HIGH COURT OF AZAD JAMMU & KASHMIR

[Shariat Appellate Bench]

Crim. Appeal No. 12/2019.
Date of institution 27.07.2019.
Date of decision 24.12.2024.

1. Farid Akhtar S/o Muhammad Rasheed.
2. Mst. Khadija Begum W/o Khaliq.
3. Gul Zaid widow of Matloob Hussain.
4. Safeda Begum W/o Riasat Hafeez.
5. Farida bi W/o Riasat Jan, caste Jat R/o Fatehpur Dehari Bagh, tehsil Khuiratta district Kotli. (Legal heirs of deceased Zubeda Begum)

....Appellants

VERSUS

1. Yasir Latif S/o Muhammad Latif caste Gujar R/o Fatehpur Dehari Bagh, Tehsil Khuiratta District Kotli.

....Real-Respondent

2. Additional Advocate General, Kotli.
3. Hamida W/o Khadim.
4. Rukhsana W/o Shahzad,
   caste Jat R/o Fatehpur Dehari Bagh, tehsil Khuiratta district Kotli (legal heirs Zubaida Begum proforma-respondents No.3, 4).

.....Proforma-respondents.

CRIMINAL APPEAL

Before:- ***Justice Sardar Liaqat Hussain, J.***
Justice Syed Shahid Bahar, J.

In presence of:
Mr. Rafiullah Sultani, Advocate for the appellants.
Raja Javed Akhtar, Advocate for respondent No.1.
Abdul Qayyum Sabri, A.A.G for the State.

Judgment:- ***(Justice Syed Shahid Bahar, J.)***

Well said by preeminent English Jurist William Black Stone "Better that ten guilty persons escape, than that one innocent suffer"

Benjamin Franklin who was one of the leading figures of early American history went further saying on the subject, "It is better a hundred guilty persons should escape than one innocent person should suffer."

The captioned appeal has been directed against the judgment dated 11.07.2019 passed by District Court of Criminal Jurisdiction, Kotli, whereby the accused-respondent No.1 was acquitted from the charges by giving him benefit of doubt.

2. Summarized facts of the case in hand are that vide F.I.R No.06/16 dated 20.01.2016, a case under sections 302/459, 392, APC was registered at Police Station Khuiratta, on the complaint of Matloob Hussain S/o Abdul Latif. After completion of investigation, respondent/accused was found guilty, therefore he was sent to face trial before District Criminal Court, Kotli. Accused/respondent No.1 was examined under Section 265-D, Cr.P.C on 19.01.2017. He pleaded not guilty, whereupon, the prosecution was ordered to lead evidence in support of their version. Total 34 prosecution witnesses were cited in the calendar of challan, out of which one witness was died, while the evidence of P.Ws.15 and 18 was relinquished. After completion of evidence of the prosecution, the accused-respondent was examined under Section 342, Cr.P.C on 04.05.2018, who once again pleaded not guilty. The learned trial Court (District Criminal Court, Kotli) after hearing arguments of the parties, vide impugned judgment dated 11.07.2019 acquitted the accused-respondent from

the charges by giving him the benefit of doubt, hence, this acquittal appeal.

3. Muhammad Rafiullah Sultani, the learned counsel for the appellants contended that the learned trial Court has failed to appreciate the evidence of the prosecution in its true perspective and arrived at wrong conclusion. The learned counsel further contended that the prosecution proved its case through cogent and convincing evidence but the learned trial Court failed to consider the same and against the law and facts acquitted the accused-respondent from the charges. The learned counsel vehemently contended that weapon of offence i.e. *knife/churri* was recovered on the indication of the accused-respondent, but the learned trial Court has illegally ignored this important aspect of the case. The learned counsel staunchly contended that the learned trial Court has not analyzed the evidence of the prosecution according to law and committed mis-reading and non-reading of evidence. The learned counsel argued that in the instant case, place of occurrence and timing are admitted and opinion of doctor is supporting the version of the prosecution. The learned counsel pointed out the statement of DSP Ch. Ansar Ali, and according to his statement the accused/respondent often comes to the house of the deceased and deceased has also given his 2nd house to the accused to reside in without any rent as the financial position of the accused/respondent was not well and deceased sometimes helped him. He zealously contended that all the recoveries are supported the version of the

prosecution but the trial Court has illegally acquitted the accused on the basis of doubt, while prosecution has fully proved its case beyond any shadow of doubt. Counsel for the appellants further contended that the learned trial Court has also ignored the statement recorded under Section 164, Cr.P.C of the accused-respondent. The learned counsel prayed that by accepting the instant appeal, the impugned judgment may be set-aside and accused-respondent may be punished in accordance with law. In support of his version, the learned counsel placed reliance upon the following cases laws:-

i. 2010 SCR 113.
ii. 2014 P.Cr.L.J 1036.
iii. 2024 P.Cr.L.J 1448.
iv. 2014 SCR 1585.
v. PLD 1984 AJK SC 82.

4. Raja Javed Akhtar, the learned counsel for the accused-respondent contended that the prosecution has failed to prove its case by producing cogent and convincing evidence, hence, the respondent has rightly been discharged from the charges by the learned trial Court. The learned counsel argued that the accused-respondent was neither nominated in the F.I.R nor the incident was witnessed by any person, thus, the case of the prosecution was of circumstantial evidence and in case of circumstantial evidence, every chain of evidence of prosecution must be linked with the other chain of evidence of prosecution, which was missing in this case. The learned counsel forcefully contended that all the recoveries are fake and fictitious, while fake statement under Section 164,Cr.P.C was made, thus, on the basis of fake and false evidence, the case against

the accused/respondent was not proved, therefore, the accused-respondent has rightly been acquitted from the charges. He zealously contended that the investigation officer Ansar Ali, DSP attributed the alleged crime weapon i.e. *Churri/Knife* with the accused respondent illegally and wrongly, while its recovery is fake and factitious and the evidence about the said weapon is contradictory, thus, on the basis of fake evidence, the accused/respondent could not be punished. The learned counsel contended that the statements of the witnesses are creating doubts, thus, same are not reliable for recording conviction. The learned counsel staunchly contended that there are numerous dents in the prosecution's case and benefit of doubt always goes in favour of the accused. The learned counsel defended the impugned judgment on all counts and prayed for dismissal of the appeal.

5. Abdul Qayyum Sabri, the learned A.A.G supported the arguments of the learned counsel for the appellants and prayed for setting aside the impugned judgment.

6. We have heard the learned counsel for the parties as well as the learned A.A.G and perused the record of the case with utmost care.

7. A perusal of record reflects that vide F.I.R No.06/16 dated 20.01.2016, a case under sections 302/459, 392, APC was registered against the accused/respondent at Police Station Khuiratta, on the complaint of complainant Matloob Hussain. After usual investigation, challan was submitted against the

accused/respondent before the learned District Criminal Court, Kotli. The learned trial Court after due procedure and hearing arguments of the parties, finally acquitted the accused-respondent from the charges by giving him benefit of doubt.

8. The allegation levelled by the prosecution in the case against the accused/respondent is a murder of deceased Zubaida Begum, with a *Churri/knife* at her house.

9. Record reflects that initially the accused/respondent was not nominated by the complainant in the alleged FIR. Later on during investigation, some doubtful persons including respondent were brought under investigation by previous investigating officer of police, Sohail Yousaf, and he in his statement recorded before the trial Court, stated that "it is correct that during his investigation no proof of committing offence of murder was found from the accused-respondent". He stated that during investigation, accused-respondent did not tell about the murder of the deceased, due to which, no recovery was made from him.

10. Prosecution witness Nasreen, in cross-examination of her statement stated that accused Yasir was arrested, after 5/6 days of the occurrence. He remained arrest for one week and later on he was released by the police. So, in previous investigation no proof of murder of deceased was found against the accused/respondent.

11. Later on the investigation of the case was made over to DSP Ansar Ali on 12.05.2016, and he stated in his statement that he arrested the accused/respondent on 08.10.2016. He further stated

that he recovered weapon of offence i.e. *Churri/Knife* from the accused on his indication, ear rings of deceased from the shop of gold (goldsmith), statement under Section 164, Cr.P.C was recorded before SDM Khuiratta/Magistrate 1st Class. The statement of Ansar Ali, DSP Kotli regarding alleged recovery of *Churri/knife*, is as under:-

''۔۔۔چھری اوائل ضبط کرنے کے بعد اپنے پاس رکھی تھی۔ یاد نہ ہے کہ کتنے روز اپنے پاس رکھی تھی۔ ریکارڈ دیکھ کر بتایا کہ چھری مظہر کی تحویل میں دی ہے لیکن یہ نہ بتا سکتا ہے کہ تحویلدار کے حوالے کس تاریخ کو کی گئی۔ چھری پر نہ لکھا ہوا ہے کہ کہ کس مقدمہ نمبر کی ہے۔ مظہر اسوقت چھری کی شناخت کر سکتا ہے۔ یہ چھری تاریخ ضبطی 10-10-2016 سے مظہر کے پاس رہی لیکن مظہر نہ بتا سکتا ہے کہ یہ چھری کس تاریخ مظہر کے پاس رہی ہے۔۔۔مظہر نہ بتا سکتا ہے کہ چھری مالخانہ میں کتنا عرصہ رہی ہے۔ چھری کو فرانزک لیبارٹری لاہور میں تجزیہ کے لئے بھیجنا ضروری نہ سمجھا تھا۔ پر چات مضبط ملزم پر کوئی خاص واضح خون کے نشانات نہ تھے اور وقت بھی کافی گزر چکا تھا اسلئے وہ کیمیائی تجزیہ کے لئے نہ بھیجے تھے۔ چونکہ ملزم نے بتایا تھا کہ اس نے کپڑے دھو کر صاف کر دیئے تھے اسلئے نہ بھیجے تھے۔۔۔''

12. P.W. Ilyas Latif, constable, in his statement recorded before the trial Court stated as under:-

''۔۔اس نے چھری صاف کر کے مقتولہ کے گھر کے باہر کھیت میں موجود پودوں میں چھپا دی تھی۔ چار پانچ دن کے بعد لنگر پرنٹ آنے کے خدشہ کی وجہ سے وہاں سے وہ چھری اٹھا کر اپنے گھر لے جا کر کچن کی شیڈ کے اوپر رکھ دی تھی۔۔۔''

13. While the allegation of snatching ornaments from the deceased and recovery of the same is also doubtful in light of evidence of the prosecution.

14. The statement recorded under Section 164, Cr.P.C of the accused respondent before SDM is also doubtful. As per record he was arrested on 07.10.2016. He was in the judicial lock up, while his statement was recorded on 25.10.2016. The statement of the Magistrate reveals that no application was moved by the accused-respondent for recording his statement through Superintendent Jail. Moreover, the accused/respondent has not accepted this statement. He deposed in his statement recorded before the trial Court as under:-

''مظہر کو کسی بھی مجسٹریٹ کے پاس پیش نہ کیا گیا ہے پولیس نے تھانہ کھوئیرٹہ میں مظہر سے ایک سفید کاغذ کے کونے پر دستخط کروائے اور یہ کہا تھا کہ تمہیں عدالت چھوڑے گی تم اپنا نام اور دستخط کرو، مظہر نے اس پر دستخط کیے تھے جس کے بعد مظہر کو جیل بھیج دیا گیا۔''

15. The statements of the prosecution's witnesses are creating doubt and dents upon the truthfulness of the prosecution story.

16. It is settled and trite proposition of law that prosecution is burdened with heavy responsibility to prove its case against accused without any shadow of doubt, if a single circumstance appears therein which creates doubt in the mind of prudent person its benefit is necessarily to be given to the accused not as a matter of grace but as a matter of right. This view of the Court finds supports by the case laws reported as [2023 P.Cr.LJ 331] "Abdul Majeed vs. State" and [2023 YLR 321] titled "Lal Bux vs. State".

17. It is celebrated principle of law that benefit of doubt always goes to the accused. It is the legal duty of the prosecution to prove the case beyond any reasonable doubt.[1] The benefit of slightest doubt shaking the roots of case must be extended to accused party.[2]

18. Court must be slow in reversing judgment of acquittal, unless the same is found to be arbitrary, fanciful and capricious on face of it, or the same is the result of bare misreading or non-reading of any material. In this regard reference can be made upon 2016 P.Cr.LJ 568.

19. Finding of acquittal cannot be reversed, upset and disturbed except when the judgment is found to be perverse,

---

1. 2008 SCR 345 (b)
2. 2006 SCR 58 (b).

shocking, alarming, artificial and suffering from error of jurisdiction or mis-reading or non-reading of evidence. This view finds support from 2009 SCMR 985.

20. Scrutiny of evidence of the prosecution shows that the prosecution has failed to establish its case with cogent and convincing evidence against the acquitted respondent, so, under such circumstances and on the basis of evidence produced by the prosecution, the accused/respondent could not be punished. There was no probability of the conviction of the accused-respondent. A perusal of the record suggested that the learned trial Court arrived at right conclusion and did not commit any illegality while recording the acquittal order in favour of the acquitted/respondent.

21. It is well settled law by now that in criminal cases every accused is innocent unless proven guilty and upon acquittal by the Court of competent jurisdiction such presumption doubles. Very strong and cogent reasons are required to dislodge such double presumption of innocence. Acquittal order recorded by the trial Court bases on cogent reasons and not perverse would not be interfered. Appellate Court should not lightly interfere with judgment of acquittal unless it arrives at a definite conclusion that evidence has not been properly analyzed and the Court below acted on surmises and conjectures.

22. Acquittal resultant of trial gives rise to double presumption of innocence for an accused, appellate Court should remain slow and cautious while considering the evidence and should

avoid reversal of an acquittal, unless such findings are perverse carrying jurisdictional dent, or based upon any sort of misreading or non-reading of evidence.

23. It is well settled by now that there are certain limitations on the power of the appellate Court to convert acquittal into a conviction. It is well settled that appellate Court would not interfere with acquittal merely because on reappraisal of the evidence if it comes to the conclusion different from that of the Court acquitting the accused, provided both the conclusions are reasonably possible. If however, the conclusion reached by the Court was such that no reasonable person would conceivably reach the same and was impossible then this Court would interfere in exceptional cases on overwhelming proof resulting in conclusion and irresistible conclusion; and that too with a view only to avoid grave miscarriage of justice and for no other purpose.[3] Acquittal at trial gives rise to double presumption of innocence for an accused.[4]

24. It is not condition precedent to carry a bundle of contradiction or a chain of dents which can lead/attract the conscious of Court quo extending its benefit for an accused, but if a single event/ circumstance creates reasonable doubt in a prudent mind about the involvement of accused as per portrayed and projected stance of the prosecution, in such case accused is entitled to get the fruits of such contradiction. An accused is like a free bird to

---

[3]. Jahangir vs. Amanaullah 2010 SCMR 491.

[4]. State vs. Khalid Khan 2024 MLD 348 + Mohammad Arif vs. The State 2024 YLR 2019 + Ghullam Sikandar vs. Mumaraz Khan PLD 1985 SC 11 + Asia Bibi vs. State PLD 2019 SC 64.

flyover and pick his defence from every circumstance and attack the veracity of evidence by all angles.

(Underlining is ours)

Crux of the above discussion is that the impugned acquittal order passed by the learned District Criminal Court, Kotli is maintained and appeal of the appellant having without any substance stands dismissed.

Muzaffarabad.
24.12.2024.

JUDGE JUDGE