JUDGMENT SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Acquittal Appeal No.S-109 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

For orders on office objections.
For hearing of main case

31.08.2023

Mr. Mashooque Ali Mahar advocate for appellant.
Mr. Imran Ahmed Abbasi, A.P.G for the State.
Mr. Adnan Ahmed Khan Advocate files Vakalatnama on behalf of respondent No.1, taken on record.

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JUDGMENT

ZULFIQAR ALI SANGI,J:- Through this acquittal appeal, appellant / complainant has impugned the judgment dated 16.06.2023 passed by VIIth. Judicial Magistrate/MTMC-I, Hyderabad (Trial Court) in Case No.783/2022 (re: The State v. Ansar Ahmed Khkan) arising out of Crime No.42 of 2022 registered at P.S Sakhi Pir for offences under Sections 452, 506(2), 504, 337-A(i) and 34, PPC, whereby respondent/accused Ansar Ahmed Khan has been acquitted of the charges.

2. Prosecution case as set up in the FIR narrated by Complainant namely Mst. Shahida Mehtab is that she is residing at House No. 35 Liaquat Colony Hyderabad along with her children. According to complainant accused is residing in front of her house in front of her house on which complainant restrained him but he did not mend his ways. It is alleged that on 09.03.2022 the complainant was present at her house along with children and brother-in-law Faheem, thereupon, at about 1630 hours the son of complainant namely Shahroz came inside the house and stated that accused along with his unknown friends were standing outside the house to whom he restrained and accused used abusive language and started quarrel with her son. It is further

alleged that accused along with two unknown friends forcibly entered into the house of complainant and used abusive language with them as well as caused danda blow on the head of her son Ahmed from which blood started oozing, the complainant made hue and cry on which one unknown friend of accused took pistol and issued threats of murder, thereafter, they went away by using abusive language and issuing threats. The complainant came at PS from where she obtained letter for medical treatment and after getting treatment and by obtaining court order lodged the FIR. After usual investigation IO submitted charge sheet against the accused.

3. A formal charge was framed against the accused, to which he pleaded not guilty and claimed his trial.

4. At the trial, prosecution examined as many as five witnesses and produced certain documents in support of their statements. Thereafter side of prosecution was closed.

5. Statement of accused / respondent was recorded u/s 342 Cr.P.C, in which, he denied the allegations of prosecution case and pleaded his innocence. However, he did not examine himself on oath in disproof of the allegations as required u/s 340 (2) Cr.P.C nor produced any witness in his defence. However, he produced photo copy of application moved by him to SSP, Hyderabad against the complainant party, photo copy of application moved by the complainant against accused, photo copy of application dated 11.04.2022 moved by accused against complainant to SSP, Hyderabad for causing harassment and photo copy of FIR No.103/22 of PS Fort lodged by accused.

6. After hearing the parties, learned trial Court acquitted the accused/respondent from the charge by extending the benefit of doubt under section 265-H(ii), Cr.P.C vide impugned judgment as stated (supra).

7. Learned counsel for appellant argued that impugned judgment of the trial Court is contrary to law, facts and circumstances of the case because the trial Court has erred in applying judicious mind while acquitting the accused/respondent; that trial Court has failed to consider the material and evidence produced by the appellant and her injured PWs and decided the matter on technicalities rather than merits; that appellant and her injured have fully supported the case of prosecution; that the entire evidence of the prosecution remained unchallenged but the trial Court did not assign any cogent reasons to acquit the accused, therefore, the impugned judgment is liable to be set aside as the same has been result of non-reading and misreading of the evidence and accused-respondent be punished.

8. Conversely Mr. Imran Ahmed Abbasi A.P.G appearing for the State and learned counsel for accused after going through the impugned judgment contended that it was passed in accordance with law and they fully supported the impugned judgment.

9. I have heard learned counsel for the parties and have gone through the material made available on the record with their able assistance.

10. On perusal of the impugned judgment it reflects that the learned trial Court while appreciating the evidence in paras No. 8, 9 and 10 had acquitted the accused. For perusal, said paras are reads as under:-

> "8. I have given due consideration to the arguments of both the sides and carefully gone through the evidence and the documents brought on record therewith. As it is the cardinal principle of criminal justice, burden to prove both the above points beyond reasonable doubt is on the prosecution. Since this is a case of using abusive language so also causing injuries and threats, the accused would stand condemned or exonerated on the sole basis of strong evidence, the same should be examined with due care and caution. There is much force in the contentions of the learned counsel for the accused and learned A.D.P.P has not been able to controvert. Firstly, from the perusal of the material available on record and scanning of contents of FIR it appears that parties are already inimical with each other and prior to this FIR they have already moved applications against each other to SSP Hyderabad, thus, false implication of the accused could not be ruled out. **Secondly,**

the statement of the complainant U/S 154 Cr.P.C recorded before police and the statement of complainant recorded by this court are not in consonances as the account of the statement U/S 154 Cr.P.C of the complainant and account of the evidence of the complainant are entirely different. **The complainant has made allot dishonest improvements due to which this court is unable to ascertain which statement of the complainant is true either recorded by the police incorporated in statement U/S 154 C.P.C or deposition recorded by this court as in the contents of FIR the complainant alleged that her brother-in-law Faheem was present at the time of incident while on the contrary during evidence she remained silent that Faheem was also available with them at the time of incident**. Thirdly, the complainant in contents of FIR alleged that accused Ansar caused baton blow on the head of her son Ahmed while on the contrary during evidence she deposed that accused attacked upon her son Shehroz with baton but he rescued himself and her son Ahmed sustained head injury. Fourthly, the FIR reveals the time of incident as 1630 hours while on the contrary the medical letter produced at Ex. 03/A reveals it issuance time as 1530 hours which creates doubt that how the medical letter was issued to complainant at 1530 hours when the offence took place at 1630 hours, this piece of evidence is sufficient to make the case highly doubtful. Fifthly, the complainant alleged in her FIR that blood started oozing from the head of her son when he sustained injury while on the contrary none the prospection witness deposed that any blood was oozed yet the prosecution has failed to produce the blood stained clothes to strengthen her case. Even otherwise **t**he stamp of injuries on the person of injured-complainant was not a yardstick to determine truthfulness or falsehood. Moreover, in the case of **Muhammad Aslam v. Sabir Hussain and others reported as 2009 SCMR 985**, held by the Honourable apex Court that "medical evidence was only corroborative and it could not be a substitute for ocular account''. It could only furnish details of the injuries sustained by a person living or dead, kind of weapon used in the occurrence. The medical evidence in the peculiar circumstances of the case cannot lend any support to the prosecution case especially when the prosecution has failed to prove its allegations against the accused through trustworthy ocular account". Besides above there are other contradictions are also available in the evidence of the prosecution witnesses but there is no need to elaborate the same keeping in view the aforesaid contradictions.

9. It is held by Honourable Supreme Court in reported case law **PLD 2021 Supreme Court 600 in case Naveed Asghar and 2 others-VersusThe State** that "it is a well-established principle of administration of justice in criminal cases that finding of guilt against an accused person cannot be based merely on the high probabilities that may be inferred from evidence in a given case. The finding as regards his guilt should be rested surely and firmly on the evidence produced in the case and the plain inferences of guilt that may irresistibly be drawn from that evidence. Mere conjectures and probabilities cannot take the place of proof. If a case is decided merely on high probabilities regarding the existence or non-existence of a fact to prove the guilt of a person, the golden rule of giving "benefit of doubt" to an accused person, which has been a dominant feature of the administration of criminal justice in this country with the consistent approval of the Constitutional Courts, will be reduced to a naught. The prosecution is

under obligation to prove its case against the accused person at the standard of proof required in criminal cases, namely, beyond reasonable doubt standard, and cannot be said to have discharged this obligation by producing evidence that merely meets the preponderance of probability standard applied in civil cases. If the prosecution fails to discharge its said obligation and there remains a reasonable doubt, not an imaginary or artificial doubt, as to the guilt of the accused person, the benefit of that doubt is to be given to the accused person as of right, not as of concession. The rule of giving benefit of doubt to accused person is essentially a rule of caution and prudence, and is deep rooted in our jurisprudence for safe administration of criminal justice. In common law, it is based on the maxim, "It is better that ten guilty persons be acquitted rather than one innocent person be convicted". While in Islamic criminal law it is based on the high authority of sayings of the Holy Prophet of Islam (peace be upon him): "Avert punishments [hudood] when there are doubts"; and" Drive off the ordained crimes from the Muslims as far as you can. If there is any place of refuge for him [accused], let him have his way, because the leader's mistake in pardon is better than his mistake in punishment".

10. In view of what had gone above, I found that there was no any independent and natural eye witness of occurrence; mashers were not being independent and natural; contradictions in ocular account and medical evidence; contradictions in statements of complainant and his witnesses, dishonest improvements, discrepancies and infirmities had been found in the prosecution case; doubts having crept in the prosecution version and the independent corroboration being available in support of the ocular testimony, it could not be said that the prosecution had succeeded in proving the guilt of the respondent beyond any reasonable doubt. It was a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt, it is not necessary that there should be many circumstances creating uncertainty. If a single circumstance created a reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then he/she shall be entitled to such benefit not as a matter of grace and concession, but as of right. Reference in this regard may be made to the cases of **Tariq Pervaiz Vs. The State (1995 SCMR 1345) and Ayyub Masih vs The State (PLD 2002 SC 1048).**Thus, it is held that the accused was entitled to the benefit of the doubt as a right. Undeniably; no iota of evidence of inspiring confidence was available on record to prove the charge against the present accused, hence, point No.1 is answered as "**Doubtful**".

11. Keeping in view the evidence as referred to above, I am of the considered view that evidence as brought on record was not sufficient to prove the case of prosecution and the same does not inspire confidence; hence, no illegality and infirmity has been committed by the trial Court in the impugned judgment while acquitting the respondent No.1, which may warrant interference by this Court. It is also settled principal of law that after getting acquittal, the accused always earns double presumption of his

innocence and Superior Courts have avoided to interfere with such acquittal findings. There is no cavil with the legal proposition that an acquittal appeal stands on a different footings than an appeal against conviction. In acquittal appeal, the Superior Courts generally do not interfere with unless they find that miscarriage of justice has taken place. The factum that there can be a contrary view on re-appraisal of the evidence by the Court hearing acquittal appeal simpliciter would not be sufficient to interfere with acquittal judgment. Reliance can be placed upon case of Muhammad Asghar and another vs. The State (PLD 1994 Supreme Court 301).

12. In view of above legal position, instant acquittal appeal fails and dismissed.

JUDGE

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