

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Acq. Appeal No.S-73 of 2018

1. For orders on office objection.
2. For hearing of main case.
3. For orders on MA-3322/18

Appellant/Complainant: Abdul Rahim son of Kehar Khan.
Through Mr. Abdul Razaque Dasti
advocate

Respondents: Through Mr. Omparkas, Advocate.

State: Mr. Shahzado Saleem Nahiyoona, D.P.G

Date of hearing: 09.12.2019

Date of decision: 09.12.2019

J U D G M E N T

IRSHAD ALI SHAH, J. The appellant / complainant by way of instant acquittal appeal has impugned judgment dated 31.03.2018 passed by learned Ist. Additional Sessions Judge, Umerkot, whereby the private respondents have been acquitted of the offence for which they were charged.

2. It is the case of prosecution that the private respondents by committing trespass into house of PW Ghulam Murtaza by strangulating his throat and causing him brick blow on his head with intention to commit his murder snatched from him Rs.95,700/= for that they were booked and reported upon.

3. At trial, the private respondents did not plead guilty to the charge and prosecution to prove it examined appellant / complainant and his witnesses and then closed the side.

4. The private respondents in their statements recorded u/s 342 CrPC denied the prosecution allegation against them by pleading innocence, they did not examine themselves on oath or anyone in their defence.

5. On conclusion of the trial, learned trial Court acquitted the private respondents of the offence vide its judgment dated 31.03.2018, which is impugned by the appellant / complainant before this Court by way of instant Acquittal Appeal, as stated above.

6. It is contended by learned counsel for the appellant/complainant that the prosecution was able to prove its case against the private respondents through cogent evidence, beyond shadow of doubt, which has not been appraised properly by learned trial Court while recording acquittal of the private respondents. By contending so, he sought for adequate punishment for the private respondents.

7. Learned D.P.G for the State and learned counsel for the private respondents have sought for dismissal of the instant acquittal appeal by supporting the impugned judgment.

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

9. The appellant / complainant is not an eye witness of the incident, as such his evidence could hardly be relied upon. The FIR of the incident has been lodged with un-plausible delay of 13 days, such delay could not be ignored. As per SIO / ASI Sher Muhammad private respondent Muhammad Arbab who allegedly caused brick blow to PW Ghulam Murtaza on investigation was let-off and section 382 PPC was omitted by him while submitting challan before the Court having jurisdiction. By

doing this, he made the involvement of respondent Muhammad Arbab and allegation of theft to be doubtful one. No brick or Romal allegedly used in commission of incident has been secured by the police during course of investigation. As per medical officer Dr. Muhammad Yaqoob, he did not issue provisional medical certificate while referring the injured to LUMS at Hyderabad for further management. Why he did so? No explanation to it is offered by the prosecution. In these circumstances, learned trial Court was right to record acquittal of private respondents by extending them benefit of doubt.

10. In case of ***State and others vs. Abdul Khaliq and others (PLD 2011 SC-554)***, it has been held by the Hon'ble Apex Court that;

“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”.

11. Nothing has been brought on record, which may suggest that the private respondents have been acquitted by trial Court in arbitrary or cursory manner, which may justify this Court to make interfere with their acquittal.

12. Consequent upon above discussion, the instant Acquittal Appeal is dismissed along with listed application.

JUDGE