

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acq. Appeal No.822 of 2019

Appellant : Muhammad Khan
through Mr. Mamoon A.K Sherwany,
Advocate

Respondents : Muhammad Mushtaq and others
through Mr. Talib Ali Memon, APG for the
State and Mr. Mehmood Akhtar Qureshi,
advocate for private respondents.

Date of hearing : 23.11.2022

JUDGMENT

Omar Sial, J:- Mohammad Mushtaq, Mohammad Aslam, Mohammad Fayyaz and Mohammad Riaz were, inter alia, nominated accused in the case arising out of F.I.R. No. 39 of 2014 registered under sections 302 and 34 P.P.C. After a full dress trial, Mohammad Riaz was convicted whereas the remaining 3 were acquitted on 12.10.2019 by the court of the learned 10th Additional Sessions Judge, Karachi West. The complainant of that case being Mohammad Khan been dissatisfied with the said judgment to the extent of the acquittal of the 3 accused has filed this appeal challenging the same.

2. Learned counsel for the respondents has argued that the acquittal appeal is time barred.

3. The judgment of the learned trial court was announced on 12.10.2019. In accordance with section 417-2(A) a person aggrieved by the order of acquittal passed by any court other than a High Court, may, within thirty days, file an appeal against such order. This appeal was filed on 16.11.2019 i.e. 4 days after the end of the limitation period. An application bearing number M.A. No. 14040 of 2019 was filed by the appellant seeking condonation of delay.

4. Section 12(2) of the Limitation Act, 1908 stipulates that in computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded. Section 12(5) provides that for the purposes of, inter alia, subsection (2), the time requisite for obtaining a copy of the decree, sentence, order, judgment or award shall be deemed to be the time intervening between the day on which an application for the copy is made and the day actually intimated to the applicant to be the day on which the copy will be ready for delivery. In the application seeking condonation of delay, the learned advocate for the appellant has stated that the judgment was passed on 12.10.2019, an application seeking a certified copy was made by him 4 days later i.e. on 16.10.2019 and the copy was supplied to him on 19.10.2019. It further appears from the record that the requisite fee for the certified copy was paid on 18.10.2019 and that the certified copy was ready on 19.10.2019. The question that arises is whether the appellant was justified in making an application for the certified copy after 4 days of the judgment and whether the computation of limitation would begin from the 16.10.2019 or 18.10.2019 when the fee was paid.

5. The above issue to an extent has been decided by the Honorable Supreme Court of Pakistan which in the case of **Pak Leather Crafts Limited and others vs Al-Baraka Bank Pakistan Limited (2022 SCMR 1868)** has held that: *“Consequently we are of the view that the filing an application pre-supposes the payment of costs for obtaining certified copies.”* Upon the facts of the present case, the time between when the fees was paid for obtaining the certified copy and the delivery of the copy to the appellant by the office of the court which was 1 day would be excluded from the computation of the limitation period. The appeal was filed 4 days

after the limitation period; exclusion of the one day taken on account of obtaining the certified copy would mean that the appeal was time barred by 3 days.

6. In the application which has been filed seeking condonation of delay it has been stated that the delay was on account of the advocate of the appellant being sick. It is stated in the application that the counsel had an asthma attack and therefore could not draft the appeal. The counsel was also diabetic and was treated at the Ojha Hospital. Although the application states that the medical reports are attached with the application, the learned counsel for the appellant admitted during hearing that no such medical reports had been provided nor that the dates of such illnesses had been specified. I am not satisfied that the reason given, especially as it was not even supported by any documentary evidence, was sufficient to justify the delay.

7. The listed application is dismissed and as a consequence the acquittal appeal is dismissed as being barred by limitation.

JUDGE