

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Acquittal Appeal No.124 of 2023

Date	Order with signature of Judge
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For hearing of case

Date of hearing: 28.11.2023

Date of Order : 14.12.2023

Mr. Rafiq Ahmed advocate for the appellent
Mr. Abrar Ali Khichi, Additional PG

ORDER

ADNAN-UL-KARIM MEMON, J. The Appellant/complainant being aggrieved by and dissatisfied with the Judgment dated 31-01-2023 passed by the learned IX Additional Sessions Judge at Karachi-South in Criminal Case No. 3337/2021, (re-*The State versus Sarfaraz Saleem & Another*) arising out of FIR No. 578/2021, P.S. Darakhshan, whereby the respondent No.2 has been acquitted of the charge under section 337-G/334/34 PPC.

2. The charge against the respondent is that on 30-08-2021 at about 1430 hours, inside the main sea view Nashan-e-Pakistan, footpath, Phase V, DHA Karachi, he provoked the absconder accused namely Ahmed to hit the tractor to the complainant and said the driver hit the complainant due to which his right leg was cut, such report of the incident was given to P.S. Darakhshan, who registered the FIR No. 578/2021 under section 337-G/334/34 PPC against the respondent and another after registration of the FIR, the Investigation submitted Challan before the Court of Vth Judicial Magistrate, South, Karachi, however, the learned trial Court was pleased to add section 324 PPC and took cognizance of the offenses under section 324, 337-G, 334, 109/114 PPC vide Order Dated 13. 10, 2021, and framed the charge on 04.12.2022, and the plea of the respondent was recorded who claimed trial.

3. During the trial the Prosecution produced PW-1 complainant, Muhammad Abid, PW-2 SI Sanullah, PW-3 Salman Haider, PW-4 PC Aqib Javed, PW-5 Ayan (minor), PW-6 PC Nabal, PW-7 Faqeer Ahmed, Ambulance driver, PW-8 SI Meer Hasan, PW-9 MLO JPMC Areeb Bakhi and PW-10 SI/LO Muhammad Jalal sheikh. Thereafter the respondent recorded his statement under section 342 Cr.P.C. The trial courts after hearing the parties acquitted the respondent from the charge vide impugned judgment.

4. The appellant/complainant being aggrieved by and dissatisfied with the aforesaid judgment has filed the instant Acquittal Appeal inter-alia on the ground that the respondent has been charged by the complainant for attempting at his life and causing him injury to his right leg by sharing common intention with main accused, as manifest from his statement as well as Medical Report; that complainant has specifically charged respondent for facilitating co-accused to hit the tractor to the complainant whereby he was severely injured and his right leg was imputed. He emphasized that the prosecution has proved the guilt of the respondent beyond the shadow of doubt.

5. Learned Additional. P.G. has supported the impugned order and urged that no indulgence of this court is required under such circumstances.

6. I have heard the parties present in court at a considerable length and have perused the impugned order passed by the trial Court.

7. It has come on record that all the PWs have stated that the respondent remained with the complainant and brought him to the hospital for treatment voluntarily. And there is no evidence that the respondent demanded a bet and provoked the co-accused to hit the complainant with the tractor, therefore the charge against the respondent was/is not proved in terms of evidence brought on record to award conviction to the respondent.

8. During the course of arguments, learned counsel for the appellant could not show the specific part of the order wherein the learned trial Court has committed any gross illegality or irregularity. It is noted that the criminal case is pending since 2021 and almost 2 years have passed the accused had already faced the agony of a protracted trial and was then acquitted by the trial Court having competent jurisdiction. The appellant has also failed to produce any convincing evidence before the trial Court for conviction against the private respondent.

9. It is not out of context to make here necessary clarification that an appeal against acquittal has a distinctive feature and the approach to deal with an appeal against conviction is distinguishable from an appeal against acquittal because the presumption of double innocence is attached in the latter case. Order of acquittal can only be interfered with when it is found on the face of it as capricious, perverse, and arbitrary in nature or based on a misreading, non-appraisal of evidence, or is artificial, arbitrary, and led

to a gross miscarriage of justice. Mere disregard of technicalities in a criminal trial without resulting injustice is not enough for interference. Suffice is to say that an order/judgment of acquittal gives rise to a strong presumption of innocence rather double presumption of innocence is attached to such an order. While examining the facts in the order of acquittal, substantial weight should be given to the findings of the lower Courts whereby the accused was exonerated from the commission of the crime.

10. The acquittal would be unquestionable when it could not be said that acquittal was either perverse or that acquittal judgment was improper or incorrect as it is settled that whenever there is doubt about the guilt of the accused, its benefit must go to him and the Court would never come to the rescue of the prosecution to fill the lacuna appearing in evidence of prosecution case as it would be against established principles of the dispensation of criminal justice. In the case of The State and others vs. Abdul Khaliq and others (PLD 2011 SC-554), it is held by the 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 with 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 in a 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. I am fully satisfied with the appraisal of evidence done by the learned trial Court and I am of the view that while evaluating the evidence, the difference is to be maintained in appeal from conviction and acquittal appeal, and in the latter case, interference is to be made only when there is gross misreading of evidence resulting in miscarriage of justice. Learned counsel for the appellant failed to disclose any misreading and non-reading of evidence. In the case of Muhammad Zafar and another v.

Rustam and others (2017 SCMR 1639), the Supreme Court of Pakistan has held that:-

“We have examined the record and the reasons recorded by the learned appellate court for acquittal of respondent No.2 and for not interfering with the acquittal of respondents No.3 to 5 are borne out from the record. No misreading of evidence could be pointed out by the learned counsel for the complainant/appellant and learned Additional Prosecutor General for the State, which would have resulted in a grave miscarriage of justice. The learned courts below have given valid and convincing reasons for the acquittal of respondents Nos. 2 to 5 which reasons have not been found by us to be arbitrary, capricious or fanciful warranting interference by this Court. Even otherwise this Court is always slow in interfering in the acquittal of the accused because it is well-settled law that in criminal trial every person is innocent unless proven guilty and upon acquittal by a court of competent jurisdiction such presumption doubles. As a sequel of the above discussion, this appeal is without any merit and the same is hereby dismissed”

12. In view of the above facts and circumstances of the case, more particularly in light of evidence brought on record in favor of the respondent that he did not provoke the co-accused to target the compliant to cause him grievous injury whereby his right leg was imputed, I reached at the irresistible conclusion that the appellant has miserably failed to prove his case against the respondent beyond the shadow of reasonable doubt, therefore, no interference in the impugned orders is required by this Court. Resultantly, the instant Criminal Acquittal Appeal being devoid of any merit is hereby dismissed along with the listed application.

JUDGE

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Heard. Reserved.

JUDGE