

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Spl. Anti-Terrorism Acq. Appeal No. D- 10 of 2024
[**Muhammad Murad v. The State and others**]

Before:

Mr. Justice Khadim Hussain Tunio
Mr. Justice Miran Muhammad Shah

Appellant : Muhammad Murad through Mr. Muhammad Iqbal Memon, Advocate
Respondents : The State through Mr. Zulfiqar Ali Jatoi, APG
Date of hearing :
& decision : 04.02.2025

J U D G M E N T

MIRAN MUHAMMAD SHAH, J: Through captioned Special Anti-Terrorism Acquittal Appeal, appellant / complainant Muhammad Murad has impugned the judgment dated 20.03.2024 passed by the Judge Anti-Terrorism Ghotki at at Mirpur Mathelo in Special Case No. 43 of 2023 arising out of Crime No. 200 of 2023 registered at police station Ubauro district Ghotki for offense punishable under Sections 365-A, 148, 149 PPC & Section 7 of Anti-Terrorism Act 1997, whereby respondents 2 to 7 have been acquitted of the charge; an excerpt of the Judgment is reproduced as under:-

Point No.2.

In view of above discussion on Point No.01, I have come to the conclusion that prosecution case is not free from doubt and prosecution have miserably failed to prove its case against present accused 1. Peer Bux s/o Khair Muhammad by caste Chachar, 2. Jameel Ahmed s/o Khair Muhammad by caste Chachar, 3. Muhammad Ismail s/o Abdul Razzaq by caste Chachar, 4. Ashiq Ali s/o Abdul Hakeem by caste Dashti, 5. Junaid Khan @ Jeand @ Jeand Khan s/o Mohabbat Khan by caste Kosh and 6. Muhammad Sadiq s/o Mohabbat Khan by caste Kosh, I therefore, acquit them under section 245-H(i) Cr.P.C. by giving them benefit of doubt.”

2. The FIR in this case was lodged by the Appellant / Complainant on 4.10.2023, alleging therein that they cultivate the land of Allah Jiwayo Chachar. On 16.7.2023 Qabool Ahmed went to the land to manage / divert water for the rice crop but did not return. On the following day, at about 0600 a.m, Complainant along with his maternal cousins Abdul Malik and Abdul

Sattar, went to the land, where they found Qabool Ahmed's spade, boots / shoes, and footprints, along with additional footprints of four other individuals and thereafter he lodged the instant FIR for kidnapping of his brother at Police Station Ubauro against the unknown culprits.

3. At the outset, on query with regard to maintainability of this Acquittal Appeal on the premise that the trial court has acquitted the respondents after recording evidence of the parties and considering every aspect of the case, learned counsel for the appellant / complainant argued that the impugned judgment is against the law and facts and the same is not based upon sound reasoning; that the trial court acquitted the respondents by extending benefit of doubt, however, the same is not based upon sound reasoning; that all the P.Ws have supported the version of FIR; that the evidence of all the P.Ws remained consistent in their examination-in-chief and there is no material contradiction brought on record yet the trial court has acquitted the respondents; that there is misreading and non-reading of evidence available on record; that the trial court has failed to appreciate that there is no enmity of the complainant with the respondents / accused to falsely implicate them in the crime; that the respondents / accused have kidnapped the brother of appellant thus they need to be convicted rather than acquitted; that the investigation officer has conducted the investigation dishonestly. He lastly prayed that the impugned judgment may be set aside and the respondents / accused may be awarded sentence accordingly.

4. Conversely, counsel for respondents / accused argued that they are innocent and have falsely been implicated in this case; that the names of present respondents / accused are not mentioned in the FIR but they have been nominated on the basis of statement of P.Ws recorded under Section 161 Cr.P.C.; that there is delay of three months in registration of FIR without any plausible explanation; that the abductee after his release did not disclose the names of respondents / accused to the police who were his cousins and neighbours, but he disclosed their names later after due deliberation and consultation; that during investigation complainant party did not disclose their relationship with respondents / accused which shows their ill intention; that it is strange that the abductee who remained under the illegal detention for about three months and was maltreated but there was not single scratch of injury on his body; that no any independent person was associated to act as mashir; that there are major contradictions in the evidence of P.Ws; that the USB produced before the Court is without forensic examination; that the I.O conducted

investigation and submitted challan in 'B' class declaring the respondents / accused as innocent; that the parties are related to each other and there is dispute over inheritance of property, hence the instant case was filed with malafide intention. He lastly prayed that the Trial Court has rightly acquitted the respondents / accused; therefore, the instant Appeal is liable to be dismissed.

5. We have heard learned counsel for the parties and perused the record with their assistance.

6. Admittedly, it is an unseen incident and there is inordinate delay of three months in lodgment of FIR which has not been explained despite the fact that the prosecution states that in abduction cases such delay is a norm; however, in my view delay in such type of cases is fatal to the prosecution case, specially when the accused tried for the charge are not specifically nominated in the FIR but are subsequently nominated on the basis of statement of abductee and other P.Ws recorded under Section 161 Cr.P.C. Although the family dispute is admitted by the Complainant party and such dispute could be the main reason for involving the respondents / accused to settle their score; despite well-thought after statements made under Section 161 Cr.P.C. by the Complainant side; there are major contradictions amongst the P.Ws at the time of trial. Such contradictions also do not support the prosecution case. Resultantly, we do not see any strong material of conviction in the case. The above view is duly supported by the case reported as **Zahoor Ahmed v. The State (2023 MLD 594)**.

7. It is also a settled principle of law that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from an appeal against acquittal because the presumption of double innocence is attached in the latter case. An order of acquittal can only be interfered with when it is found on the face of it as capricious, perverse, arbitrary, or foolish, which are lacking in this case. Reliance is placed on the case of **INAYAT ULLAH BUTT V. MUHAMMAD JAVED ETC. (PLD 2003 SC 563)**, **MST. ANWAR BEGUM V. AKHTAR HUSSAIN ALIAS KAKA AND 2 OTHERS (2017 SCMR 1710)**.

8. Even in principle the Judgment of acquittal can be reversed where the trial Court committed glaring misreading or non-reading of evidence and recorded its findings in a fanciful manner, contrary to the evidence brought on

record. We have noticed that the Judgment of trial court is very elaborative and needs no further deliberation as no illegality has been pointed out by the appellant; even otherwise it is well-settled principle of law that the burden always lies upon the shoulders of prosecution to prove the case beyond any shadow of reasonable doubt, and if a single circumstance creates doubt it goes in favor of the accused, the benefit of which shall be extended to him not as a matter of grace but as a matter of right as laid down by honourable Supreme Court of Pakistan in the cases of **TARIQ PERVAIZ V. THE STATE** (1995 SCMR 1345), **MUHAMMAD AKRAM V. THE STATE** (2009 SCMR 230) and in case of **MUHAMMAD ZAFAR AND ANOTHER V. RUSTAM AND OTHERS** (2017 SCMR 1639).

9. In view of the above, the impugned judgment seems to be an elaborate, speaking one based upon valid and cogent reasoning, does not suffer from any misreading, non-reading or non-appraisal of evidence, therefore, it does not warrant interference of this court. Resultantly, the instant Special Anti-Terrorism Acquittal Appeal was dismissed vide short order dated 04.02.2025 and these are the reasons for the same.

JUDGE

JUDGE