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IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Acquittal Appeal No.D-25 of 2004.

PRESENT:

Mr. Justice Zafar Ahmed Rajput,
Mr. Justice Irshad Ali Shah,

Appellant	Hussain Bux Seehro through Mr. Asif Ali Abdul Razak Soomro, Advocate.
Respondents	Khair Shah & others, through Mr. Tahir Abbas Shah, Advocate for respondents No.2 to 4. Mr. Sharafuddin Kanhar, Assistant Prosecutor General.
Date of Hearing:	04.9.2018.
Date of Decision:	04.9.2018.

J U D G M E N T

Zafar Ahmed Rajput –J. The instant criminal acquittal appeal is directed against the judgment dated 03.09.2004, passed by the learned VII-Additional Sessions Judge, Larkana, in Sessions Case No.222 of 2000 (Re: State v/s Khair Shah & others) emanated from Crime/FIR No.22 of 2000, registered at Police Station Warah, District Larkana (now District Kamber-Shahdadkot at Kambr), for offence under Section 302, 34, PPC, whereby respondents No.1 to 4, namely, Khair Shah (now dead), Hussain Shah, both sons of Rakhial Shah, 3. Imam Shah son of Khadim Hussain Shah and 4. Akhtiar Ali son of Akkan Khaskheli, were acquitted of the charge of committing murder of deceased Mohammad Yousif and Rajib Ali.

2. Briefly, the facts of the case are that on 25.4.2000 complainant Hussain Bakhsh Seehro, lodged report at P.S Warah, alleging *inter alia* therein that on the fateful night while he, his uncle Mohammad Yousif, his cousin Rajib Ali and his brother-in-law Ali Hassan along with other family members were sleeping in the home on the separate cots, at about 0200 hours they woke up on the commotion and saw on bulb light persons, namely, 1. Khair Shah armed with gun, 2. Hussain Shah having pistol, 3. Imam Shah armed with 222

rifle, and 4. Akhtiar Ali Khaskheli having 222 rifle standing in the house, out of whom accused Khair Shah fired direct gunshot at Rajib Ali, which hit him and he fell down; accused Imam Shah fired direct rifle shot, which hit Mohammad Yousif and he also fell down by raising cries, while the other accused persons also fired direct shots from their respective weapons at Rajib Ali, cousin of the complainant and his uncle Mohammad Yousif. Cries raised by the complainant party attracted to PW Wahid Bux Kalhoro and other villagers, who also saw and identified the accused persons, who seeing them coming, departed towards the northern side by abusing the complainant party and raising slogans that they had taken revenge of murder of Asghar Shah. Then the complainant and P.Ws saw injured Mohammad Yousif and Rajib Ali succumbed to injuries.

3. After completion of formalities, a formal charge was framed by the learned trial Court against the above-named respondents/accused for offence punishable under section 302, 34, PPC, to which they pleaded 'not guilty' and claimed to be tried.

4. The prosecution to substantiate the charge, examined PW-1 complainant Hussain Bux at Exh.7; PW-2 Dr. Badaruddin at Exh.9; PW-3 Wahid Bux at Exh.10; PW-4 Ali Hassan at Exh.11; PW-4 Tapedar Abdul Sami at Exh.12; PW-5 Ashique Ali (mashir); PW-6 Abdul Razaque at Exh.14, and PW-7 DSP Ghulam Hussain at Exh.15. They produced the relevant documents. The statements of accused under section 342, Cr.P.C were recorded by the learned trial Court, wherein they denied the prosecution allegations and pleaded innocence. However, they did not examine themselves on oath nor led any evidence in their defence in terms of Section 340(2), Cr.P.C. On conclusion of trial and after hearing the parties, the learned trial Court acquitted the respondents/accused of the charge extending them benefit of doubt vide judgment dated 03.09.2004. It is against that judgment, that instant Criminal Acquittal Appeal has been maintained by the appellant/complainant.

5. It may be relevant to mention here that during pendency of this criminal acquittal appeal, the respondent No.1, namely, Khair Shah expired, hence proceedings against him were abated vide order dated 04.12.2013.

6. Heard the learned Counsel for the parties and perused the material available on record.

7. Mr. Asif Ali Abdul Razak Soomro, learned Counsel for the appellant, has contended that the respondents/accused were identified at the spot and were nominated in the FIR with specific role; that the complainant and eyewitnesses, namely, Ali Hassan and Wahid Bux examined during trial have fully supported the prosecution case and ocular testimony based on their evidence is worthy of credence, which was fully corroborated by the medical and other circumstantial evidence; that the learned trial Court has not properly assessed the prosecution evidence and has also not applied judicious mind to the facts of the case and it has not recorded cogent reasons for acquitting the respondents No.1 to 4; that sufficient evidence is available on record to believe that the respondents No.1 to 4 have committed the murder of deceased Mohammad Yousif and Rajib Ali, therefore, they are liable to be convicted for the same.

8. On the other hand, learned Counsel for the respondents No.1 to 4 and learned APG, while controverting the learned Counsel for the appellant, have fully supported the impugned judgment. They unanimously contended that the learned trial Court while acquitting the respondents/accused has discussed the evidence on record, hence, the impugned judgment being well-reasoned and speaking one, requires no interference by this Court in its appellate jurisdiction.

9. We have considered the contentions of learned Counsel for the parties and perused the material available on record with their assistance.

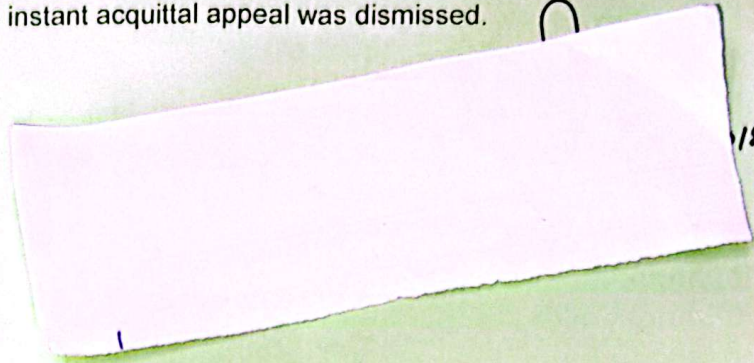
10. It appears that the learned trial Court while assessing the evidence on record has held that the identity of assailants at midnight was

doubtful, as the mashirnama of place of incident is silent regarding fitting of electricity at the place of occurrence, which was admitted by SHO Ghulam Hussain in his evidence; that the sketch prepared by Tapedar at the pointation of complainant was also silent about availability of electricity at the place of incident and even PW Wahid Bux, the alleged eyewitness, admitted in his evidence that the footprints of accused persons were tracked in the morning, which disappeared near village Thariri, which clearly shows that complainant and eyewitnesses were not certain about the presence of accused persons at the scene of offence; that the complainant admitted that PW Wahid Bux came at the place of occurrence and enquired from him about the incident, to whom he disclosed that the persons seen by him running away had committed murders; that the complainant stated that there was longstanding enmity between him and the accused persons; PW Wahid Bux admitted that there was litigation between him and accused Akhtiar over the agricultural land; PW Ali Hassan admitted that in the morning footprints of accused persons were tracked. The learned trial Court also observed that when the accused persons were already known to the complainant and PWs, there was no necessity to track the footprints of the assailants. The learned trial Court has also noted that the complainant has deposed that the PW Ali Hassan was present at the spot at the time of incident and PW Wahid Bux had come on the cries, but PW Ali Hassan contradicted the complainant and PW Wahid Bux by deposing that Akhtiar Ali and Mohammad Ali had come at the place of incident first. Apart from above, the learned trial Court has discussed in detail many other material discrepancies, infirmities and glaring contradictions in the evidence of prosecution witnesses, which rendered the prosecution case highly doubtful. Hence, prosecution has failed to bring home guilt of respondents / accused beyond a reasonable doubt. It is well-settled principle of law that for basing conviction against an accused there should be strong evidence before the trial Court and if the doubt, even slightest, arises in the prudent mind as to the guilt of the accused, benefit of the same has to be extended in his favour.

11 We do not find any force in the arguments of learned Counsel for the appellant. The learned trial Court has recorded valid reasons for its order of acquittal, which are based on correct appraisal evidence on record and the conclusion drawn by the learned trial Court as to the innocence of accused is appropriate. It is well-settled principle of law that the extraordinary remedy of an appeal against an acquittal is different from an appeal against the judgment of conviction and sentence, because presumption of double innocence of the accused is attached to the order of acquittal. Thus, on the examination of the order of acquittal as a whole, credence is accorded to the findings of the subordinate Court whereby the accused had been exonerated from the charge of commission of the offence. To reverse an order of acquittal, it must be shown that the acquittal order is unreasonable, perverse and manifestly wrong; therefore, the order of acquittal passed by the trial Court, which is based on correct appreciation of evidence, will not warrant interference in appeal. The Honourable Supreme Court while dealing with the appeal against acquittal has been pleased to lay down the principle in the case of **Muhammad Shafi Vs Muhammad Raza & another (2008 SCMR 329)** that *an accused is presumed to be innocent in law and if after regular trial he is acquitted, he earns a double presumption of innocence and there is a heavy onus on the prosecution to rebut the said presumption. In view of the discrepant and inconsistent evidence led, the guilt of accused is not free from doubt, we are therefore, of the view that the prosecution has failed to discharge the onus and the finding of acquittal is neither arbitrary nor capricious to warrant interference."*

12. In view of above reasons, we are of the humble view that the impugned judgment dated 03.9.2004 passed by the learned trial Court does not suffer from any illegality or infirmity and misreading or non-reading of evidence leading to miscarriage of justice; therefore, the same is not open for interference by this Court under Section 417, Cr.P.C. Hence, this acquittal appeal being devoid of merit is liable to be dismissed.

13. Above are the reasons of short order announced by us on 04.9.2018, whereby the instant acquittal appeal was dismissed.



Qazi Tahir PA"