Judgment Sheet

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Jail Appeal No. S- 14 of 2018

Crl. Acquittal Appeal No. S- 41 of 2013

Crl. Acquittal Appeal No. S- 42 of 2013

Date of hearing: 11.11.2022

Date of Decision: 18.11.2022

Mr. Achar Khan Gabol, Advocate for Appellants in Criminal Jail Appeal No.S-14 of 2018.

Syed Sardar Ali Shah, Additional Prosecutor General Sindh for appellants in Cr. Acquittal Appeals Nos. S-41 and S-42 of 2013.

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J U D G M E N T

NAIMATULLAH PHULPOTO, J. Appellants were tried by learned 1st Additional Sessions Judge, Naushehro Feroze and in terms of Judgment dated 18.01.2018 appellants were convicted under section 302(b) PPC read with section 34 PPC and sentenced to imprisonment for life as Ta'zir and to pay compensation of Rs. 100,000/-, in default to pay compensation amount, the appellants were directed to suffer further RI for six months more.

2. Prosecution story briefly stated is that on 27.12.2011 at 2.30 p.m complainant Abdul Azeez, P.Ws Naeemullah and Shahnawaz were present in the otaq, Abdul Razaque (deceased) was sleeping. At about 2.30 pm appellants Shareefullah and Abdul Khalique armed with pistols appeared there and fired upon deceased and fled from spot. Motive alleged was matrimonial dispute between the parties. FIR of incident was lodged on the same day at 1645 hours.

02 empties were collected from place of vardat. Appellants were arrested on the same day and unlicensed pistols were recovered from them. Pistol, empties collected from place of vardat and blood stained earth were dispatched to the experts for report. On the conclusion of investigation, case was sent up against the appellants.

3. Trial Court framed charge against appellants to which they pleaded not guilty and claimed trial. At trial prosecution examined 10 witnesses. When examined under section 342, Cr.P.C appellants denied the prosecution story and claimed false implication due to enmity. Appellants did not lead any evidence in defense and declined to give statement on oath in disproof of prosecution allegations.

4. Trial Court after hearing learned counsel for the parties convicted and sentenced the appellants through impugned Judgment, hence this appeal is filed. It may be mentioned here that both appellants were separately tried for offence under section 13(d) Arms Ordinance 1965. Learned 3rd Judicial Magistrate vide Judgment dated 21.01.2013 acquitted them. State has filed appeals against their acquittal. By this Judgment I propose to decide all the appeals as appreciation of evidence is same.

5. Learned advocate for appellants argued that P.Ws were closely related to deceased and interested; that their evidence require independent corroboration but it is lacking in this case; that head injury was suppressed by the prosecution as such ocular evidence was contradictory to the medical evidence; that 161 Cr.P.C statements of P.Ws were recorded with delay of six days; lastly, contended that both appellants have been acquitted by 3rd Judicial Magistrate Naushehro Feroze in the connected / off shoot cases under section 13(d) Arms Ordinance by disbelieving the evidence of police officials.

6. Adverting to the appeals against acquittal Mr. Achar Khan Gabol Advocate appearing for respondents submits that prosecution had not established safe custody and safe transmission of weapons recovered from the respondents and acquittal has been rightly recorded. In support of his submissions, he has relied upon the cases of Javed Khan alias Bacha and another v. The State and another (2017 SCMR 524), Ali Sher and others v. The State (2008 SCMR 707) and Muneer Malik and others v. The State through P.G Sindh (2022 SCMR 1494).

7. Syed Sardar Ali Shah, Additional Prosecutor General Sindh argued that it is a case of prompt FIR; that both appellants were specifically named and role of firing upon deceased was assigned to them which role stands supported by the medical evidence. Witnesses of incident remained consistent on all material points of prosecution case. As regards to appeals filed by State against acquittal in connected / off shoot cases under section 13(d) Arms Ordinance,1965 are concerned, learned Additional Prosecutor General argued that evidence of police officials was trust worthy and acquittal recorded by Judicial Magistrate was perverse.

8. Heard learned counsel for the parties and perused evidence minutely. Record shows that FIR was lodged within 2 hours and 15 minutes of the occurrence. Appellants were specifically named therein; a definite role of firing upon deceased was attributed to the appellants. Incident occurred on 27.12.2011 at 2.30 p.m while FIR was lodged on the same day at 4.45 p.m. Distance between Police Station and place of incident is 03 kilometers this clearly shows a promptitude with which the matter was reported to the police, would rule out the possibility of false implication and even otherwise it is repellent to common sense that the complainant would let off the real culprit and involve

someone else. During trial PW-1 complainant Abdul Azeez, PW-2 eye witness Naeemullah and PW-3 eye-witness Shahnawaz, the witnesses of incident remained consistent on all material particulars of the prosecution case in so far as the role attributed to the appellants is concerned. Their testimony is corroborated by the medical evidence, which is consistent with the ocular account in so far as the weapon, locale of injuries and the time which lapsed between the injuries and post mortem examination is concerned. In the aforesaid circumstances, the re-assessment of the evidence made by me, has arrived at the conclusion that finding of guilt recorded by the trial Court was neither arbitrarily nor against the evidence led. Therefore, contentions raised by learned advocate for appellants are without merit. Learned Additional Prosecutor General has rightly relied upon the case of Shamsher Ahmed and another v. The State and another (2022 SCMR 1931). Relevant portion is re-produced as under:-

> *" The ocular account in this case has been furnished by Manzoor Ahmed, complainant (PW-6) and Sarniullah (PW-7). These prosecution witnesses were subjected to lengthy cross-examination by the defence but nothing favourable to the petitioner/convict or adverse to the prosecution could be produced on record. Both these PWs remained consistent on each and every material point inasmuch as they made deposition exactly according to the circumstances happened in this case, therefore, it can safely be concluded that the ocular account furnished by the prosecution is reliable, straightforward and confidence Inspiring The medical evidence available on the record corroborates the ocular account so far as the nature, time, locale and impact of the injury on the person of the deceased is concerned. So far as the argument of learned counsel for the petitioner that the medical evidence contradicts the ocular version is concerned, we may observe that where ocular evidence is found trustworthy and confidence Inspiring, the same is given preference over the medical evidence. It is settled that casual discrepancies and conflicts appearing in medical evidence and the ocular version are quite possible for variety of reasons."*

9. In view of above discussion, trial Court, rightly found appellants guilty. I also hold that prosecution had proved its' case against appellants

Shareefullah and Abdul Khalique. Resultantly, **Criminal Jail Appeal No.S-14 of 2018** filed by both appellants stands **dismissed.**

10. Now, I discuss the appeals against acquittal, it appears that respondents Shareefullah and Abdul Khalique were tried in off shoot cases under section 13(d) Arms Ordinance passed by 3rd Judicial Magistrate Naushehro Feroze and they were acquitted mainly for the following reasons:

> *" One of the interesting point is that; Learned ADPP contended that in entry No.16 it has been discussed about entry No.11 on which complainant party left P.S but entry No. 16 reveals that it was kept on 28.12.2011 at about 0030 hours time but on the other hand date and time of lodging of FIR shows that FIR was lodged on 27.12.2011 at about 2200 hours time. It means that complainant party did not keep such entry when they returned at P.S but same was kept after registration of FIR and that also suggest to believe that prosecution case is very much doubtful. Learned ADPP has exhibited the photocopy of entry No.16, which is under law is not applicable/admissible and same does not signify its genuineness. Failing to produce the exact entry under which complainant party left P.S rendered the entire episode shrouded in doubt. Said fact by itself was enough to disbelieve the prosecution version. Hence all these flaws and infirmities are sufficient for understanding that prosecution case does not have confidence inspiring."*

11. Learned Additional Prosecutor General appearing on behalf of appellant / State could not satisfy the Court that acquittal ordered against the respondents was arbitrarily. Non production of crucial roznamcha entry was fatal to the prosecution case. Findings of acquittal recorded by trial Court are based upon sound reasons. It is settled law that ordinary scope of acquittal appeal is considerably narrow and limited and obvious approach for dealing with the appeal against the conviction would be different and should be distinguished from the appeal against acquittal because presumption of double innocence of

accused is attached to the order of acquittal as held in the case of *The State and others v. Abdul Khaliq and others* (**PLD 2011 Supreme Court 554**).

12. In the recent judgment in the case of *Zulfiqar Ali v. Imtiaz and others*(**2019 SCMR 1315**), Hon'ble Supreme Court has held as under:

> *" It is by now well-settled that acquittal once granted cannot be recalled merely on the possibility of a contra view. Unless, the impugned view is found on the fringes of impossibility, resulting into miscarriage of justice, freedom cannot be recalled. Criminal Appeal fails. Appeal dismissed.* **"**

13. For what has been discussed above, the impugned judgments of acquittal are neither arbitrary nor as alleged to be a grave miscarriage of justice to warrant inference. An accused acquitted after regular trial earns a double presumption of innocence.

14. This **Criminal Acquittal Appeals Nos. S-41 and S-42 of 2013 are without merit and the same are dismissed.**

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J U D G E

Irfan/PA

14. Complainant Akber Ali has filed Criminal Revision No. D-89 of 2016 for enhancement of sentence recorded by the trial Court against appellant Muhammad Punhal alias Punhoon vide Judgment dated 07.06.2016.

So far motive is concerned the Honourable Supreme Court of Pakistan in case reported in PLD 2006 S.C P.354 and PLD 2008 S.C 503 had held that for awarding punishment existence of motive is not necessary because motive is shrouded in the mind of accused persons which may spur at any moment and no instrument can measure contents of mind of accused persons, hence case of prosecution cannot be said to remain unsuccessful in case of non-availability of motive. Moreover it is also held in case of Imtiaz Ahmed vs. The State [2001 SCMR 1334 (c)], that allegation and proof of motive are not legal requirements for awarding maximum penalty of death in a murder case, when the prosecution has proved the guilt of the accused beyond reasonable doubt. The decision of the case must not be taken in relation of case of accused, but must rest on examination of entire evidence.

and fate of the accused in the case of Muhammad

Learned Advocate for appellant / complainant has filed Criminal Revision No. D- 89 of 2016 for enhancement of sentence but trial Court in the Judgment has mentioned that prosecution has failed to prove the motive against the appellant for commission of the offence which was set up in the FIR. Reliance is placed on the case of Mst. Nazia Anwar vs. The State and others (2018 SCMR 911). Relevant portion of the Judgment is re-produced as under:-

> "*The law is settled by now that if the prosecution asserts a motive but fails to prove the same then such failure on the part of the prosecution may react against a sentence of death passed against a convict on the charge of murder and a reference in this respect may be made to the cases of Ahmad Nawaz v. The State (2011 SCMR 593), Iftikhar Mehmood and another v. Qaiser Iftikhar and others (2011 SCMR 1165), Muhammad Mumtaz v. The State and another (2012 SCMR 267), Muhammad Imran alias Asif v. The State. (2013 SCMR 782), Sabir Hussain alias Sabri v. The State (2013 SCMR 1554), Zeeshan Afzal alias Shani and another v. The State and another (2013 SCMR 1602), Naveed alias Needu and others v. The State and others (2014 SCMR 1464), Muhammad Nadeem Waqas and another v. The State (2014 SCMR 1658), Muhammad Asif v. Muhammad Akhtar and others (2016 SCMR 2035) and Qaddan and others v. The State (2017 SCMR 148). After going through the entire record of the case from cover to cover and after attending to different aspects of this case I have found that although it is proved beyond doubt that the appellant was responsible for the murder of the deceased yet the story of the prosecution has many inherent obscurities ingrained therein. It is intriguing as to why the appellant would bring her four months old baby-boy to the spot and put the baby boy on the floor and then start belabouring the deceased with a dagger in order to kill her. I have, thus, entertained no*

manner of doubt that the real cause of occurrence was something different which had been completely suppressed by both the parties to the case and that real cause of occurrence had remained shrouded in mystery. Such circumstances of this case have put me to caution in the matter of the appellant's sentence and in the peculiar circumstances of the case I have decided to withhold the sentence of death passed against appellant."

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17. Additional Prosecutor General argued that prosecution has proved its case, as the eye witnesses of incident and ocular evidence gets supports from medical evidence, however, Additional Prosecutor General submits that trial Court rightly held that motive has not been established at trial.

17. We have re-examined the evidence of eye-witnesses and have no hesitation to hold that motive as set up in the FIR by the complainant has not been established at trial and evidence of trial Court regarding motive is based upon sound reasons. Ocular evidence in this case is confidence inspiring, we have no reason to disbelieve it. Trial Court has rightly been relied upon the evidence of eye witnesses supported by the medical evidence, therefore, conviction recorded by trial Court vide Judgment dated 07.06.2016 requires no interference by this Court. Investigating Officer has also failed to interrogate about the previous murder of one Muhammad Arif, therefore, we have no hesitation to hold that trial Court has rightly held that motive is not proved.

18. Through Criminal Revision No. D- 89 of 2016 filed by appellant / complainant Akber Ali has prayed for enhancement of sentence passed against respondent / accused Muhammad Punhal alias Punhal on the charge under section 302(b) PPC to death. Learned Advocate for appellant Muhammad

Punhal alias Punhoon could not satisfy the Court that prosecution succeeded to prove the motive against appellant for commission of offence. In this connection we find that reasons recorded by the trial Court in the impugned Judgment for awarding life imprisonment are cogent, trial Court has mentioned that prosecution has failed to prove motive as set up in the FIR at trial and it is recognized ground for awarding life imprisonment under section 302(b) PPC as trial Court has assigned sound reasons for awarding life imprisonment and such reasons are hardly quite for interference by this Court particularly at such late stage when respondent Muhammad Punhal alias Punhoo has already served substantial portion of his sentence. Learned Trial Court as well as Additional P.G argued that motive as set up in the FIR has not been established at trial. Learned advocate for respondent has rightly relied upon the case of Faiz Muhammad and another vs. Shafique-ur-Rehman and another (2013 SCMR 583), therefore, we hold that no case for enhancement of the sentence to the appellant is made out. **Consequently Revision Application No.D-89 of 2016 is without merit and the same is dismissed.**

19. Now we re-examine the prosecution evidence in Criminal Jail Appeal No. S-122 of 2016. It appears that learned trial Court found appellant guilty for offence under section 13(d) Pakistan Arms ordinance, 1965 and sentenced him to 07 years R.I and to pay fine of Rs. 20,000/- in case of default to pay fine, appellant was ordered to suffer R.,I for one month more.

20. The appellant Muhammad Punhal alias Punhoo was arrested after about 02 months on 13.09.2009 and Kalashnikov was recovered from his possession. Surprisingly the same was not sent to ballistic expert for report. We are unable to rely upon the evidence of P.Ws ASI Rabdino, PW-2 SIO Rana Asif Ali and PW PC Abdul Rehman for the reasons that it is un-believable that appellant was carrying Kalashnikov after commission of murders for last two

months. Moreover said Kalashnikov was not sent to Expert. Police officials failed to associate independent and reliable persons of the locality despite had received spy information. Prosecution failed to produce before trial Court arrival roznamcha entry which cuts the roots of the prosecution case. Recovery of Kalashnikov from the possession of appellant cannot be used as corroborative piece of evidence in the commission of offence. Evidence of police officials regarding recovery of Kalashnikov had inherent defects but trial Court failed to appreciate evidence of police officials on sound judicial principles. We are satisfied on re-appraisal of evidence that prosecution could not succeed to prove the recovery of Kalashnikov from possession of appellant as alleged by the prosecution and findings of trial Court regarding guilty of appellant is not based upon sound reasons, therefore, **Criminal Jail Appeal No. S- 122 of 2016 is allowed.** The conviction and sentence recorded against the appellant Muhammad Punhal alias Punhoon for offence under section 13(d) Pakistan Arms Ordinance, 1965 vide Judgment dated 07.06.2016 is set aside. Appellant shall be released forthwith in crime No.244/2009 of Police Station Daharki.

21. In view of above discussion, trial Court rightly found appellant guilty, we also hold that prosecution had proved its case against appellant beyond any reasonable shadow of doubt. Resultantly, Criminal Jail Appeal No. S-123 of 2016 filed by the appellant Muhammad Punhal alias Punhoon stands **dismissed.**

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Judgment Sheet

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Jail Appeal No. S- 14 of 2018

Crl. Acquittal Appeal No. S- 41 of 2013

Crl. Acquittal Appeal No. S- 42 of 2013

Date of hearing: **28.10.2022**

Date of Decision: _____

Mr. Achar Khan Gabol, Advocate for Appellants in Criminal Jail Appeal No.S-14 of 2018.

Syed Sardar Ali Shah, Additional Prosecutor General Sindh for appellants in Cr. Acquittal Appeals Nos. S-41 and S-42 of 2013.

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J U D G M E N T

NAIMATULLAH PHULPOTO, J. This appeal shall dispose of Criminal Jail Appeal No.S-14 of 2018 arising out of crime 224 of 2011 registered at Police Station **Darya Khan Marri** (shown in FIR as PS Padidan) for offences under sections 302, 114, 34 PPC and appeals against acquittal bearing Nos.S-41 of 2013 and S-42 of 2013 filed by State against Judgment of Acquittal passed by 3rd Judicial Magistrate Naushehro Feroze in cases against appellants Shareefullah and Abdul Khalique under sections 13(d) Arms Ordinance. Appellants were tried by learned 1st Additional Sessions Judge, Naushehro Feroze and in terms of Judgment dated 18.01.2018 appellants were convicted under section 302(b) PPC read with section 34 PPC and sentenced to imprisonment for life and to pay fine of Rs. 100,000/-, in default to pay fine amount, the appellants were directed to suffer further RI for six months more.

2. Prosecution story briefly stated is that on 27.12.2011 at 2.30 p.m complainant Abdul Azeez along with P.Ws Naeemullah and Shahnawaz were present in the otaq. Deceased Abdul Razaque was sleeping, it was 2.30 pm suddenly appellants Shareefullah and Abdul Khalique armed with pistols appeared there and fired upon deceased and fled from spot. Deceased was taken to the hospital for post mortem examination. Motive alleged was matrimonial dispute between the parties.

3. FIR of incident was lodged on the same day at 1645 hours. 02 empties were collected from place of vardat. Appellants were arrested on the same day and pistols were recovered from them. Pistol, empties collected from place of vardat and blood stained earth were dispatched to the expert for report. On the conclusion of investigation case was sent up against the appellants.

4. Trial Court framed charge against appellants to which they pleaded not guilty and claimed trial. At trial prosecution examined 10 witnesses. When examined under section 342, Cr.P.C appellants denied the prosecution story and attributed false implication to enmity. Appellants did not lead any evidence in defense and declined to give statement on oath in disproof of prosecution allegations.

5. Trial Court after hearing learned counsel for the parties convicted and sentenced the appellants through impugned Judgment hence this appeal is filed.

6. Learned advocate for appellants argued that P.Ws were closely related to deceased and interested; that their evidence require independent corroboration but it is lacking in this case; that head injury was suppressed by the prosecution as such ocular evidence was contradictory to the medical

evidence; that 161 Cr.P.C statements of P.Ws were recorded with delay of six days; lastly contended that both appellants have been acquitted by 3rd Judicial Magistrate Naushehro Feroze in the connected / off shoot cases under section 13(d) Arms Ordinance by disbelieving the evidence of police officials.

7. Adverting to the appeals against acquittal Mr. Achar Khan Gabol Advocate appearing for respondents submits that prosecution has not established safe custody and safe transmission of the arms recovered from the respondents and acquittal has been rightly recorded. In support of his submissions he has relied upon the cases reported in the cases reported as 2017 SCMR 524, 2008 SCMR 707 and 2022 SCMR 1494.

8. Syed Sardar Ali Shah, Additional Prosecutor General Sindh argued that it is a case of prompt FIR; that both appellants were specifically named and role of firing upon deceased was assigned to them which role stands supported by the medical evidence. Learned Additional P.G further contended that normally sentence under section 302(b) PPC is death but trial Court has already taken a lenient view and awarded life imprisonment to the appellant.

9. Heard learned counsel for the parties and perused evidence minutely. Record shows that FIR was lodged within 2 hours and 15 minutes of the occurrence. Appellants were specifically named therein; a definite role of firing upon deceased was attributed to the appellants. Incident occurred on 27.12.2011 at 2.30 p.m while FIR was lodged on the same day at 4.45 p.m. Distance between Police Station and place of incident is 03 kilometers this clearly shows a promptitude with which the matter reported was reported to the police would rule out the possibility of false implication and even otherwise it is repellent to common sense that the complainant would let off the real culprit and involve someone else. During trial PW-1 complainant Abdul Azeez, PW-2 eye witness

Naeemullah and PW-3 eye-witness Shahnawaz, the witnesses of incident remained consistent on all material particulars of the prosecution case in so far as the role attributed to the appellants is concerned. Their testimony is corroborated by the medical evidence, which is consistent with the ocular account in so far as the weapon, locale of injury and the time which lapsed between the injury and post mortem examination is concerned. In the aforesaid circumstances, the re-assessment of the evidence made by me, has arrived at the conclusion that finding of guilt recorded by the trial Court was neither arbitrarily nor against the evidence led, therefore, contentions raised by learned advocate for appellants are without merit. Learned Additional Prosecutor General has rightly relied upon the case Muhammad Mumtaz and others vs. State and another (2012 SCMR 267).

10. In view of above discussion, trial Court, rightly found appellant guilty, we also hold that prosecution had proved its case against appellants Shareefullah and Abdul Khalique beyond any reasonable shadow of doubt. Resultantly, **Criminal Jail Appeal No.S-14 of 2018** filed by both appellants stands **dismissed.**

11. Now I discuss the appeals against acquittal, it appears that respondents Shareefullah and Abdul Khalique were tried in off shoot cases under section 13(d) Arms Ordinance passed by 3rd Judicial Magistrate Naushehro Feroze and they were acquitted mainly for the following reasons:

> *" As per the FIR; complainant received spy information that accused persons were waiting for conveyance at Mungya Mor Bus stop and same accused are wanted in crime No.224/2011 of P.S Darya Khan Marri. As the complainant left P.S under entry No.11 but during evidence prosecution miserably failed to produce such entry, on the contrary entry No. 16 was produced,*

this suggests to believe that case of prosecution is doubtful. PW PC Kabir disclosed that his statement was recorded at place of incident but I.O disclosed that same was done at P.S. I.O admitted in his cross examination that he did not examine the case property and it was sealed. I.O had also admitted that he had not been shown the actual place, where as alleged accused were tried to escape. Complainant himself admitted that he had not made efforts to associate any private witness at the time of arrest of accused. The version of complainant and PW PC Kabir in respect of distance is very much contradictory, as complainant disclosed that there is a 7/8 K.m distance in between P.S and place of incident but PC Kabir admitted that there is a distance of 7/8 paces in between P.S and place of incident. Complainant disclosed that the Dotson through which they proceeded towards place of incident belong to him but PC Kabir disclosed that same was brought by complainant on hire basis. PW PC Kabir disclosed that he had made personal search of the accused Shareefullah but complainant had paradox version by saying that he (complainant) had made personal search of all accused persons.

One of the interesting point is that; Learned ADPP contended that in entry No.16 it has been discussed about entry No.11 on which complainant party left P.S but entry No. 16 reveals that it was kept on 28.12.2011 at about 0030 hours time but on the other hand date and time of lodging of FIR shows that FIR was lodged on 27.12.2011 at about 2200 hours time. It means that complainant party did not keep such entry when they returned at P.S but same was kept after registration of FIR and that also suggest to believe that prosecution case is very much doubtful. Learned ADPP has exhibited the photocopy of entry No.16, which is under law is not applicable/admissible and same does not signify its genuineness. Failing to produce

the exact entry under which complainant party left P.S rendered the entire episode shrouded in doubt. Said fact by itself was enough to disbelieve the prosecution version. Hence all these flaws and infirmities are sufficient for understanding that prosecution case does not have confidence inspiring."

12. Learned Additional Prosecutor General appearing on behalf of appellant / State could not satisfy the Court that acquittal ordered against the respondents was arbitrarily. Findings of acquittal recorded by trial Court are based upon sound reasons even otherwise scope against acquittal…

13. It is settled law that ordinary scope of acquittal appeal is considerably narrow and limited and obvious approach for dealing with the appeal against the conviction would be different and should be distinguished from the appeal against acquittal because presumption of double innocence of accused is attached to the order of acquittal. In the case of *The State and others v. Abdul Khaliq and others* (**PLD 2011 Supreme Court 554**), following guiding principles have been laid down for deciding an acquittal appeal in a criminal case:

"*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."

14. In the recent judgment in the case of *Zulfiqar Ali v. Imtiaz and others*(**2019 SCMR 1315**), Hon'ble Supreme Court has held as under:

> *" **It is by now well-settled that acquittal once granted cannot be recalled merely on the possibility of a contra view. Unless, the impugned view is found on the fringes of impossibility, resulting into miscarriage of justice, freedom cannot be recalled.** Criminal Appeal fails. Appeal dismissed.***"**

15. Standards of assessing evidence in appeal against acquittal are different from those laid down for appeal against conviction, while dealing such appeals Courts are always slow in exercising jurisdiction unless it is found that gross injustice had been done, while the judgment impugned as observed above, neither perverse nor shocking or contrary to the evidence available on record, therefore, is not open to any exception.

16. For what has been discussed above, the impugned judgments of acquittal are neither arbitrary nor as alleged to be a grave miscarriage of justice to warrant inference. An accused acquitted after regular trial earns a double presumption of innocence.

17. This **Criminal Acquittal Appeals Nos. S-41 and S-42 of 2013 are without merit and the same are dismissed.**

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J U D G E

Irfan/PA

14. Complainant Akber Ali has filed Criminal Revision No. D-89 of 2016 for enhancement of sentence recorded by the trial Court against appellant Muhammad Punhal alias Punhoon vide Judgment dated 07.06.2016.

So far motive is concerned the Honourable Supreme Court of Pakistan in case reported in PLD 2006 S.C P.354 and PLD 2008 S.C 503 had held that for awarding punishment existence of motive is not necessary because motive is shrouded in the mind of accused persons which may spur at any moment and no instrument can measure contents of mind of accused persons, hence case of prosecution cannot be said to remain unsuccessful in case of non-availability of motive. Moreover it is also held in case of Imtiaz Ahmed vs. The State [2001 SCMR 1334 (c)], that allegation and proof of motive are not legal requirements for awarding maximum penalty of death in a murder case, when the prosecution has proved the guilt of the accused beyond reasonable doubt. The decision of the case must not be taken in relation of case of accused, but must rest on examination of entire evidence.

and fate of the accused in the case of Muhammad

Learned Advocate for appellant / complainant has filed Criminal Revision No. D- 89 of 2016 for enhancement of sentence but trial Court in the Judgment has mentioned that prosecution has failed to prove the motive against the appellant for commission of the offence which was set up in the FIR. Reliance is placed on the case of Mst. Nazia Anwar vs. The State and others (2018 SCMR 911). Relevant portion of the Judgment is re-produced as under:-

> "*The law is settled by now that if the prosecution asserts a motive but fails to prove the same then such failure on the part of the prosecution may react against a sentence of death passed against a convict on the charge of murder and a reference in this respect may be made to the cases of Ahmad Nawaz v. The State (2011 SCMR 593), Iftikhar Mehmood and another v. Qaiser Iftikhar and others (2011 SCMR 1165), Muhammad Mumtaz v. The State and another (2012 SCMR 267), Muhammad Imran alias Asif v. The State. (2013 SCMR 782), Sabir Hussain alias Sabri v. The State (2013 SCMR 1554), Zeeshan Afzal alias Shani and another v. The State and another (2013 SCMR 1602), Naveed alias Needu and others v. The State and others (2014 SCMR 1464), Muhammad Nadeem Waqas and another v. The State (2014 SCMR 1658), Muhammad Asif v. Muhammad Akhtar and others (2016 SCMR 2035) and Qaddan and others v. The State (2017 SCMR 148). After going through the entire record of the case from cover to cover and after attending to different aspects of this case I have found that although it is proved beyond doubt that the appellant was responsible for the murder of the deceased yet the story of the prosecution has many inherent obscurities ingrained therein. It is intriguing as to why the appellant would bring her four months old baby-boy to the spot and put the baby boy on the floor and then start belabouring the deceased with a dagger in order to kill her. I have, thus, entertained no*

manner of doubt that the real cause of occurrence was something different which had been completely suppressed by both the parties to the case and that real cause of occurrence had remained shrouded in mystery. Such circumstances of this case have put me to caution in the matter of the appellant's sentence and in the peculiar circumstances of the case I have decided to withhold the sentence of death passed against appellant."

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17. Additional Prosecutor General argued that prosecution has proved its case, as the eye witnesses of incident and ocular evidence gets supports from medical evidence, however, Additional Prosecutor General submits that trial Court rightly held that motive has not been established at trial.

17. We have re-examined the evidence of eye-witnesses and have no hesitation to hold that motive as set up in the FIR by the complainant has not been established at trial and evidence of trial Court regarding motive is based upon sound reasons. Ocular evidence in this case is confidence inspiring, we have no reason to disbelieve it. Trial Court has rightly been relied upon the evidence of eye witnesses supported by the medical evidence, therefore, conviction recorded by trial Court vide Judgment dated 07.06.2016 requires no interference by this Court. Investigating Officer has also failed to interrogate about the previous murder of one Muhammad Arif, therefore, we have no hesitation to hold that trial Court has rightly held that motive is not proved.

18. Through Criminal Revision No. D- 89 of 2016 filed by appellant / complainant Akber Ali has prayed for enhancement of sentence passed against respondent / accused Muhammad Punhal alias Punhal on the charge under section 302(b) PPC to death. Learned Advocate for appellant Muhammad

Punhal alias Punhoon could not satisfy the Court that prosecution succeeded to prove the motive against appellant for commission of offence. In this connection we find that reasons recorded by the trial Court in the impugned Judgment for awarding life imprisonment are cogent, trial Court has mentioned that prosecution has failed to prove motive as set up in the FIR at trial and it is recognized ground for awarding life imprisonment under section 302(b) PPC as trial Court has assigned sound reasons for awarding life imprisonment and such reasons are hardly quite for interference by this Court particularly at such late stage when respondent Muhammad Punhal alias Punhoo has already served substantial portion of his sentence. Learned Trial Court as well as Additional P.G argued that motive as set up in the FIR has not been established at trial. Learned advocate for respondent has rightly relied upon the case of Faiz Muhammad and another vs. Shafique-ur-Rehman and another (2013 SCMR 583), therefore, we hold that no case for enhancement of the sentence to the appellant is made out. **Consequently Revision Application No.D-89 of 2016 is without merit and the same is dismissed.**

19. Now we re-examine the prosecution evidence in Criminal Jail Appeal No. S-122 of 2016. It appears that learned trial Court found appellant guilty for offence under section 13(d) Pakistan Arms ordinance, 1965 and sentenced him to 07 years R.I and to pay fine of Rs. 20,000/- in case of default to pay fine, appellant was ordered to suffer R.,I for one month more.

20. The appellant Muhammad Punhal alias Punhoo was arrested after about 02 months on 13.09.2009 and Kalashnikov was recovered from his possession. Surprisingly the same was not sent to ballistic expert for report. We are unable to rely upon the evidence of P.Ws ASI Rabdino, PW-2 SIO Rana Asif Ali and PW PC Abdul Rehman for the reasons that it is un-believable that appellant was carrying Kalashnikov after commission of murders for last two

months. Moreover said Kalashnikov was not sent to Expert. Police officials failed to associate independent and reliable persons of the locality despite had received spy information. Prosecution failed to produce before trial Court arrival roznamcha entry which cuts the roots of the prosecution case. Recovery of Kalashnikov from the possession of appellant cannot be used as corroborative piece of evidence in the commission of offence. Evidence of police officials regarding recovery of Kalashnikov had inherent defects but trial Court failed to appreciate evidence of police officials on sound judicial principles. We are satisfied on re-appraisal of evidence that prosecution could not succeed to prove the recovery of Kalashnikov from possession of appellant as alleged by the prosecution and findings of trial Court regarding guilty of appellant is not based upon sound reasons, therefore, **Criminal Jail Appeal No. S- 122 of 2016 is allowed.** The conviction and sentence recorded against the appellant Muhammad Punhal alias Punhoon for offence under section 13(d) Pakistan Arms Ordinance, 1965 vide Judgment dated 07.06.2016 is set aside. Appellant shall be released forthwith in crime No.244/2009 of Police Station Daharki.

21. In view of above discussion, trial Court rightly found appellant guilty, we also hold that prosecution had proved its case against appellant beyond any reasonable shadow of doubt. Resultantly, Criminal Jail Appeal No. S-123 of 2016 filed by the appellant Muhammad Punhal alias Punhoon stands **dismissed.**

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