

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Acq. A. No.D- 80 of 2020

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection.
2. For hearing of main case.

12.01.2021

Mr. Faisal Nadeem Abro, Advocate for appellant.

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Through this Criminal Acquittal Appeal, appellant has assailed the judgment 07.02.2020, handed down by learned Additional Sessions Judge-I / Model Criminal Trial Court, Tando Adam in Sessions Case No.271-A of 2017 (re: The State Vs. Fida Hussain and others) being outcome of FIR No.39 of 2017, registered at Police Station Sarhari, under sections 302, 324, 504, 34 PPC, whereby after full dressed trial, private respondents have been acquitted of the charges.

2. Heard arguments of learned counsel and perused the record.

3. Main contention of learned counsel is that the appellant being wife of the deceased has filed an application under section 540 Cr.P.C. before conclusion of the trial, which was dismissed. However, in view of the fact that wife of the deceased was neither cited by the prosecution as witness nor she was complainant, therefore, even application under section 540 Cr.P.C. moved by her after the conclusion of entire prosecution evidence was not lawfully maintainable. Learned counsel for the appellant has also failed to show any case law or provision of law which allows a stranger to the proceedings to start participating in criminal proceedings even with permission of the Court. It is also matter of record that after pronouncement of the impugned judgment neither the complainant nor the state has filed any appeal against judgment of acquittal. Appellant has first challenged the acquittal of private respondent through Constitutional petition. It was subsequently converted into appeal against acquittal.

3. Be that as it may, the consideration for deciding a Criminal Appeal against acquittal is quite different from that of a Criminal Appeal against conviction as in the former case presumption of double innocence of the accused is available in the case. It is also a settled principle of law that the superior Courts act slowly in interfering with an order of acquittal, unless

grounds for acquittal are perverse, wholly illogical or unreasonable. Reliance can be placed upon the case of **Muhammad Asghar and another v. The State** (PLD 1994 Supreme Court 301).

4. Further, in dismissing the instant acquittal appeal, we are fortified with the case law laid down by Hon'ble Apex Court in the case of **State vs. Abdul Khaliq** reported in PLD 2011 Supreme Court 554 and relevant observation is as under:-

*“ 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, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. 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. Judgment of acquittal 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 reappraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities. Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the courts below. Supreme Court observed that it was expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals.**”*

4. In view of above, instant appeal against acquittal has no merits and the same is hereby dismissed.

JUDGE

JUDGE