IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE JAMAL KHAN MANDOKHAIL
MR. JUSTICE MUHAMMAD ALI MAZHAR
MR. JUSTICE SYED HASAN AZHAR RIZVI

CRIMINAL PETITION NO. 290-L OF 2015
(On appeal from the judgment dated 02.03.2015 passed by the Lahore High Court, Lahore in Criminal Appeal No.89/2011)

Muhammad Riaz ...Petitioner

VERSUS

Khurram Shehzad and another ...Respondents

For the Petitioner: Mr. Mukhtar Ahmad Gondal, ASC
Syed Rifaqat Hussain Shah, AOR

For the State: Mirza Abid Majeed, DPG Punjab

Date of Hearing: 27.10.2023

JUDGMENT

MUHAMMAD ALI MAZHAR, J:- This Criminal Petition for leave to appeal is directed against the Judgment dated 02.03.2015 passed by the Lahore High Court, ("**High Court**") in Criminal Appeal No. 89/2011 whereby the respondent No.1 was acquitted of the charge against him.

2. According to the chronicles of the case, the complainant Riaz Ahmed lodged FIR No.775/2007, under Sections 302, 109 and 34 of the Pakistan Penal Code, 1860 ("**PPC**") at Police Station Saddar, District Mandi Baha-ud-Din, stating that he along with his brother-in-law, Mukhtar Ahmad, and his son, Umar Farooq, who was riding a bicycle, were returning home after having dinner at Muhammad Ashraf's house when, around 8:55 p.m., while they were in front of Arshad Hotel, a motorbike with two unknown assailants suddenly arrived. The individual at the back of the motorbike fired two shots from a .30 bore pistol, which struck the rear side of the

complainant's son and caused him to fall off the bicycle. Thereafter the complainant and Mukhtar Ahmad transported Umar Farooq to the DHQ Hospital *via* private vehicle, where he succumbed to his injuries. The complainant had also asserted that he could identify the perpetrators if he came across them. The FIR was lodged on 26.10.2007 and, during the investigation, on 01.12.2007, the complainant submitted an application for implicating accused Habib Arshad who was arrested by the I.O. on 30.12.2007 and, on 13.01.2008, the complainant moved another application for implicating the accused Khurram Shehzad, Atif Javed and Raheela Bashir in light of which the I.O. also added the offence under Section 109, PPC. The I.O. arrested Raheela Bashir on 17.01.2008 and, on the same day, also recovered a mobile phone without SIM from her. On 19.01.2008 the I.O. also arrested the accused Khurram Shehzad and recovered a mobile phone without SIM from him. On 24.01.2008 the I.O. also recovered and took into possession a 125cc Honda motorbike from the accused Khurram Shehzad. The I.O. also registered a separate case under Section 13 of the Pakistan Arms Ordinance, 1965 and, on 26.01.2008, a .30 bore pistol was also recovered from the accused Khurram Shehzad. The I.O. thereafter found the respondent No.1 guilty and submitted a report under Section 173 of the Code of Criminal Procedure, 1898 ("**Cr.P.C.**"). The learned Trial Court framed the charge against the respondent No.1 on 12.05.2008, to which the accused pleaded not guilty and moved for a trial. In order to establish the guilt of the accused persons, the prosecution produced eleven witnesses. The respondent No.1 was examined under Section 342, Cr.P.C, but chose not to produce any defence witnesses.

3. At the conclusion, the learned Trial Court sentenced the respondent No.1, Khurram Shehzad, to death with a further direction to pay compensation to the legal heirs of the deceased, Umar Farooq. The accused Raheela Bashir was acquitted while extending benefit of doubt, and the other accused, Atif Javed, was acquitted from the charge by dint of compromise. Being aggrieved and dissatisfied, the respondent No.1 filed Crl. Appeal No.89/2011 in the High Court to challenge his conviction and, in tandem, the learned Trial Court also forwarded Murder Reference No.7/2011 for confirmation of death sentence as delineated under Section 374, Cr.P.C. In opposition to

the acquittal of Raheela Bashir, the petitioner/complainant also filed Crl. Appeal No.2139/2014 in the High Court. By means of the impugned judgment, the learned High Court held that the prosecution has failed to substantiate its case against the respondent No.1/appellant and, as a result thereof, the conviction of respondent No.1 was set aside and he was acquitted from the charge, and, in consonance, the Murder Reference was also answered in the negative. So far as the appeal against the acquittal of Raheela Bashir (daughter-in- law of the complainant) is concerned, the learned High Court held that she was not nominated in the FIR but was implicated after a lapse of more than two and half months of the occurrence, when she allegedly went to the graveyard to offer 'Fatiha' at the grave of her deceased husband and was discovered meeting with the two co-accused. It had been alleged that she was having illicit relations with Khurram Shehzad, however the prosecution failed to produce any convincing and trustworthy evidence in support of this serious allegation, and none of the prosecution witnesses uttered anything to prove her connivance with the other accused persons for committing the murder of her deceased husband. Consequently, the appeal against her acquittal was also dismissed by the High Court.

4. The learned counsel for the petitioner argued that the evidence on record was sufficient to substantiate that the respondent No.1 committed the murder. It was further contended that the learned High Court ignored the evidence adduced in the Trial Court and the order of acquittal of the respondent No.1 is based on misreading of evidence which has caused a serious miscarriage of justice. The learned counsel further argued that that the respondent No.1 was implicated in this case on 13.01.2008 when the prosecution story unfolded. It was further averred that a .30 bore pistol was recovered from the respondent No.1 and the report of the Forensic Laboratory in this respect is also positive, which indicates the involvement of the respondent No.1 in the crime; however this piece of evidence was also ignored by the learned High Court.

5. The Deputy Prosecutor General, Punjab argued that the learned High Court passed the acquittal order after properly appreciating and considering the evidence led in the case, and the same does not require any interference. It was further averred that Raheela Bashir

was acquitted by the Trial Court due to benefit of doubt, while Atif Javed was acquitted on the basis of compromise. The acquittal of Raheela Bashir was maintained by the High Court and no appeal has been filed against the judgment of the High Court to the extent of maintaining her acquittal. He further argued that after considering the judgment rendered by the learned High Court, the State did not find the case fit for filing an appeal against acquittal.

6. Heard the arguments. The foremost rationale of the administration of criminal justice is to penalize and reproach the offender or perpetrator so as to maintain law and order in the populace and society and deter such crimes. Hence it is the onerous duty of the State to punish offenders under the laws of the land, which includes penal laws. In the administration of criminal justice, the evidence considered may be ocular or circumstantial and may be classified as direct or indirect evidence. In all indictments, it is the arduous duty of the prosecution to prove the guilt of the accused beyond any reasonable doubt as where such doubt exists, the Court may extend the benefit thereof to the accused and exonerate him from the charge. The probative worth and value of evidence hinges, by and large, on the facts of each case. The Courts are duty-bound to gauge the trustworthiness of witnesses, identify and resolve any evidentiary inconsistencies and/or contradictions, contemplate the medical evidence *vis-à-vis* the ocular testimony as corroborative piece of evidence, and then reach a conclusion. The term 'beyond reasonable doubt' is a legal fiction whereby a hefty burden of proof is required to be discharged to award or maintain a sentence or verdict of guilt in a criminal case. *Id est*, it connotes that the prosecution is obligated to satisfy the Court with regard to the actuality of reasonable grounds, beyond any shadow of doubt, in order to secure a verdict of guilt. Indubitably, the standard of proof required in a criminal trial is considerably greater than the benchmark adopted in the trial of civil cases i.e. on a balance of probabilities.

7. The learned High Court appreciated the cumulative effect of the entire evidence in its pith and substance and finally reached the conclusion that the prosecution had failed to establish the guilt of respondent No.1 beyond reasonable doubt. The gist of the evidence

reveals that the ocular testimony in the case was led by the complainant, namely Riaz Ahmad (PW-6), Muhammad Ashraf (PW-4) and Mukhtar Ahmad (PW-5); all residents of village Ajowal situated around 30 to 35 kilometers from the place of occurrence. There was no denial that the incident occurred in the night at 8:55 p.m. in October and the testimony of the eye witnesses remained unsuccessful in establishing any source of light at the scene of the crime. Further, the PWs asserted that they could identify the culprits if they came across them, however it was only after a lapse of two and a half months that the respondent No.1 was implicated, when Raheela Bashir allegedly went to the graveyard to offer 'Fatiha' at the grave of her deceased husband and was discovered meeting with the co-accused. Regardless, no identification parade was conducted for determining the involvement of the accused persons and the evidentiary value of identification at a belated stage has little value in the eyes of the law, more particularly when the lineaments and physiognomy of the accused are not mentioned anywhere by the complainant or the eye witnesses. The complainant had also filed an application for implicating Habib as the murderer of his son, but the said accused was found innocent during investigation and his name was accordingly placed in column No.2 of the report under Section 173, Cr.P.C. Furthermore, the I.O. admitted that he had recorded the statement of the complainant, however in the site plan the place of incident was not shown, though the prosecution claimed that the incident occurred near Octroi No.9, Arshad Hotel. The I.O. also admitted that he had not demarcated the place from where the accused had fired at the victim in the rough site plan, nor had the prosecution witnesses shown him the specific place of death of the deceased at the site of the occurrence. The I.O. further admitted that he had called upon the inhabitants of the place of occurrence i.e. owners of the nearby *haveli* and service station, but they could not provide any detail of the occurrence or any description of the assailants.

8. The learned High Court has also rightly given weightage to the argument of the learned counsel for the accused Khurram Shehzad that, if the prosecution was so convinced and confident that the actual culprit was the respondent No.1, then there was reason to

implicate Habib through an application after a considerable lapse of time, and that too prior to the date of implicating respondent No.1 in the case. Another significant feature is that, as per the prosecution case, the deceased sustained two firearm injuries, however the postmortem report reveals that only one firearm injury was found on the deceased's body. Thus, even in this respect the ocular account was contradicted by the medical evidence. It is a settled exposition of law that when the presence of eye witnesses on the spot is doubtful then, in such situations, the ocular testimony should be excluded from consideration. The contradictions, if any, in the ocular evidence and medical evidence originates doubts and improbabilities in the prosecution case and, in such a situation, the benefit of doubt would obviously be extended to the accused. It is pertinent to note that it is not obligatory or compulsory that there should be several circumstances creating doubts in order to justify the extension of this benefit to the accused; on the contrary, even a simple circumstance creating reasonable doubt *vis-à-vis* the guilt of the accused is sufficient to entitle him to such benefit.

9. The High Court has ample jurisdiction under the law while dealing with an appeal, irrespective of whether it is moved against an acquittal or against a conviction. It is a well settled principle in the criminal justice system that if two sensible and judicious conclusions can be drawn keeping in mind the substance of the evidence, then the view which espouses and provides backing towards acquittal must be subscribed and assented to. The doctrine of presumption of innocence is structured on the fundamental principle that every person is presumed to be innocent unless proven guilty and, in the event of an acquittal, the presumption of innocence is reinvigorated, fortified and strengthened. The law does not impose any fetters on the powers and jurisdiction of the Appellate Court for reconsideration or reappraisal of the evidence on which the order of conviction or acquittal is grounded.

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.

11. In the case of Ghulam Sikandar and another v. Mamaraz Khan and others (**PLD 1985 SC 11**), this Court laid out the most important and consistently followed principles with respect to the presumption of double innocence and stated that (1) In an appeal against acquittal the Supreme Court would not on principle ordinarily interfere and instead would give due weight and consideration to the findings of Court acquitting the accused. This approach is slightly different than that in an appeal against conviction when leave is granted only for the re-appraisement of evidence which then is undertaken so as to see that benefit of every reasonable doubt should be extended to the accused. This difference of approach is mainly conditioned by the fact that the acquittal carries with it the two well-accepted presumptions: one initial, that till found guilty, the accused is innocent; and two that again after the trial a Court below confirmed the assumption of innocence. It was further held that the Court would not interfere with acquittal merely because on re-appraisal of the evidence it comes to a conclusion different from that of the Court acquitting the accused, provided both the conclusions are reasonably possible. In the case of The State and others v. Abdul Khaliq and others (**PLD 2011 SC 554**) this Court, while considering numerous pronouncements of the Supreme Court held that 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 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, or suffering from the errors of grave misreading or non-reading of the evidence. Such judgments should not be lightly interfered with and a 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. 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, and 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.

12. We are mindful of the phrase that *"the accused is the favourite child of law"* but it is somewhat enlightening to understand why this axiom was not coined contrariwise to say *"the victim is the favourite child of the law*". The substratum of this concept is based on the farsightedness and prudence, 'let a hundred guilty be acquitted but one innocent should not be convicted'; or that it is better to run the risk of sparing the guilty than to condemn the innocent. The *raison d'être* is to assess and scrutinize whether the police and prosecution have performed their tasks accurately and diligently in order to apprehend and expose the actual culprits, or whether they dragged

innocent persons in the crime report on account of a defective or botched-up investigation which became a serious cause of concern for the victim who was deprived of justice. The philosophy of the turn of phrase "*the accused is the favourite child of law*" does not imply that the Court should grant any unwarranted favour, indulgence or preferential treatment to the accused, rather it was coined to maintain a fair-minded and unbiased sense of justice in all circumstances, as a safety gauge or safety contrivance to ensure an evenhanded right of defence with a fair trial for compliance with the due process of law, which is an integral limb of the safe administration of criminal justice and is crucial in order to avoid erroneous verdicts, and to advocate for the reinforcement of the renowned doctrine "innocent until proven guilty".

13. In the wake of the above discussion, we do not find any illegality or perversity in the impugned judgment passed by the learned High Court and therefore we are not inclined to grant leave to appeal. This Criminal Petition is dismissed accordingly.

Judge

Judge

Judge

Islamabad
27th October, 2023
Khalid/Faaiza/Haanya
Approved for reporting