

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Acquittal Appeal No.S-38 of 2024

Date of hearing: 10.09.2024

Date of decision: 10.09.2024

Appellant: Mumtaz Ali through Mr. Deen Muhammad Chandio,
advocate.

JUDGMENT

ZULFIQAR ALI SANGI, J.- Through this Criminal Acquittal Appeal, the appellant/complainant has assailed the judgment dated 15.02.2024, passed by learned Additional Sessions Judge-II, Dadu, in Criminal Appeal No.29/2023, outcome of FIR bearing Crime No.208/2023, for offence punishable under Sections 324, 452, 337-A(i), 337-F(vi), 148, 149, 504 PPC, registered at PS A-Section Dadu, , whereby the private respondents/accused have been acquitted by extending them benefit of doubt.

2. Brief facts of the case are that on 11.07.2023, complainant Mumtaz Ali Zounr filed an FIR alleging that his relative, Asghar Ali Zounr, and others were upset over the court granting custody of Imtiaz Ali's daughter, Tahira, to the complainant's side. On 14.06.2023, Asghar, along with Allah Yar, Ashique Ali, and three unknown men, trespassed into the complainant's house. Allah Yar threatened them over the custody issue, after which Asghar attacked the complainant's father with a hatchet, and Ashique assaulted his brother with a pistol butt. Allah Yar fired a shot at the complainant but missed. The injured were taken for treatment, and an FIR was registered following a court order.

3. After hearing the parties, learned appellate Court acquitted the private respondents vide impugned judgment dated 15.02.2024, hence, this criminal acquittal appeal.

4. Per learned counsel for the appellant/complainant that learned appellate Court has passed the judgment in violation of law and there was sufficient material available on record to convict the private respondents/accused but learned appellate Court acquitted them on flimsy grounds. Lastly, he prayed for setting aside of the impugned judgment and allowing of the instant criminal acquittal appeal.

5. Heard learned counsel for the appellant/complainant and perused the material made available on the record.

6. It reflects from the impugned judgment that the learned appellate court has mainly acquitted the private respondents on the reasoning mentioned in paragraphs No.14 and 15 of impugned judgment and relevant portion thereof is reproduced as under:-

“14. I have also perused the evidence of medical officer which also appear to be in conflict with the ocular account. As per prosecution’s version, appellant/accused Asghar inflicted hatchet on the head and right arm of complainant’s father Imdad Ali and appellant/accused Ashique caused pistol butt bows to complainant’s brother Aijaz. However the medical certificate of injured Imdad Ali shows kind of weapon as hard & blunt substance though P.W Imdad Ali in his examination-in-chief deposed that Asghar caused him sharp edge side blow with his hatchet on his head and also caused second blow on his arm. The medical certificate of injured P.W Aijaz shows only one injury on his bod and the description of injury as incised wound and kind of weapon as sharp cutting substance, though he as allegedly sustained butt blows of pistol. It would be relevant to reproduce here the relevant portion of cross examination of medical officer who has deposed on the said point as under;

“It is correct that I have shown injury of Aijaz to be caused by any sharp cutting substance. It is correct that such injury cannot be caused by stick blow or butt blow. It is correct that injuries of Imdad are shown to be caused by hard and blunt substance by me in medical certificate. It is correct that injuries sustained by Imdad cannot be caused by sharp edge, hatchet or knife”.

15. The medical officer has further deposed that the injured informed him that they have been caused injuries by sticks and knife. He further disclosed that Imdad told him that he was caused injuries with stick and Aijaz informed that he was caused injury with knife. The evidence of medical officer is contradictory to the ocular account furnished by the complainant/injured witness. Even otherwise, medical evidence and recovery evidence are always treated to be supportive evidence and the conviction cannot be based on sole medical and recovery evidence unless there is confidence inspiring ocular evidence. Reliance in this regard is placed upon 2023-SCMR-1278 wherein it was held as under;

“It is settled principle of law that the value and status of medical evidence and recovery is always corroborative in its nature, which alone is not sufficient to sustain conviction”.”

7. It is well settled by now that the scope of appeal against acquittal is very narrow and there is a double presumption of innocence and that the Courts generally do not interfere with the same unless they find the reasoning in the impugned judgment to be perverse, arbitrary, foolish, artificial, speculative and ridiculous as was held by the Honourable Supreme Court in the case of State Versus Abdul Khaliq and others (PLD 2011 SC 554), wherein the Hon’ble Supreme Court has held as under;-

“From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced 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. It has been categorically held in a plethora of judgments that 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. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the re-appraisal 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. It is averred in *The State v. Muhammad Sharif* (1995 SCMR 635) and *Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others* (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals.”*

8. The sequel of above discussion is that the learned appellate Court has committed no illegality or irregularity while recording acquittal of the private respondents/accused by way of impugned judgment, which even otherwise does not call for any interference by this Court by way of instant Criminal Acquittal Appeal, the same fails and is dismissed accordingly together with listed applications.

JUDGE

Irfan Ali