IN THE FEDERAL SHARIAT COURT OF PAKISTAN

(Appellate Jurisdiction)

JUSTICE DR. FIDA MUHAMMAD KHAN
JUSTICE SYED MUHAMMAD FAROOQ SHAH

Cr. Appeal No.06/P of 2011

Changez son of Muhammad Shafiq,
R/o Bagh Colony, Street No.3, Shamsi Road, Mardan.

…..Appellant

Versus

1. **Shahid son of Iqbal, resident of Mohallah Naziran, Hoti, Mardan.**
2. **The State**

…..Respondents.

Counsel for the Appellant	**---**	**Mr. Khalid Rehman, Advocate.**
Counsel for Respondent	**---**	**Mr. Gul Daraz Khan, Advocate**
Counsel for the State.	**---**	**Mr. Wilayat Khan Assistant A.G, KPK**
Case FIR No, date & Police Station	**---**	**FIR No.868, dated 23.12.2009 P.S Hoti, District Mardan**
Date of impugned Judgment.	**---**	**14.06.2011**
Date of institution	**---**	**12.08.2011.**
Date of hearing	**---**	**20.04.2018**
Date of decision	**---**	**20.04.2018**

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SYED MUHAMMAD FAROOQ SHAH, J. Impugned herein is the judgment dated 14.06.2011, rendered by the learned Addl: Sessions Judge-II Mardan, whereby the respondent No.1 namely Shahid was acquitted of the charges under section 17(3) Offences Against Property (Enforcement of Hudood) Ordinance, 1979, read with sections 458,148/149 PPC, vide case FIR No.868 dated 23.12.2009, lodged at Police Station Hoti, Mardan by the appellant namely Changez.

2. We have considered the worthy submissions advanced by learned counsel for the parties and carefully scanned the impugned judgment in light of the evidence adduced by the prosecution.

3. Prior to adverting to the submissions made by the learned counsel for the parties, it may be appropriate to briefly highlight relevant facts and circumstances of the case in hand in view of the evidence adduced by the prosecution. A perusal of record transpires that to substantiate the charges against the accused that on 20.11.2009 at 03.00 hours he along with absconding co-accused namely Shah Faisal, Sajid, Umar, Ajab Gul and Zafar Iqbal, duly armed with pistols stormed in the house of complainant; out of them two aimed their respective weapons on the complainant, his brother Muhammad Shakeel and mother Mst.Shamim and also on his brother in law Zahir and rest of four culprits searched the house. They took out three

mobiles phones, cash amounting to Rs.30/35 thousands and 20 tolas golden ornaments. The complainant, while explaining 33 days delay in lodging the FIR, stated that he was searching the culprits that as to who had committed the offence and when came to know about the names of the above accused, he lodged the report on 23.12.2009 but he did not make clarification that on whose instance and information he involved the accused in the commission of the aforesaid offence. After completion of usual investigation, final report under section 173 Cr.P.C was submitted by the concerned police against the respondent/ accused and absconding co-accused.

4. In order to prove its case against the respondent/ accused, the prosecution examined ten witnesses; thereafter, statement of accused was recorded under section 342 Cr.P.C, who pleaded his innocence by asserting his false implication by the PWs being interested one. On conclusion of evidence and after affording opportunity of hearing to both sides, the impugned acquittal judgment was pronounced. It needs to be reiterated that the complainant has neither given the description of culprits in the FIR nor he had identified the offenders at the time of commission of offence by their features. The respondent/accused was already arrested by the police whom the complainant has also charged for the commission of the offence of the instant case and that the complainant stated in

evidence that he had been informed by someone regarding involvement of the accused but did not disclose the source of information or the persons who had informed him regarding involvement of the accused. Moreso, identification of alleged recovered robbed properties or of the accused was not held in accordance with law.

5. Insofar as the recovery of gold ornaments and Rs.30,000/- from the house of accused is concerned, the currency notes could not be identified as stolen money from house of the complainant because neither any number nor any other mark of identification of the currency notes stolen from his house was given by the complainant. Similarly, the gold ornaments allegedly robbed from the house of complainant were not recovered from possession of the accused rather gold weighing four and a half tola was recovered by the Investigation Officer, which could not be identified as gold ornaments stolen from house of the complainant.

6 Mr. Khalid Rahman, learned counsel for the appellant could not substantiate that the impugned judgment of acquittal recorded by the learned trial court is against the law, facts, and that the impugned judgment suffers from non-reading or misreading of the evidence available on record. It is an admitted fact that the identification parade of the accused through complainant and other witnesses as well as the

identification of recovered robbed property had not been got conducted. Learned counsel for the appellant, during his arguments did not specifically point out that the reasons advanced for recording of acquittal by the trial court were either artificial or speculative. While reappraising the evidence, we did not find any such legal infirmity in the judgment assailed through the captioned appeal.

7. Conversely, learned counsel for the respondent/ accused Shahid, as well as the learned State counsel vehemently supported the impugned judgment while arguing that attending facts and circumstances as well as relevant evidence available on record transpire that the trial court has rightly extended benefit of doubt in favour of the accused leading towards the real doubt, sufficient to acquit him. It is next argued that as per settled proposition of law, the appellate court may not frequently interfere with acquittal merely because of re-appraisal of evidence, it comes to the conclusion different from that of the court acquitting accused.

8. It is an admitted position that complainant has not shown any sufficient reason or plausible cause, or compelling circumstances along with sound justification which prevented or precluded him from lodging the FIR in time. Even otherwise the contents of the FIR as well as the deposition of the complainant does not reflect explanation of inordinate delay of

33 days as well as source of information of implication of the accused, therefore, we cannot brush aside the legal aspect that the allegations levelled in the FIR would be presumed to be result of deliberation, negotiations, discussions and after thought with malafide intention and ulterior motive to get the accused/respondent convicted.

8. While re-appreciating the evidence, we have to keep in mind that the settled parameters for interference in the judgment of acquittal is the substitution of opinion which is not permissible until and unless conclusion is perverse or arbitrary and if two views are possible, the view in favour of accused has to be given preference. Even otherwise, prosecution evidence, as discussed above, appears to be fabricated cannot be considered trustworthy; more particularly, the trial court has correctly discarded contradictory evidence in its impugned judgment which is not due to non-reading or misreading of evidence, resulted into the miscarriage of justice.

9. It is not out of context to reiterate that after acquittal the accused, he shall be presumed to be innocent, in other words, the presumption of innocence is doubled. Law requires that a judgment of acquittal would not be disturbed even though second opinion could be reasonably possible. In such legal perspective, we are not persuaded to agree with the submissions made by learned counsel for the appellant as

substitution of opinion is not permissible until and unless conclusion in the impugned judgment of acquittal is perverse.

10. From perusal of record, it appears that the prosecution has miserably failed to prove its case beyond the shadow of reasonable doubt. It is settled proposition of law that a single circumstance creates a reasonable doubt in a prudent mind about the guilt of accused, then he shall be entitled to such benefit not as a matter of grace but as a matter of right as held in authoritative pronouncements of Hon'ble Supreme Court of Pakistan in the cases (i) **1995 S C M R 1345** (*Tariq Parvez v. The State*) (ii) **1997 S C M R 25** (*Muhammad Ilyas v. The State),* (iii) **2008 S C M R 1221** (*Ghulam Qadir and 2 others v. The State.* In the case of *Yasin alias Ghulam Mustafa v. The State* reported as **2008 S C M R 336;** the Apex Court held that proof defined under Article 2(4) of the *Qanoon-e-Shahadat* Order, 1984 containing conclusive duty upon prosecution to prove its case beyond any shadow of doubt. Admittedly, conviction cannot be based on high probabilities and suspicion cannot take the place of proof, therefore, no legal sanctity is attached to the FIR lodged after inordinate delay merely on disclosure of some unknown source or information.

11. As discussed above, the scope of interference in appeal against acquittal is most narrow and limited because after acquittal the accused shall be presumed to be innocent; in

other words, the presumption of innocence is doubled. We do agree with worthy submissions of learned counsel for respondent as well as the learned counsel representing the State that the relevant evidence available on record transpires that the trial court has correctly extended benefit of doubt in favour of the accused, sufficient to acquit him.

12 Insofar as, the scope to disturb a judgment of acquittal is concerned, we are fortified with our views by placing reliance upon the case law in such context, expounded in **A I R 1934 P C 227 (2)** (*Sheo Swarup and others v. King Emperor,* (ii) **P L D 1985 S C 11** (*Ghulam Sikandar and another v. Mamraz Khan and others*), (iii) **P L D 1977 S C 529** (*Fazalur Rehman v. Abdul Ghani and another),* (iv) **P L D 2011 S C 554** (*The State and others v. Abdul Khaliq and others),* (v) **P L D 2010 S C 632** (*Azhar Ali v. The State*), (vi) **2002 S C M R 261** (*Khadim Hussain v.Manzoor Hussain Shah and 3 others*), (vii) **P L J 2002 S C 293** (*Khadim Hussain v.Manzoor Hussain Shah and 3 others)* (viii) **2013 P.Cr.L.J 374** (*Fateh Muhammad Kobhar v. Sabzal and 4 others),* (ix) **2011 P.Cr.L.J 856 (FSC)** (*Mst. Salma Bibi v. Niaz alias Billa and 2 others),* (x) **PLD 1994 S C 31,** (*Ghulam Hussain alias Hussain Bakhsh and 4 others v. The State and another),* (xi) **2010 S C M R 1592** (*Qurban Hussain alias Ashiq v. The State*), (xii) **2017 S C M R 633** (*Intizar Hussain v. Hamza Ameer, etc*)**.**

13. In the backdrop of the above discussion in light of persistent view of the Hon'ble Supreme Court of Pakistan as well as this Court, the present appeal instituted against the acquittal of respondent No.1 Shahid son of Muhammad Shafiq having no merits for consideration was dismissed *in limine* and these are the reasons for our short order of even date.

JUSTICE SYED MUHAMMAD FAROOQ SHAH

JUSTICE DR. FIDA MUHAMMAD KHAN

Peshawar the
April 20, 2018
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