

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No.324 of 2023

Present:

Mr. Justice Zafar Ahmed Rajput
Justice Ms. Tasneem Sultana

Appellant : Zeeshan is present in person.

Respondent No.1 : The State through Mr. Siraj Ahmed Khan
Chandio, Addl. P.G.

Respondent No.2 : Saeed Mian through Mr.Rehman Ghani
Khattak, Advocate.

Date of Hearing : 28.02.2025.

Date of Order : 28.02.2025.

J U D G M E N T

TASNEEM SULTANA, J.— Through this Criminal Acquittal Appeal, the appellant has called in question the judgment dated 31.05.2023 passed by the learned 1st Additional Sessions Judge/Model Criminal Trial Court, Malir, Karachi, in Sessions Case No.760 of 2020, arising out of Crime No.556 of 2019 registered at Police Station Ibrahim Hyderi, whereby respondent No.02 was acquitted of the charge under Sections 365 and 302 read with Section 34, P.P.C., by extending benefit of doubt.

2. Brief facts of the prosecution case are that on 15.10.2019 at about 08:30 p.m., 10/12 police personnel came in two police mobiles and took away the complainant's brother Abdul Qadir from his house. On 21.10.2019, the complainant was informed by ASI Ali Hassan of Police Station Steel Town that Abdul Qadir was confined there in FIR No.489 of 2019 under Section 23(1)(a) of the Sindh Arms Act, 2013. The complainant allegedly found him seriously injured, whereupon Abdul Qadir disclosed that he had been abducted and tortured at the instance of Saeed Mian. It was further alleged that Abdul Qadir was later handed over to Police Station Landhi, where he was subjected to custodial torture in FIR No.384 of 2019 under Section 394/34, P.P.C. On 24.10.2019, when he was produced before the Magistrate, direction for his medical treatment was issued; however, his condition deteriorated and he expired at Jinnah Hospital. The complainant alleged that Saeed Mian and police officials had involved Abdul Qadir in false cases and caused his death through custodial torture.

3. After usual investigation, police submitted charge-sheet under section 173 Cr.P.C., before the competent Court. The requisite documents were supplied to the accused in terms of Section 265-C, Cr.P.C., whereafter formal

charge was framed against respondent No.02 Saeed Mian and co-accused at Ex.04, to which they pleaded not guilty and claimed trial. Subsequently, upon arrest of absconding accused Ali Hassan, amended charge was framed against all the accused at Ex.12, to which they again pleaded not guilty and claimed trial .

4. To prove its case, the prosecution examined PW-1 Zeeshan, complainant, at Ex.19; PW-2 Hazoor Bux, at Ex.28; PW-3 Mohammad Hasnain, at Ex.29; PW-4 SIP Raza Mohammad Solangi, at Ex.31; PW-5 Mehmood Ali, at Ex.32; PW-6 Mst. Shahida Parveen, at Ex.33; PW-7 Altaf Hussain at Ex.34; PW-8 Syed Jan Badshah, at Ex.35; PW-9 Mohammad Javaid, at Ex.37; PW-10 Abdul Ghani at Ex.38; PW-11 Dr. Syed Umair Ahmed, at Ex.40; PW-12 SIP Manzoor Ahmed Chandio, at Ex.42; PW-13 Dr. Abdul Ghaffar Shaikh, at Ex.43; PW-14 SIP Mohammad Ilyas, at Ex.44; PW-15 Inspector Waseem Ahmed, at Ex.45; and PW-16 DSP Kanwar Asif Sarfaraz, SDPO Saddar Karachi, at Ex.48; PW-Abdul Ghafoor was given up vide statement dated 04.08.2022 at Ex.39, whereas PWs Khuda Bux, Chan Zaib, Abu Bakar, Ameer Bux and Mohammad Asghar were given up vide statement dated 11.08.2022 at Ex.41. Thereafter, the prosecution closed its side vide statement at Ex.49.

5. During trial, accused Syed Shakir Ali and the complainant party filed compromise applications under Sections 345(2) and 345(6), Cr.P.C., which were allowed by the learned trial Court vide order dated 07.12.2020 and he was acquitted of the charge. Subsequently, accused Ali Khan Sanjrani, Mumtaz Ali Narejo, Zulfiqar Ali Arain, Ali Hassan Hingoro and Manzoor Ali Abro also entered into compromise with the complainant party and filed applications under Sections 345(2) and 345(6), Cr.P.C., which were allowed by the learned trial Court vide order dated 29.10.2022, and they were acquitted under Section 345(6), Cr.P.C.

6. Thereafter, statement of accused Saeed Mian was recorded under Section 342, Cr.P.C. at Ex.50, wherein he denied the allegations, claimed innocence and stated that he had no nexus with the alleged abduction and killing of Abdul Qadir, nor had he ever acted as his business partner or owed any amount to him. He neither examined himself on oath in terms of Section 340(2), Cr.P.C. nor led any evidence in his defence.

7. The learned trial Court after hearing learned counsel for the appellant , learned ADPP for the state and learned defence counsel acquitted the respondent No.02 Saeed Mian of the charge by extending benefit of doubt vide above impugned judgment. Being aggrieved, the appellant has preferred the instant appeal.

8. Appellant, appearing in person, submitted that the prosecution witnesses had consistently implicated respondent No.02 Saeed Mian; that the medical evidence conclusively established custodial torture; that respondent No.02 had falsely implicated the deceased in Crime No.384 of 2019, which furnished a clear motive; and that despite overwhelming evidence connecting him with the commission of offence, the learned trial Court failed to appreciate the evidence in its true perspective; that the acquittal of respondent No.02 is contrary to the evidence available on record and is the result of misreading of evidence, hence the impugned judgment is liable to be set aside.

9. Conversely, learned Addl.P.G for the state assisted by counsel for the respondent No.02 supported the impugned judgment and submitted that the findings recorded by the trial Court are based upon proper appreciation of evidence and no perversity or illegality has been demonstrated warranting interference.

10. We have heard appellant in person, learned counsel for respondent No.02 as well as learned Addl.P.G. for the State and have gone through the material available on record with their assistance.

11. The case of the prosecution, in substance, was that Abdul Qadir, brother of the appellant, was allegedly taken away from his house on 15.10.2019 by police officials and was subsequently shown arrested in FIR No.489 of 2019 under Section 23(1)(a) of the Sindh Arms Act at Police Station Steel Town and thereafter in FIR No.384 of 2019 under Section 394/34, P.P.C. at Police Station Landhi. The appellant alleged that respondent No.02 Saeed Mian, due to monetary/business dispute, got deceased Abdul Qadir implicated in false cases and caused him to be tortured through police officials, as a result whereof he died at Jinnah Hospital on 24.10.2019.

12. The medical evidence on record establishes that deceased Abdul Qadir had suffered multiple injuries caused by blunt violence and that his death was unnatural. PW-11 Dr. Syed Umair Ahmed examined Abdul Qadir during his lifetime and noted injuries on his person, while PW-13 Dr. Abdul Ghaffar Shaikh conducted postmortem examination and opined the probable cause of death as crush syndrome leading to renal failure secondary to extensive injuries to muscles from blunt violence. Thus, the factum of injuries and unnatural death was not seriously in dispute. However, medical evidence, by its very nature, could only establish the nature of injuries and cause of death; it could not identify the person who caused such injuries nor could it, by itself, connect respondent No.02 with the alleged offence.

13. The prosecution was, therefore, required to establish through independent and confidence-inspiring evidence that respondent No.02 was either directly involved in abduction/torture of the deceased or that he had

procured such illegal acts through police officials. On this crucial aspect, the evidence available on record remained doubtful. The appellant claimed that the deceased had disclosed to him that he was tortured at the instance of respondent No.02, but during cross-examination he admitted that he had not seen respondent No.02 maltreating his brother before his eyes, had not seen respondent No.02 at the place of alleged abduction and had not personally heard him making any conspiracy.

14. The conduct of the appellant also assumes importance. The alleged abduction took place on 15.10.2019, yet no prompt complaint was lodged before any police authority or Magistrate, nor was any immediate legal recourse taken before a competent forum for recovery of the deceased or for redressal of his alleged illegal detention. The appellant admittedly came to know on 21.10.2019 that Abdul Qadir was confined at Police Station Steel Town, met him there in injured condition, accompanied him during remand proceedings and remained aware of his deteriorating condition. Even then, no immediate complaint was made against respondent No.02 or the concerned police officials till registration of FIR on 26.10.2019 after the death of Abdul Qadir. The learned trial Court was justified in treating such unexplained delay and conduct as a circumstance creating doubt in the prosecution version.

15. The evidence of close family witnesses also does not furnish a consistent account against respondent No.02. PW-6 Mst. Shahida Parveen, widow of the deceased, stated that when she met Abdul Qadir at Police Station Steel Town, his condition was bad, but on inquiry he told her that his eyes were tied, and he did not know who had taken him or who had made that condition. This statement materially weakens the complainant's assertion that deceased had specifically nominated respondent No.02 behind the alleged torture. PW-2 Hazoor Bux, father of the deceased, also did not provide any direct evidence connecting respondent No.02 with the alleged abduction or torture.

16. The private witnesses relied upon by the prosecution also did not inspire confidence to the extent necessary for reversal of acquittal. PW-3 Muhammad Hasnain claimed to have witnessed the abduction, but during cross-examination he admitted that the appellant was his cousin and brother-in-law, whereas at the time of his statement under Section 164, Cr.P.C., he had denied having any relationship with the appellant and deceased. This contradiction was material because it affected his claim of independence and credibility. PW-9 Muhammad Javaid resiled from his earlier statement under Section 164, Cr.P.C. and did not identify respondent No.02 as one of the persons who abducted the deceased. He was declared hostile, yet nothing substantial could be elicited from him to connect respondent No.02 with the commission of offence.

17. PW-10 Abdul Ghani, who according to the prosecution was also taken away and tortured along with the deceased, did not identify respondent No.02 or other accused present in Court as the persons who had abducted him or brought deceased Abdul Qadir to the alleged place of torture. His testimony, therefore, also failed to provide direct nexus between respondent No.02 and the injuries/death of Abdul Qadir.

18. The prosecution also relied upon motive by alleging monetary/business dispute between respondent No.02 and deceased Abdul Qadir. In support thereof, photographs, Nikahnama and some documents relating to property transactions were produced. At the highest, such material establishes that respondent No.02 and deceased were known to each other and had some social or business association. It does not establish any definite monetary dispute, liability or enmity of such nature which could safely be treated as motive for committing murder. Motive, when not proved through reliable evidence, cannot fill the gaps left in the ocular account.

19. It is also correct that respondent No.02 had lodged FIR No.384 of 2019 and thereafter identified deceased Abdul Qadir during identification proceedings in that robbery case despite prior acquaintance. This circumstance may create suspicion regarding the implication of deceased in that case; however, suspicion cannot be substituted for proof. In the absence of reliable direct evidence showing that respondent No.02 procured the abduction or torture of the deceased, the said circumstance alone could not legally justify conviction.

20. The remaining evidence is largely formal, medical or investigative in nature. PW-14 SI Muhammad Ilyas, PW-15 Inspector Waseem Ahmed and PW-16 DSP Kunwar Asif Sarfaraz mainly deposed regarding different stages of investigation, collection of documents, CDR record, tracker reports and submission of reports. Their evidence, however, does not remove the material doubts appearing from the prosecution's own case. It has come in their evidence that the CDR/tracker material did not support the presence of the nominated police officials at the alleged place of occurrence. It also appears that some private witnesses had not initially named respondent No.02 as a culprit present at the spot, while original documents relating to the alleged business relationship or motive were not produced. These circumstances further weakened the prosecution case. The learned trial Court considered the material evidence, noticed contradictions and infirmities, and assigned reasons for extending benefit of doubt to respondent No.02. The view taken by the learned trial Court is a possible and reasonable view of the evidence and cannot be termed perverse merely because another view may also be suggested.

21. It is also a cardinal principle of criminal jurisprudence that the prosecution must prove its case beyond reasonable doubt and, if a single circumstance creates reasonable doubt in the prosecution case, the accused is entitled to its benefit not as a matter of grace or concession, but as a matter of right. Reliance in this regard is placed upon **Tariq Pervaiz v. The State (1995 SCMR 1345)**, **Muhammad Akram v. The State (2009 SCMR 230)** and **Muhammad Zafar and another v. Rustam and others (2017 SCMR 1639)**. In the present case, delay in lodging FIR, absence of prompt complaint, inconsistent evidence regarding alleged disclosure by deceased, doubtful testimony of private witnesses, resiling of PW-9, non-identification by PW-10, failure to prove motive and absence of direct evidence connecting respondent No.02 with torture or death of deceased cumulatively created serious doubt in the prosecution case.

22. It is settled law that the scope of interference in an appeal against acquittal is narrow and limited because an acquittal carries double presumption of innocence in favour of the accused. The Honourable Supreme Court of Pakistan in the case of **Muhammad Riaz v. Khurram Shehzad and another (2024 SCMR 51)** has held as under: -

“10. The aforesaid set of circumstances creates misgivings and suspicions regarding the presence of the prosecution witnesses at the scene of the crime, and the discrepancies and defects in the investigation and the prosecution case pointed out by the learned High Court in the impugned judgment also colors the case in doubt and improbability. Therefore, the learned High Court rightly held that the prosecution badly failed to substantiate the case against the respondent No. 1, and the learned Trial Court was not justified in convicting him on the strength of untrustworthy or uncorroborated evidence which was full of material contradictions, especially contradictions in the ocular and medical evidence. It is a well-settled exposition of law that in an appeal against acquittal, the Court would not ordinarily interfere and would instead give due weight and consideration to the findings of the Court acquitting the accused which carries a double presumption of innocence, i.e. the initial presumption that an accused is innocent until found guilty, which is then fortified by a second presumption once the Court below confirms the assumption of innocence, which cannot be displaced lightly.”

23. The above principle is further fortified by the law laid down by the Honourable Supreme Court in **State v. Abdul Khaliq and others (PLD 2011 SC 554)**, wherein it has been held as under: -

“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 until proved guilty; in other words, the presumption of innocence 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.”

24. For the foregoing reasons, the impugned judgment does not appear to suffer from any illegality, perversity, misreading or non-reading of evidence warranting interference by this Court. Accordingly, the instant Criminal Acquittal Appeal, being devoid of merit, was dismissed vide short order dated 28.02.2025, and these are the reasons thereof.

JUDGE

JUDGE