letter addressed to the SHO Sehwan at Ex-10/A, another letter addressed to ASI Abdul Hameed at Ex-10/B, letter addressed to Judicial Magistrate, Kotri for holding identification test at Ex-10/C and five D.D entries at Ex-10/B, 10-E, 10-F, 10-G and 10-H, his previous deposition at Ex-10/I. P.W-6 Ayaz Ali ASI was examined at Ex-11, who produced mashirnama of arrest and recovery at Ex-11/A and his previous deposition at Ex-11/B. P.W-7 Addul Sattar was examined at Ex-12, who produced his previous deposition at Ex-12/A. P.W-8 Ahmed Nawaz I.O was examined at Ex-13, who produced copies of FIR No.85/2000 and 86/2000 at Ex-13/A and 13/B, his previous deposition at Ex-13/C and DD entry at Ex-13/D. P.W-14 Mr. Munawar Ali, Judicial Magistrate was examined at Ex-14. Thereafter, the prosecution side was closed vide statement at Ex-15.

6. The statement of accused Mohammad Dayyar was recorded under Section 342 Cr.P.C at Ex-16. Accused denied the prosecution allegations and pleaded his innocence. Accused did not lead evidence in defence and declined to be examined on oath in disproof of the prosecution allegations.

7. After hearing the learned counsel for the parties and examining the evidence, the learned Trial Court acquitted respondent/accused Mohammad Dayyar from the charge.

8. Record reflects that the State has filed this appeal against respondent/accused Mohammad Dayyar, who has been acquitted by the learned Judge, Anti-Terrorism Court, Hyderabad by judgment dated 14.04.2003 mainly for the following reasons-

“I have given my considered view to the arguments advanced before me I have gone through the entire evidence on record and also the law cases referred before me by the learned D.C as above. I find that in this case at the time of trial proceedings of the present accused the taxi corolla has not been produced and the complainant states that he had sold out the taxi. I further find that the cash of Rs.8800/-, which was allegedly recovered from the present accused has also not been produced at the trial proceeding. I further find that the identification mashirs namely Niaz Ahmed and Ahmed Nawaz in their respective depositions on record have mentioned that they had identified the present accused by putting the hand on him. But these P.Ws/mashirs have not described the role specifically played by the accused. In the mashirnama of identification test (Ex-9/D) also does not describe the role played by the present accused in the alleged crime. I therefore, hold that the arguments advanced by the learned defence counsel Mr.Nasiruddin Abro enjoys full legal force and the case law as above cited by him are very much relevant to this case. As such the prosecution side has failed to discharge its burden successfully about this point against the present accused. This point is answered accordingly.”

9. Trial Court in the impugned judgment has observed that case property was not produced at the trial, so also the identification parade was defective. Trial Court had rightly appreciated the evidence of the prosecution witnesses according to the settled principles of law. In our considered view, judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous as held by the Honourable Supreme Court in the case of *The State V/s. 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 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 above referred judgment.

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.”

10. For the above stated reasons there is no merit in the appeal against acquittal. Acquittal recorded by trial Court in favour of respondent/accused is based upon the sound reasons, which requires no interference at all. As such, the appeal against acquittal is without merits and the same is dismissed.

JUDGE

JUDGE

Shahid