

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Acquittal Appeal No.388 of 2023

Date	Order with signature of Judge
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For hearing of main case

30.11.2023

Mr. Liaquat Ali Khan advocate for the appellant
Syed Meeral Shah Bukhari, Additional PG
Mr. Shafi Muhammad advocate for respondents No.1 and 2

Through this Criminal Acquittal Appeal, the appellant has impugned the order dated 20.7.2023 passed by learned VI-Civil Judge & Judicial Magistrate Karachi West in case No.96 /2022, (Re: The State Vs. Zeshan and others), culminating from Crime No.1797 /2021, Police Station Surjani Town, registered under Sections 448,506-B and 34 PPC whereby the respondent No.1 and 2 have been acquitted under Section 249-A Cr.P.C., an excerpt whereof is reproduced as under:-

“ In light of the record and evidence produced before this Court and after hearing of both parties it appears that FIR is lodged after one year of delay, there is no eye witness of the incident, there are serious contradictions in the statement of Complainant and PW Saeed Builder, there is also contradiction in FIR and cross-examination of complainant hence after perusal of record and hearing both the parties. I am of the humble view that the charge is groundless and there is no possibility of conviction of the accused person hence accused persons named as Zeeshan S/o Abdul Raof and Rizwan Qureshi S/o Saleem Qureshi are hereby acquitted under Section 249-A Cr. P.C. their bail bonds stand canceled and sureties be discharged. The case is disposed of.”

2. Brief facts of the case are that the appellant Syed Jawed Raza lodged FIR No. 1797 of 2021 against the private respondents under Section 448, 506-B, and 34 PPC with PS Surjani Town Karachi with the allegation that they came with the weapon(s) and caused harassment to him as well as issued him life threats. Such a case was investigated and a charge sheet was submitted against the respondents. A formal charge was framed against the accused to which they pleaded not guilty and claimed trial. The prosecution examined the complainant who produced certain documents and also examined his witnesses Syed Zeeshan Ali, Muhammad Farooq, and Saeed Ahmed. Meanwhile, the private respondents moved the application under Section 249-A Cr. P.C for acquittal, notice was served upon the applicant, who resisted the application on the plea that two more witnesses are required to be

examined, however, the learned trial Court did not agree with the appellant and allowed the application of the respondents under Section 249-A Cr. P.C. on the ground that the FIR was delayed for one year, there was no eye witness of the incident and there were serious contradiction and the statement of the complainant and PW Saeed Builder as well as in the statement of the complainant.

3. Learned counsel for the Appellant argued that the respondents are involved in a serious offense and there is sufficient material available on the record to connect them with the commission of the offense. There are specific allegations against them that require evidence to be recorded. As per learned the decision of criminal case should be on merits after the recording of the prosecution evidence, statement of the accused under section 342, Cr.P.C., recording of statement of accused under section 340(2), Cr.P.C. if so desired by the accused persons and hearing the arguments of the counsel of the parties and that the provisions of section 249-A, should not normally be pressed into action for the decision of fate of a criminal case especially when conviction is probable after recording evidence. He emphasized that in the instant case, the allegations leveled in the FIR are supported by the preliminary evidence and it could not be said at that stage by the trial Court that there was no probability of conviction of the respondent-accused. He added that sanctity cannot be accorded to acquittals at intermediary stages and the trial should be based on full-fledged evidence; that the order of acquittal of the accused under section 249-A Cr.P.C. would not have the same sanctity as orders of acquittal on merits. He asserted that in the present case, the trial court disrupted the normal course of law against the mandate of principles laid down by the Supreme Court. It is further contended by the learned counsel for the appellant that two witnesses are more to be examined as such the matter needs to be remanded to the trial court for decision on merits. Learned counsel prayed for allowing the appeal.

4. I have heard the learned counsel for the appellant on the maintainability of the Acquittal Appeal and perused the record.

5. The question involved in the present proceedings is whether the prosecution had sufficient material/evidence to warrant the prosecution of the respondents or whether there was no probability of the respondent-accused being convicted of any offense.

6. Primarily, under section 249-A, the Magistrate is empowered to acquit any accused on two grounds i.e. charge is groundless and there is no probability of conviction.

7. From the above section, it is also clear that application under sections 249-A can be filed or taken up for adjudication at any stage of the proceeding of trial i.e. even before the recording of prosecution evidence during the recording of evidence or when the recording of evidence is over. Although there is no bar for an accused to apply to the said section at any stage of the proceeding of the trial, the facts and circumstances of the prosecution case will have to be kept in mind and if there is a slight probability of conviction then of course, instead of deciding the said application should record the evidence and allow the case to be decided on its merit after appraising the evidence available on record.

8. It appears from the record that the learned trial Court examined the material witnesses and pointed out certain lacunas in their statements on the question of the alleged offense that occurred on 15.11.2020 so far as the alleged threats and trespassed in shop No. SR-27-1 Sector 7/DS, Town Karachi was concerned. It appears from the evidence brought by the prosecution which seems to be vague, and sketchy in all aspects of the case, as such the appellant failed to prove the charge against the respondents and had rightly been discarded by the trial Court below. Evidence had been appreciated in its true perspective under principles laid down by the Supreme Court qua appreciation of evidence. No illegality, infirmity, misreading, or non-reading of evidence, could be pointed out warranting interference in the impugned order of acquittal of the private respondents under section 249-A Cr.P.C., which being unexceptional could not be reversed.

9. It is well settled that once a charge for an offense, duly tried, results in acquittal, the accused person acquires a very right and he should not therefore be put in jeopardy of his life again. It would be advantageous to summarize the principles governing the appeal against acquittal under section 417 Cr.P.C.

- i) **Parameters to deal with the appeal against conviction and appeal against acquittal are different because the acquittal carries a double presumption of innocence and the same can be reversed only when found blatantly perverse, illegal, arbitrary, capricious, speculative, shocking, or rests upon impossibility.**
- ii) **It is well settled law by now that in criminal cases every accused is innocent unless proven guilty and upon acquittal by a court of competent jurisdiction such presumption doubles. Very strong and cogent reasons are 3 required to dislodge such a double presumption of innocence.**

- iii) **Acquittal recorded by the trial court based on cogent reasons and not perverse would not be interfered. The appellate court should not lightly interfere with the judgment of acquittal unless it arrives at a definite conclusion that evidence has not been properly analyzed and the court below acted on surmises or conjectures.**
- iv) **Acquittal cannot be reversed merely because a contra view is possible, where the findings of the trial court are not unreasonable, improbable, perverse, or patently illegal. Where based on evidence on record two views are reasonably possible, the appellate Court should not substitute its view in the place of that of the trial Court. v) The presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.**
- v) **Judgment of acquittal can be reversed where the trial Court committed glaring misreading or non-reading of evidence and recorded its findings in a fanciful manner, contrary to the evidence brought on record. vii) The appellate Court, while dealing with an appeal against acquittal, must proceed with the matter more cautiously and only if there is absolute certainty regarding the guilt of the accused considering the evidence on record, acquittal can be interfered with or disturbed.**

10. In view of the above-stated facts and circumstances, coupled with the evidence brought with the record by the appellant I am of the view that the learned trial court was well within the remit of settled law to acquit respondents.

11. Learned counsel for the appellant has failed to point out any misreading or non-reading of evidence, glaring illegality, perversity, unreasonableness, or arbitrariness in the impugned order.

12. In the light of principles as summarized in the preceding paragraphs I am persuaded to hold that no grounds are available warranting interference with the impugned order dated 20.07.2023 passed by the learned VI Civil Judge and Judicial Magistrate West Karachi in Criminal Case No. 96 of 2022. The impugned order rendered by the trial court is well-reasoned and based on judicial prescriptions laid down in various judgments of the Supreme Court.

13. For what has been discussed above, I have concluded that the impugned order does not appear to have been passed in an arbitrary or

cursory manner, to be interfered with by this Court through instant Criminal Acquittal Appeal; and, it is dismissed accordingly.

14. These are the reasons for my short order dated 30.11.2023 where the instant Acquittal Appeal was dismissed.

JUDGE