

10/28

the evidence is appraised with a strict view, whereas the same rigid method of appraisal of evidence is not to be taken into consideration while deciding an acquittal appeal. In such appeals interference is only made out when it appears that there is gross misreading of evidence which might cause miscarriage of justice. In acquittal appeals ordinarily the Courts are reluctant to interfere with the judgment of the trial Court and instead due weight is to be given to the findings of the trial Court, as the evidence has been appraised and a conclusion has been drawn. The Hon'ble Supreme Court in the case of ***Muhammad Usman & 2 others v. The State*** (1992 SCMR 489) has laid down certain principles in respect of acquittal appeals, which read as under:

"(1) In an appeal against acquittal the Supreme Court would not on principle ordinarily interfere and instead would give due weight and consideration to the findings of Court acquitting the accused. This approach is slightly different than that in an appeal against conviction when leave is granted only for the reappraisal of evidence which then is undertaken so as to see that benefit of every reasonable doubt should be extended to the accused. This difference of approach is mainly conditioned by the fact that the acquittal carries with it the two well accepted presumptions: One initial, that till found guilty, the accused is innocent; and two that again after the trial a Court below confirmed the assumption of innocence.

(2) The acquittal will not carry the second presumption and will also thus lose the first one if on points having conclusive effect on the end result the Court below: (a) disregarded material evidence; (b) misread such evidence; (c) received such evidence illegally.

(3) In either case the well-known principles of reappraisal of evidence will have to be kept in view when examining the strength of the views expressed by the Court below. They will not be brushed aside lightly on mere assumptions keeping always in view that a departure from the normal principle must be necessitated by obligatory observances of some higher principle as noted above and for no other reason.

(4) The Court would not interfere with acquittal merely because on reappraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If, however, the conclusion reached by that Court was such that no reasonable person would conceivably reach the same and was impossible then this Court would interfere in the exceptional cases on overwhelming proof resulting in conclusion and irresistible conclusion; and that too with a view only to avoid grave miscarriage of justice and for no other purpose. The important test visualized in these cases, in this behalf was that the finding sought to be interfered with,

after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous."

8. On perusal of the record and evidence placed before us, it appears that the trial Court has taken due care in acquitting the respondent, as this is a case wherein there is no ocular evidence which could connect the respondent with the commission of the alleged crime as none of the witnesses examined by the prosecution have deposed that they had seen the respondent while committing the murder of deceased Ali Akbar. It is also an admitted fact that the first FIR (62/2007) was against unknown persons and the present respondent was never nominated in the said FIR. Though he was arrested on the instigation of the complainant; however, after thorough investigation the report under Section 173, Cr.P.C was filed for "Cancel" Class, on which appropriate orders were also passed by the concerned Judicial Magistrate. Thereafter, the complainant approached the Justice of Peace and a second FIR (90/2007) was lodged, wherein the respondent and absconding accused, namely, Abdul Razaq were nominated. This appears to be a case of improvement. The prosecution witnesses examined on behalf of the complainant include his son and nephew, whereas it has come on record that there was personal enmity amongst the parties due to matrimonial dispute. It further appears that the body of the deceased was recovered on the basis of information provided by the co-villagers, who were present all along with the policy party at the said incident and particularly at the time of inspecting the dead body and preparation of inquest report, but surprisingly none of them was made mashir or witness of the case, which creates doubts in the prosecution's case. Insofar as the official witnesses are concerned, they only acted as formal witnesses for recording the statements and, therefore, their evidence also does not inspire any confidence so as to convict the respondent. It is also a matter of fact that despite

interrogation no crime weapon was ever recovered, whereas there is no motive for the offence in the entire case. On the other hand, the respondent in his statement under Section 342, Cr.P.C has categorically denied the charges and claimed to be innocent and has pleaded his false implication at the hands of the complainant party in the second FIR due to a matrimonial dispute. He has further stated that his sister was married to PW-2 Shahnawaz and due to dispute obtained divorce from the Family Court, which has annoyed and has made them inimical towards him. All these points and issues do not lead us to any conclusion other than the acquittal of the respondent.

9. In view of hereinabove facts and circumstances of this case, we are of the view that the learned trial Court has passed a reasoned judgment by acquitting the respondent, as the prosecution has failed to prove the case beyond any reasonable shadow of doubt and we do not find justification for interfering with the impugned judgment. Accordingly instant acquittal appeal is hereby dismissed.

JUDGE

JUDGE

19.9.17

101

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Acqtl. Appeal No.D-08 of 2013

Present:

Mr. Justice Muhammad Junaid Ghaffar,
Mr. Justice Muhammad Saleem Jessar,

Appellant : Ali Muhammad Abro in person.

Respondents : Allah Dino Mojai, through Mr. Ashfaque Hussain Abro, Advocate.

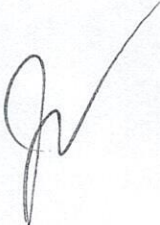
Mr. Khadim Hussain Khooharo, Addl. P.G.

Date of hearing: 19.09.2017. Date of Judgment: 19.09.2017.

J U D G M E N T

Muhammad Junaid Ghaffar, J.- This acquittal appeal has been filed by appellant/complainant Ali Muhammad Abro against the judgment dated 12.01.2013, passed by learned 3rd Additional Sessions Judge, Larkana, in Sessions Case No.417/2008, arising out of Crime No.90/2007 of Police Station Bakrani, registered under Sections 302, 34, PPC, whereby the respondent No.1, namely, Allah Dino Mojai was extended benefit of doubt and acquitted of the charge.

2. In brief, the prosecution case is that on 17.7.2007, at about 7.00 p.m. accused Allah Dino and Abdul Razak, after seeking permission from complainant Ali Muhammad Abro, took away his son Ali Akbar (deceased) for gathering at their village. On 18.07.2007, at about 8.00 a.m. complainant was informed that dead body of his son Ali Akbar was lying in the land of Sarfraz Khan Bughio, whereupon he along with relatives and co-villagers rushed there and found dead body of his son Ali Akbar lying in the land having firearm injuries on his neck. Complainant then lodged FIR, which was disposed of under



"Cancel" Class, whereafter on 09.09.2007 second FIR was lodged by him, which after investigation was challaned.

3. The appellant has appeared in person and is unable to render any assistance to the Court; however, the matter has been taken up at his request for a decision with the assistance of the Counsel for respondent and learned Additional Prosecutor General.

4. The Counsel for respondent submits that the impugned judgment of the trial Court is correct in law and facts and instant appeal is liable to be dismissed on the grounds that this is a case of two FIRs. He submits that initially an FIR bearing No.62/2007 was registered by the same complainant against unknown persons for commission of alleged murder of his son and after arrest of the respondent on his oral motion, the case was investigated and was disposed of as a "Cancel" Class with the approval of the Judicial Magistrate. He submits that thereafter the complainant approached Justice of Peace and second FIR was registered after almost two months, whereas this is a case of last seen evidence and no cogent and convincing evidence has been led on behalf of the complainant so as to convict the respondent. He prays for dismissal of the appeal.

5. Learned Addl. P.G has fully supported the impugned judgment and submits that the prosecution has failed to prove the case beyond reasonable doubts and, therefore, no case is made out.

6. We have heard the learned Counsel for respondent as well as learned Addl. P.G and have perused the record as well as the R&Ps.

7. At the very outset we may observe that while deciding an acquittal appeal the appraisal of the evidence vis-à-vis an appeal against conviction is not on same plane. In appeal against conviction