

IN THE FEDERAL SHARIAT COURT
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MUHAMMAD NOOR MESKANZAI, CHIEF JUSTICE
MR. JUSTICE KHADIM HUSSAIN M. SHAIKH

CRIMINAL APPEAL NO.05-Q OF 2019

SYED NAJAM-UD-DIN CHISHTI, SON OF SYED HAJI PIR
MUHAMMAD, CASTE SYED CHISHTI, RESIDENT OF
MOHALLAH SHAH PETROLEUM ZARGHOON ROAD, QUETTA.

Appellant

VERSUS

1. MUHAMMAD IDREES SON OF ABDUL HAKIM, CASTE KAKAR,
RESIDENT OF KILLI MACHAN, PISHIN.

2. THE STATE.

Respondents

Counsel for the Appellant : Syed AyazZahoor, Advocate

Counsel for the Respondent : Mr. Qasim Khan, Advocate

Counsel for the State : Mr. AmeerHamzaMengal,
Deputy Prosecutor General,
Balochistan.

FIR No., Date and : 09/1996, 24.04.1996
Police Station : Headquarter, Pishin.

Date of Impugned Judgment : 22.05.2019

Date of Institution : 17.07.2019

Date of Hearing : 08.04.2021

Date of Judgment : 05.2021

J U D G M E N T

KhadimHussain M. Shaikh –J.The captioned Criminal Appeal,which
was converted into Acquittal Appeal from the Criminal Revision
Application vide order dated 30.08.2019,is directed against the judgment
dated 22.05.2019, passed by the learned Additional Sessions
Judge/Model Criminal Trial Court,Pishin, in Case i.e. PPC No.01 of

2019, re-The State vs Muhammad Idrees and others, emanating from F.I.R. No.09 of 1996 registered at Police Station Headquarter Pishin, for offence under Section 17(4) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 and offence under sections 324, 109, 34 PPC, whereby respondent Muhammad Idrees has been acquitted of the charge, extending him benefit of doubt.

2. Briefly the facts of the case are that on 24.04.1996 at 08.30 a.m. the afore-mentioned F.I.R was registered on the narration of complainant Syed Abdul Qadir son of Syed Ghulam Muhammad Chishti mainly stating therein that he (complainant Syed Abdul Qadir) accompanying Syed Zain-uddin boarding in a vehicle were going towards Killi Manzaki and when they reached near Bund Khushdil Khan on Khairabad Charhai, (Khairabad Incline) some dacoits with muffled faces on the strength of weapons stopped their vehicle and demanded money from them, in the meanwhile, dacoits made firing, a bullet hit Zain-uddin, who died at the spot and one bullet also hit the arm of the complainant. Earlier two co-accused Nasibullah son of Saadullah Tareen and Abdul Salam son of Adam Khan were arrested and after trial, they were convicted and sentenced as shown in the judgment dated 14.04.1997, passed by the learned Sessions Judge Pishin, which was assailed in criminal appeal before this Court, that was dismissed vide judgment dated 16.08.2002. Finally, the appeal filed by the convicted persons namely Nasibullah and Abdul Salam was dismissed by the Hon'ble Supreme Court of Pakistan vide order dated 19.10.2004. Respondent Muhammad Idrees and one Rehmat-ullah Alias were shown absconders in the challan. On 10.05.2018 respondent Muhammad Idrees was arrested and was sent up with the subsequent challan.

3. After completing the legal formalities, a formal charge was framed against accused Muhammad Idrees (“**the respondent**”), to which he pleaded ‘not guilty’ and claimed his trial.

4. At the trial, the prosecution examined in all 10 PWs and after closure of the prosecution side, the statement of the respondent was recorded under Section 342, Cr.P.C, wherein he denying the prosecution allegations, professed his innocence and false implication in the subject case. He, however, neither examined himself on oath nor did he produce any person as his defense witness.

5. At the conclusion of trial and after hearing the parties’ counsel, the learned trial Court acquitted the respondent of the charge, extending him benefit of doubt vide impugned acquittal judgment dated 22.05.2019, as discussed in paragraph-I *supra*.

6. Appellant Syed Najamud Din Chishti, claiming himself to be the brother of complainant Syed Abdul Qadir Shah, filed criminal revision application No.01-Q of 2019 on 17.07.2019, which was later on converted into acquittal appeal on the request of learned counsel for the appellant vide order dated 30.08.2019.

7. It is, *inter alia*, contended by the learned Counsel for the appellant that the learned trial Court has not properly appreciated the evidence brought on the record; that co-accused Nasibullah and Abdul Salam, who named respondent Muhammad Idrees in their confessional statements recorded before the learned City Magistrate, Pishin and before the learned Assistant Commissioner Pishin respectively, were convicted, therefore, per learned counsel the respondent is also liable to be convicted on the basis of confessional statements of co-accused

Nasibullah and Abdul Salam, but the learned trial Court has acquitted the respondent; and, that the impugned acquittal judgment, passed by the learned trial Court is illegal. The learned counsel placing his reliance on the cases of **ZULFIKAR ALI BHUTTO VERSUS THE STATE (PLD 1979 SUPREME COURT 53)**, **ATLAS KHAN VERSUS STATE (PLJ 1995 FSC 193)**, **SHERI ZAMAN, ETC VERSUS THE STATE (NLR 1989 CRIMINAL 536)**, **ZAHIR-UD-DIN VERSUS THE STATE (1976 P CR. L J 625)** and **FAISAL KHAN VERSUS THE STATE (2010 P CR. L J 192)**, prays that this criminal acquittal appeal may be allowed and the respondent may be convicted.

8. Conversely, the learned Advocate for the respondent has mainly contended that the instant acquittal appeal is time barred and no explanation for delay in filing the appeal has been offered by the appellant; that appellant Syed NajamudDin, is not an aggrieved person, therefore, per learned counsel, the instant acquittal appeal is not maintainable; that the learned trial Court after appreciating the evidence brought on record has acquitted the respondent; and, that the impugned acquittal judgment may be maintained. The learned counsel has placed his reliance on the case of **HAZRAT BILAL VERSUS THE STATE AND ANOTHER (2000 P CR. L J 865)**. The learned Deputy Prosecutor General, Balochistan on behalf of the State adopting the arguments of the learned counsel for the respondent prays for dismissal of the instant criminal acquittal appeal.

9. We have considered the submissions of learned counsel for the appellant, the learned Advocate for the respondent and learned Deputy Prosecutor General, Balochistan, and have gone through the material brought on the record.

10. From a perusal of the record it would be seen that complainant Syed Abdul Qadir neither named respondent Muhammad Idrees as one of the culprits in his F.I.R nor did he name him in his statement recorded during the trial rather he went on to depose that *when they reached at Khairabad Charhai a person equipped with Kalashnikov came on the road and indicated them to stop, to which Zain-uddin stopped the vehicle and then the said person came to Zain-uddin's side and demanded money and another person came on his side also made a demand of money from him by causing him fist blow; in the meanwhile a fire was made, which hit Zain-uddin and one fire was also made at him, hitting his hand, Zain-uddin died and he sustained injury; and, that he had not identified any of the culprits because of the fact that the culprits were with muffled faces.* Thus, per complainant Syed Abdul Qadir, who besides being injured was a solitary eye witness of the occurrence, there were two persons, having Kalashnikovs, with muffled faces, who had committed the offence; two persons namely Nasibullah and Abdul Salam, who were initially arrested, after a full dress trial had already been convicted and sentenced as discussed *supra*; the names of respondent Muhammad Idrees and one Rehmat-ullah Alyas were brought on the record, showing them as absconders in the challan only on the basis of alleged confessional statements of co-accused Nasibullah and Abdul Salam recorded before the then learned City Magistrate, Pishin on 05.05.1996 and before the then Assistant Commissioner, Pishin on 08.05.1996 respectively.

11. It is reiterated that the confessional statement of an accused can be used as a substantive piece of evidence against the maker thereof and it can be used against another accused, not as a

substantive piece of evidence, but as a corroboratory piece of evidence; if there is other evidence against the accused, corroborating the confessional statement of co-accused, the Court may take into consideration the confessional statement made by one accused, as a piece of circumstantial evidence against the other accused, which would merely be a link of the chain.

12. Manifestly, the prosecution case rested on the evidence of complainant Abdul Qadir, who has not named the present respondent Muhammad Idrees in his F.I.R and/or even in his deposition before the learned trial Court, rather he went on to depose that there were two culprits, who had committed the offence and he had not identified them due to the fact that their faces were muffled; except the retracted confessional statements of convicted co-accused Nasibullah and Abdul Salam, which would merely be a corroboratory piece of evidence, there was no other direct or circumstantial evidence, connecting respondent Muhammad Idrees with the commission of the subject crime. It is well settled that the confessional statement of one accused cannot form sole basis for conviction of another accused as it being a corroboratory piece of evidence cannot suffice itself to convict an accused on a capital charge. And, thus, there was no evidence to record conviction against respondent Muhammad Idrees. Under these circumstances, we are of the considered view that the learned trial Court was right in acquitting respondent Muhammad Idrees, extending him benefit of doubt as the prosecution had failed to prove its case against him beyond the reasonable doubt.

13. The principles for appreciation of evidence in appeal against the acquittal are now well settled, for, an accused is presumed

to be innocent and if after trial, he is acquitted, he earns double presumption of innocence and acquittal judgment or order normally does not call for any interference unless it is found arbitrary, capricious, fanciful, artificial, shocking and ridiculous and while evaluating the evidence, difference is to be maintained in an appeal from conviction and an appeal against acquittal and in the latter case the interference is to be made only when there is none reading and gross mis-reading of the evidence, resulting the miscarriage of justice and on perusal of the evidence no other decision can be given except that the accused is guilty. A perusal of the impugned acquittal judgment would reveal that the same is apt to the facts and circumstances of the case, which does not suffer from any illegality or any perversity and misreading or non-reading of the evidence, and the same calls for no interference. Reliance in this context is placed on the cases of ***Yar Muhammad and 3 others V/S The State(1992 SCMR 96)***, ***Muhammad Shafi v. Muhammad Raza and another(2008 SCMR 329)***, ***State/Government of Sindh through Advocate General, Sindh, Karachi v. Sobharo(1993 SCMR 585)***, ***Muhammad Yaqoob v. Manzoor Hussain and 3 others (2008 SCMR 1549)*** and ***State and others v. Abdul Khaliq and others(PLD 2011 SC 554)***.

14. So far the objections regarding competency of appeal against acquittal filed by appellant Syed NajamudDin and the instant appeal being time barred, are concerned, the remedy of an appeal in case of acquittal is provided under the provisions of Section 417 of Code of Criminal Procedure, 1898, which is reproduced here for the sake of convenience:-

“417. Appeal in case of acquittal. (1) Subject to the provision of sub-section (4), the Provincial Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

(2) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf grants special leave to appeal from the order of acquittal the complainant may present such an appeal to the High Court.

(2-A) A person aggrieved by the order of acquittal passed by any Court other than a High Court, may, within thirty days, file an appeal against such order.

(3) No application under sub-section (2) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from this date of that order.

(4) If, in any case, the application under sub-section (2) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1).”

15. It is worthwhile to mention here that by insertion of sub-Section (2-A) in Section 417 Code of Criminal Procedure, 1898, through Act No. XIX of 1994(“**the Code**”), the right of an appeal to a person aggrieved by the order of acquittal has been provided.

16. Admittedly, appellant NajamudDin was neither injured nor was a witness in the subject case. He, however, claiming himself to be the brother of complainant Syed Abdul Qadir, has filed this criminal acquittal appeal; memo of the instant appeal reveals that appellant Syed Najamud Din Chishti is son of Syed Haji Pir Muhammad Chishti and whereas complainant Syed Abdul Qadir was son of Syed GhulamMuhammad Chishti and thus the claim of the appellant that he is the brother of the complainant is apparently absurd. Facing with such situation, the learned counsel for the appellant has conceded that the appellant is not brother of complainant Syed Abdul Qadir. On a query,

the learned counsel has further stated that deceased Syed Zainuddin and complainant Syed Abdul Qadir, who is stated to have died, have left behind several legal heirs after their demises. The learned counsel for the appellant has also not been able to satisfy the Court as to how the appellant is an aggrieved person to agitate acquittal of the respondent Muhammad Idrees, who had not been implicated even by injured complainant Syed Abdul Qadir, who was the sole eye witness of the occurrence, in his F.I.R and in his statement before the learned trial Court (Ex.P.1/A). In such view of the matter, we are of the humble view that appellant Najamud Din can hardly be termed to be an aggrieved person to agitate acquittal of respondent Muhammad Idrees.

17. For the purpose of deciding the question of limitation involved in this case, the relevant provision is sub-section (2-A) of Section 417 of the Code, which provides period of thirty (30) days for filing the appeal by a person aggrieved by the order of acquittal passed by any Court other than a High Court.

18. A perusal of the certified copy of the impugned judgment, filed by the appellant with this appeal, would reveal that the impugned judgment was rendered on 22.05.2019, copy whereof was delivered to the appellant on 24.05.2019, and on excluding the period of two days spent in obtaining certified copy of the impugned judgment, the appeal was to be filed latest by 24.06.2019, but it was filed on 17.07.2019 i.e. after 53 days of delivery of the certified copy of the impugned judgment to the appellant. Record further reveals that on 30.08.2019, on the request of learned counsel for the appellant the Criminal Revision No.01-Q of 2019, filed by the appellant, was converted into acquittal appeal, when he also sought permission to file an application for

condonation of delay in filing the appeal, but he has not filed such an application till date, although the period of more than 20 months has elapsed; and, even in his appeal, the appellant has not offered any explanation for such an inordinate delay of 23 days in filing of the appeal. It is well settled that the delay of each and every day with justification is to be explained even in a case, attracting provisions of Section 5 of Limitation Act, what to say about the case one in hand, in which the Code of Criminal Procedure, 1898, itself provides period of limitation for filing the appeal against an acquittal order, hence in our humble view Section 5 of Limitation Act is not applicable to this case. In case of **NOOR HUSSAIN vs. MUHAMMAD SALIM (1985 SCMR 893)**, the Hon'ble Supreme Court of Pakistan has held that:-

“2..... Notwithstanding the fact that the delay is only of one day, we do not consider it a fit case for condonation of the delay as Muhammad Salim son of Muhammad Ramzan (respondent No.1) has acquired the right to live, while others have acquired the valuable right of liberty.

The petition is, therefore, dismissed as barred by time.”

19. The case law cited at bar by the learned counsel for the appellant being distinguishable on facts and circumstances is not helpful for the appellant as none of the cases cited *supra* by the learned counsel involved the acquittal judgment and the facts and circumstances, as are involved in the case one in hand.

20. In view of what has been stated above, the instant Acquittal Appeal besides being devoid of merit and incompetent, is also time barred, which is accordingly dismissed as such.

(JUSTICE KHADIM HUSSAIN M.SHAIKH)

JUDGE

(JUSTICE MUHAMMAD NOOR MESKANZAI)
(CHIEF JUSTICE)

Announced on 05.2021
Islamabad
*Khurram**