Holy Prophet (PBUH) endorses benefit of doubt. Appeal against acquittal – dismissed – NFR

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IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:
Mr. Justice Abdul Maalik Gaddi
Mr. Justice Mohammad Karim Khan Agha

Cr. Acq. Appeal No.D-25 of 2017

Rano

Vs.

Tulsi alias Tulcho & another

Appellant : Rano	Through Haji Qalandar Bux Leghari, Advocate
None present for private respondent	
Respondent : the State	Through Syed Meeral Shah Bukhari, Additional Prosecutor General.
Date of hearing :	04.09.2018
Date of judgment :	04.09.2018

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J.- This criminal acquittal appeal has been filed by appellant Rano against the judgment dated 29.07.2017, passed by the learned Sessions Judge, Umerkot in Sessions Case No.149 of 2015 (re-The State Vs. Tulsi) under Crime No.130 of 2015, registered at P.S Kunri under sections 302, PPC, whereby the learned trial Court after full dressed trial acquitted the private respondent by giving him the benefit of the doubt.

2. Precisely, the brief facts of the prosecution case as disclosed in the FIR which was lodged at police station Kunri by complainant Rano, are as under:

> "On 14.10.2014, complainant Rano Kachhi lodged FIR at P.S Kunri alleging therein that he has five sons elder was Teerath aged about 25/26 years, Haresh aged about 21/22 years, who were doing Health Technician course in Government hospital Kunri. On 14.10.2015, he and his sons Teerath and Haresh came at Taluka hospital Kunri and from taluka hospital Kunri he alongwith his sons Teerath and Haresh and maternal nephew Arjan were coming to Kunri town from hospital and at 1200 hours reached in front the hospital of Dr. Naseem Akram at Hajran Maternity Home, where Teerath

purchased bottle of water from M-Nooh Super Store, as soon as he purchased water bottle and came out from the shop an unknown person came on the road and took out dagger from the fold of his shalwar and within their sight stabbed dagger blow in the abdomen and he fell down on the ground, unknown person showed dagger and threatened not to come near to him and that person went away. They saw that Teerath sustained dagger blow on right side of abdomen and blood was oozing. They arranged conveyance and brought injured Teerath at taluka hospital Kunri and obtained letter from P.S for treatment, after first aid doctor referred injured to Hyderabad and on the next day Teerath succumbed to the injuries and brought dead body at Kunri hospital. Thereafter lodged the FIR."

3. After usual investigation, challan of the case was submitted before the concerned Court. The learned trial Court framed charge against accused Tulsi alias Tulcho, to which he pleaded not guilty and claimed to be tried.

4. The prosecution in order to prove its case against the accused examined PW/complainant Rano, PWs Mohan Lal, Haresh Kumar, Nelo, Dr. Nandlal, Tapedar Muhammad Khalil, PW/IO Muhammad Ramzan and thereafter prosecution side was closed.

5. Thereafter, statement of accused person was recorded under section 342 Cr.P.C. wherein he denied the prosecution allegations and professed his innocence.

6. The trial court after hearing the learned counsel for the parties and assessment of evidence, by impugned judgment acquitted the accused/respondent as stated in concluding paragraph of the impugned judgment. Hence, this acquittal appeal has been filed by the appellant.

7. Haji Qalandar Bux Leghari, learned Counsel for appellant contended that the judgment passed by the learned trial court is perverse and the reasons are artificial, vis-à-vis the evidence on record; that the grounds on which the trial court proceeded to acquit the respondent are not supportable from the evidence on record. He further submitted that the respondent has been directly charged and that the discrepancies in the statements of witnesses are not so material on the basis of which respondent could be acquitted. He further contended that the learned trial court has based its finding of acquittal merely on the basis of minor contradictions on non-vital

points in the statements of prosecution witnesses and that the prosecution evidence has not been properly appreciated. Therefore, under the circumstances, he was of the view that this appeal may be allowed as prayed.

8. On the other hand, the learned Additional Prosecutor General Sindh has supported the impugned judgment passed by learned trial court by arguing that the impugned judgment has been passed after due appreciation of evidence on record and that there is no legal infirmity in the same and the appeal was liable to be dismissed.

9. We have heard the learned Counsel for the parties and perused the evidence so brought on record alongwith impugned judgment with their able assistance.

10. The operative part of the Judgment reads as under:

> "From the available record, and the evidence so far brought on record by the prosecution which I discussed above, is full of doubt. The ocular account is concerned, it would be seen that on the date of incident, it was 12.00 noon, broad day time and alleged incident took place in Kunri town but none of the eye witness or any other person identified the accused, the presumption would be that PWs were not present at the time of incident. The learned state counsel has stated that complainant and PWs are near related had no reason to falsely implicate the accused does not carry much substances, as it is not the question of relationship but veracity of witness is to be seen so as to arrive at conclusion whether the witnesses are truthful or otherwise. General rule is that statement of a witness must be in consonance with the probabilities fitting in the circumstances of the case and also inspires confidence in the mind of reasonable and prudent person. If these elements are present, then the statement of worst enemy of the accused can be accepted and relied upon without corroboration but these elements are missing then the statement of a pious man can be rejected without second thought. In the present matter the statements of prosecution witnesses do not come within the ambit of above rule of acceptance of evidence, therefore, no implicit reliance can be place on such type of evidence without any corroboration, which is lacking in the present case. There is no direct evidence against the accused but the case against the accused based on the circumstantial evidence. In the present matter the recovery of crime weapon on the pointation of accused is also doubtful, as the alleged Chhuri was not stained with blood nor the same was sent to the chemical examiner.
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> It was the basic duty of the prosecution to prove all the links of circumstantial evidence, but the prosecution has failed to prove all the links beyond any reasonable doubt. No doubt that this was the brutal murder. The way in which the deceased was murdered has engraved indelible feeling of sorrows on the heirs of the deceased. But finding of guilt against the accused cannot be based merely on the probabilities that may be inferred from the evidence. Finding of guilt should rest

surely and firmly on the solid and cogent evidence, because the conjecture, surmises and probabilities cannot take place of proof.

The motive was absent in the FIR but the prosecution witnesses tried to create the same by making improvements in their depositions, as stated by the complainant in his deposition that prior to 7/8 years the father-in-law of accused told him that there is illicit relations with his son Teerath and daughter of Baboo Kachhhi and they assured him that on oath that it is a false information. But neither the complainant nor PWs have stated about motive in their further statement of complainant or in the statements u/s 164 Cr.P.C of PWs. Therefore there is improvement in the evidence and motive has also not been proved. It also casts doubt on the genuineness of the story of the prosecution. It is well-celebrated principle of law that benefit of doubt, however, slight it may be, goes to the accused. It was the basic duty of the prosecution to establish the case against the accused beyond any reasonable doubt.

Like wise it is established principle of Law of Evidence that benefit if so creeps from the evidence, must be given to the accused as a matter of right and not as matter of grace and further that bundle of doubts are not necessary rather even a solitary and slightest doubt is more than enough to discard the whole prosecution case. Extension of benefit of doubt is not only the golden principle of English law but this wisdom has been drawn from the words of our Holy Prophet (PBUH). In this regard I am fortified by the dictum laid down in case of Attaullah V. The State and another, reported in 2017 P.Cr.L.J 992, wherein Honourable High Court has held as under:-

> "(k) Criminal trial—
> --Benefit of doubt-Scope-Wisdom of benefit of doubt had been drawn from the words of Holy Prophet (PBUH) that "Mistake of Qazi to acquit ten guilty persons was better than his mistake to convict a single innocent person."

Accused has taken plea in his 342 Cr.P.C. statements that he has been falsely implicated in this case due to enmity. However, accused did not examine himself on oath nor lead any defence evidence but burden of proof lies upon the prosecution to prove its case beyond shadow of doubt.

Having examined the above evidence I have come to the conclusion that the prosecution has failed to prove its case against accused Tulsi alias Tulchho beyond shadow of doubt as discussed above, therefore point No.2 is answered as doubtful."

11. As matter of law the parameters for an appeal against acquittal to succeed are much narrower than in the case of an appeal against conviction. 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:
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> **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), **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).
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> 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 added)

12. In this case we find that there is an unexplained delay in lodging the F.I.R. of one day; that the complainant does not identify the respondent and name him in the F.I.R. despite allegedly knowing him as he has a dispute with him which does not appeal to reason; that the eye witness evidence we do not find trust worthy or confidence inspiring; that the respondent was never put to an identification parade; that during the trial the prosecution improved their statements by adding a motive which was never mentioned in their statements before trial; that the alleged murder weapon which was a dagger was found without any blood and was not sent for chemical analysis; that it is a well settled principle of law that the accused is entitled to the benefit of doubt and that in an appeal against acquittal there is a double presumption of innocence and that in this case there are many doubts in the prosecution case as alluded to above which the respondent is entitled to the benefit of. When we asked the learned counsel for the appellant to specifically point out any legal infirmity in the impugned judgment he was unable to do so.

13. Thus, we find that the appellant within the narrow scope of an appeal against acquittal as provided by law has not been able to make out his case. As such the impugned judgment is upheld and the appeal against acquittal is dismissed. These are the reasons for our short order announced in open court today which reads as under:

"Learned counsel for the parties have been heard. They have concluded their arguments. For the reasons to be recorded later on, this Criminal Acquittal Appeal has no merit, which is dismissed."