

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Cr. Acq Appeal No. 92/2017

Abdul Ghafoor

V

Abdul Jabbar and another

Date of hearing	15.06.2017
Date of judgment	16.06.2016
Appellant	Through Mr. Liaquat Ali, advocate
Respondent/The State	Through Mr. Zahoor Shah, Addl. P.G.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- By this judgment I intend to dispose of above criminal acquittal appeal filed by the appellant/complainant whereby the respondent No.1 was acquitted vide judgment dated 18.01.2017 by the trial Court in SCMO Case No.2445/2011 passed by learned Ist Judicial Magistrate, Karachi East (the impugned judgment).

2. The appellant Abdul Ghafoor son of Nadan Khan being dissatisfied with the impugned judgment has challenged the same through this instant appeal against acquittal.

3. The brief facts of the prosecution case as per contents of the FIR are that the accused in order to fulfill his obligations dishonestly issued cheque no.8923094 of Rs. 5,75,000/- dated 10.03.2011 of Standard Chartered Bank, Abul Hassan Isphani Road, Karachi in favour of the complainant namely Abdul Ghafoor son of Nadan Khan who had presented the same in the bank but the same was not encashed and was bounced and thereby an

offence u/s 489-F PPC was committed which lead to the complainant filing an FIR against the accused under the aforesaid section.

4. After usual investigation the accused was challoned, later charged and after a full dressed trial the accused was acquitted through the impugned judgment.

5. There is no need to set out the evidence as this forms a part of the record and has also been discussed in the impugned judgment so as to avoid unnecessary repetition.

6. The appellant in this appeal against acquittal has mainly contended that the trial Court has acquitted the Respondent/accused without appreciating the evidence in accordance with the settled principles of law and that that there has been a misreading and non reading of evidence which requires the impugned judgment to be set aside by this court. On the other hand the Respondent No.1 has submitted that the impugned judgement is in accordance with law and that there are no legal infirmities which justify it being interfered with. Learned counsel for the State supported the arguments of the Respondent No.1.

7. I have heard learned counsel for the appellant, Respondent, Addl. Prosecutor General, examined the entire evidence available on record and the impugned judgment with the able assistance of learned counsel for the parties and have considered the relevant case law.

8. It appears that the trial Court through the impugned judgment has mainly acquitted the Respondent No.1 for the following reasons as set out in the impugned judgment below;

"Complainant's version is that he gave money to one person namely Manzoor in lieu of fake gold, on request of Abdul

Jabbar but there is no such confidence inspiring evidence in this regard. PW-3 during cross-examination stated, "..... The cheque in question at Ex.5/d was given to complainant in office, however, I have not witnessed the handing/taking over of this cheque. There is no confidence inspiring evidence on record of handing/taking over of money in lieu of fake gold. There is no confidence inspiring evidence on record of handing/taking over of cheque in question to fulfill the alleged liability accrued due to the fake handing/taking over of gold. There is nothing on record from which the liability of accused for issuance of cheque could be determined without any shadow of doubt. These very facts/observations create doubt in the prosecution story."

9. It is settled law that judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous as held by the Honorable Supreme Court in the case of **The State v. Abdul Khaliq and others** (PLD 2011 Supreme Court 554). Moreover, the scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of the innocence is significantly added to the cardinal rule of criminal jurisprudence as the accused shall be presumed to be innocent until proved guilty. **In other words, the presumption of innocence is doubled** as held by the Honourable Supreme Court of Pakistan in the above referred judgment. The relevant para is reproduced hereunder:-

"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 Ahmed 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 02 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 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." (bold and italics added)

10. Having gone through the evidence and the impugned judgment I find that there has been no misreading or non reading of evidence, that the impugned judgment is based on sound reasons and there is no question of the findings in the impugned judgment being perverse, arbitrary, foolish, artificial, speculative and ridiculous especially as it is a well established principle of law that the accused is always entitled to the benefit of the doubt in criminal cases and as was held in the case of **Tariq Pervez V/s. The State** (1995 SCMR 1345), where the Honourable Supreme Court has observed as follows:-

"It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right."

11. As such in my view there is no merit in the instant appeal against acquittal. The Acquittal recorded by trial Court in favour of Respondent No.1 is based upon sound reasons, which require no interference at all. As such, the instant appeal against acquittal is dismissed.