

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Crl. Rev. A. No.S-78 of 2018.

Mst. ShumailaApplicant.

Versus.

Vth Additional Sessions Judge
Hyderabad and others.Respondents.

Mr. Farhad Ali Abro, Advocate for the applicant.

Mr. Shahzado Saleem Nahiyoan, DPG.

Date of hearing and order: 25.06.2018.

ORDER

IRSHAD ALI SHAH, J. It is alleged by the applicant that the private respondent caused fists and kicks blows to her thereby she miscarried her pregnancy, for that she lodged an FIR with police. The private respondent after due investigation, was challaned by the police and he after due trial, was found guilty for the above said offence and was convicted and sentenced to undergo SI for a period of three years by the learned trial Magistrate. On challenge, the conviction and sentenced recorded against the appellant by the learned trial Magistrate, were set aside by the learned appellate Court. The applicant being aggrieved of the judgment of the learned appellate Court has preferred the instant criminal revision application before this Court.

2. It is contended by the learned counsel for the applicant that the learned appellate Court by acquitting the private respondent of the charge has not appreciated the evidence properly, which was produced by the prosecution before the learned trial Magistrate. By contending so, he sought for admission of the instant criminal revision application to its regular hearing by converting the same into criminal acquittal appeal.

3. Learned APG has supported the impugned judgment of the learned appellate Court.

4. I have considered the above arguments and perused the record.

5. The FIR of the incident was lodged by the applicant with delay of two days, such delay could not be lost sight of. The applicant during course of her examination before the learned trial Magistrate has not disclosed the name of the accused responsible for commission of the alleged incident. Nowhere in her evidence before the learned trial Magistrate, it was stated by the applicant that the private respondent is the same person, who has committed the alleged incident. In that situation, it would be hard to connect the private respondent with commission of the alleged incident. P.Ws. Zahoor Ahmed and Abid were given up by the prosecution before the learned trial Magistrate. The presumption, which could be drawn of their non-examination, prima facie, would be that they were not going to support the case of prosecution. P.W. Muhammad Ali, who happened to be mashir to the mashirnama of place of incident, has not supported the case of prosecution by stating before the learned trial Magistrate that police did not write anything at the place of incident. By stating so, he also belied SIO/SIP Shahzaman Chandio, that he prepared such mashirnama at the place of incident. In these circumstances, learned appellate Court was right to record acquittal of the private respondent by extending him benefit of doubt by way of impugned judgment, which is not calling for interference by this Court, as the same is neither appearing to be arbitrary nor it has caused miscarriage of justice to anyone.

10. In case of **State vs. Rasheed Ahmed**, which is reported at **NLR 2004 Cr. 286**, it was held by Hon'able Division Bench of Lahore High Court that

the judgment of acquittal which is neither arbitrary nor causes miscarriage of justice would not warrant interference by High Court.

11. In case of **Muhammad Tassawur vs. Hafiz Zulqarnain and others**, which is reported at **PLD 2009 SC 53**, it was held by Hon'able Supreme Court of Pakistan that when an accused person is acquitted of the charge by the court of competent jurisdiction then he carried with him double presumption of innocence.

12. In view of above, the instant criminal revision application is dismissed in limine.

JUDGE

S