

2001 P Cr. L J 1587

[Peshawar]

Before Ijaz-ul-Hassan, J

ZAHOOR ALI SHAH---Petitioner

versus

AMIR HUSSAIN SHAH and another---Respondents

Criminal Revision No.40 of 1994, decided on 9th April, 2001.

(a) Penal Code (XLV of 1860)---

---Ss. 364-A/109---Criminal Procedure Code (V of 1898), S.439---Revision against acquittal---Impugned order of acquittal of accused was based on correct assessment and evaluation of evidence on record---Delay of one day in lodging the F.I.R. had remained unexplained---Statements of the wife and the brother of the complainant had been rightly brushed aside by the Trial Court---Confessional statement allegedly made by accused was not recorded in accordance with law and essential formalities before recording the same were not duly observed---Cogent and convincing reasons had been given by the Trial Court for acquitting the accused---Revision petition against acquittal of accused was dismissed in circumstances.

Zar Bahadur v. The State 1978 SCMR 136; Abdur Rashid and others v. The tte. and others PLD 1962 SC 249; Ghulam Sikandar and another v. . Mamaraz Khan and others PLD 1985 SC 11 and Muhammad Khan v. Maula Bakhsh and another 1998 SCMR 570 ref.

(b) Criminal Procedure Code (V of 1898)---

---S. 417---Penal Code (XLV of 1860), Ss.364-A/109---Appeal against acquittal---Principle---Presumption of double innocence being attached to accused after his acquittal, approach for dealing with the appeal against acquittal would be different and distinguishable from the appeal against conviction.

Muhammad Khan v. Maula Bakhsh and another 1998 SCMR 570 ref.

Mufti Muhammad Idris for Petitioner.

A.A.-G. for the State.

Khalid Rehman Qureshi for Respondent No. 1.

Date of hearing: 12th February, 2001.

JUDGMENT

Amir Hussain Shah respondent herein, Muqtada Hussain Shah and Ashfaq Shah, all residents of Mauza Hattar, District Haripur, were tried by Additional Sessions Judge, Abbottabad Camp at Haripur under sections 364-A/109, P.P.C. and having been found not guilty were extended benefit of doubt and acquitted through judgment, dated 11-7-1994.

2. Zahoor Ali Shah complainant, feeling aggrieved has filed instant revision petition challenging the acquittal of Amir Hussain Shah.

3. The complainant runs a Karyana Shop in Mauza Hattar. According to him, on 10-4-1992 he had gone to Rawalpindi to make purchases and on the following day when he returned back, he was informed by his wife Mst. Rukhsana Shaheen that yesterday at "Peshi Qaza Wela", when his daughter Uzma Syed was on her way to the house of her maternal grand-father Phu] Pir Hussain Shah and when she reached near the house of her co-villager Anzal Hussain Shah, accused-respondent Amir Hussain Shah lifted the girl by keeping his hand on her mouth with intent to kill her. When he reached near the under construction house of Raza Hussain Shah and tried to enter into it, the girl started hue and cry. Buzurag Shah and Zawal Hussain Shah on hearing cries of the girl reached the spot. Having seen them the accused-respondent left the girl and ran away from the spot. Previous enmity between the complainant and the accused-party was stated to be a motive for the incident Uzma Bibi also supported her father in this respect.

4. Amir Hussain Shah accused-respondent was arrested on 11-4-1992 whereas the remaining accused were arrested on 9-5-1992. A formal charge was framed against the accused to which they did not plead guilty and claimed to be tried.

5: The prosecution in order to prove its case produced 7 witnesses. Ahmad Nawaz Khan, S.H.O. and Mehrban Shah, A.S.-I. are police officials who carried out investigation. Sher Bahadur Khan, Resident Magistrate Bitgali Haripur recorded confessional statement of the accused-respondent on 12-4-1992. The complainant, his brother Zawal Hussain Shah, Mst. Uzma Syed and Mst. Rukhsana Shaheen narrated the prosecution story and charged the accused-respondent and the acquitted accused for the crime in question.

6. The accused in their statements under section 342, Cr.P.C. denied the prosecution allegations and claimed to have been falsely roped in due to previous enmity. They led no evidence in defence.

7. Mufti Muhammad Idris, Advocate, learned counsel for the petitioner criticised the impugned order of acquittal and contended that order of trial Court was visibly coloured and conclusions drawn by it were patently erroneous and unnecessary concessions were given to the accused-respondent in total disregard to the ocular account of the occurrence furnished by Zahoor Ali Shah, Mst. Uzma, Zawal Hussain Shah and Mst. Rukhsana Shaheen P.Ws. and the confessional statement recorded by Magistrate Sher Bahadur Khan P.W. To substantiate the contentions, reliance was placed on Zar Bahadur v. The State 1978 SCMR 136 and Abdur

Rashid and others v. The State and others PLD 1962 SC 249. In response to the arguments addressed on behalf of the petitioner, Mr. Muhammad Ayub, A.A.-G. for the State supported the judgment and prayed for its sustenance.

8. I have heard the arguments and submissions of learned counsel for the parties and have also gone through the statements at the trial and I find myself in agreement with the learned Assistant Advocate-General that the impugned order of acquittal is based on correct assessment and evaluation of p, evidence on record and hardly requires interference by this Court. The crime in question is alleged to have taken place on 10-4-1992 at Peshi Qaza Wela whereas the report (Exh.P.A.) was made about it on 11-4-1992 at 12-30 hours by complainant Zahoor Ali Shah father of Mst. Uzma Syed. The complainant claims to have gone to Rawalpindi at the relevant time to make purchases for his Karyana Shop but nothing has been produced in evidence in support of the assertion. The delay in lodging of the F.I.R. has remained unexplained. Admittedly, Zawal Hussain Shah P.W.4 brother of the complainant and Mst. Rukhsana Shaheen P.W.5 wife of the complainant were present in the village at the material time and they could easily have gone to police station to make report. No explanation has "come on record regarding omission of the mentioned witnesses having reported the matter to the police without loss of time. So far as the statements of Mst. Ruhsana Shaheen and Zawal Hussain Shah are concerned, I feel that they were Correctly brushed aside by the learned trial Court. So far as the confessional statement of the accused-respondent is concerned I find myself in agreement with learned Assistant Advocate-General that the said confession was not recorded in accordance with law and essential formalities before recording confessional statement were not duly observed. The learned trial Judge has given cogent and convincing reasons for passing acquittal order in favour of the accused-respondent and I see no good reason to disagree with him. The case-law produced on behalf of the petitioner is distinguishable and speaks of the different situation. It is not denied that ordinarily scope of petition or appeal against the acquittal of accused is considerably narrow and limited. It has been held in Ghulam Sikandar and another v. Mamaraz Khan and others PLD 1985 SC 11 that whole examining the facts about order of acquittal, substantial weight should be given to the findings of subordinate Courts where accused are exonerated from committing the crime. Obviously approach for dealing with appeal against conviction would be different and distinguishable from appeal against acquittal, because presumption of double innocence is attached in the latter case. Muhammad Khan v Maula Bakhsh and another 1998 SCMR 570.

9. Consequently, finding no substance in this criminal revision I dismiss the same and maintain the impugned judgment of acquittal.

N.H.Q./269/Q

Revision petition dismissed.