

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

Criminal Acquittal Appeal No.S-42 of 2023

Date of hearing: 10.09.2024

Date of decision: 10.09.2024

Appellant: The State through Ms. Rameshan Oad, Assistant  
Prosecutor General, Sindh.

## **JUDGMENT**

**ZULFIQAR ALI SANGI, J.-** Through this Criminal Acquittal Appeal, the appellant/complainant has assailed the judgment dated 24.09.2022, passed by Additional Sessions Judge-IV, Hyderabad, in Sessions Case No.01 of 2016, outcome of FIR bearing Crime No.148/2015, u/s 24-A, 25 Sindh Arms Act, registered at PS B-Section Latifabad, Hyderabad, whereby the private respondent/accused has been acquitted by extending him benefit of doubt.

2. Brief facts of the prosecution case as unfolded in the FIR lodged by complainant SIP/SHO Nek Muhammad Khoso of Police Station B-Section Latifabad, Hyderabad, are that on 06.10.2015 vide daily diary entry No.16 at 1600 hours, he took out already arrested accused in Crime No.133 of 2015, U/S. 302, 34 PPC, namely Kamran Majeed S/o Abdul Majeed from lockup, who during interrogation became ready to produce crime weapon. Vide entry No.18 at 1630 hours, accused led the police party consisting upon complainant, PC Gulzar Ali and DPC Tarique Hussain, to pointed place viz. Bismillah City, Unit No.10 inside under construction flats where complainant nominated private persons namely Muhammad Irfan and Muhammad Irshad as mashirs. Thereafter, accused walked ahead to some extent, removed 10/15 bricks from the corner of a room and produced a black colour shopper at 1645 hours, which was checked and found containing 9.MM pistol and two magazine, which was unloaded and found one empty magazine and three live bullets in another magazine, for which, accused could not produce the license, hence, it was sealed in white cloth bag, such memo of arrest and recovery was prepared in presence and with the signatures of above mashirs, then accused and case property were brought at Police Station where the FIR was registered.

3. After full-fledged trial and hearing the parties, learned trial Court acquitted the private respondent vide impugned judgment dated 24.09.2022, hence, this criminal acquittal appeal.

4. Per learned APG representing the appellant/complainant that learned trial Court has passed the judgment in violation of law and there was sufficient material available on record to convict the private respondent/accused but learned trial Court acquitted him on flimsy grounds. Lastly, she 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 trial court has mainly acquitted the private respondent on the reasoning mentioned in paragraphs No.12 & 13 of impugned judgment and relevant portion thereof is reproduced as under:-

“12. It is matter of record that the alleged recovery was not in exclusive possession of accused and place of recovery was accessible to every person as recovery was affected from under construction building, therefore, said recovery would not support the prosecution as no evidence is produced to show that the place of recovery was in the exclusive possession of the accused. At this juncture, I am fortified with a case law reported as 2014 YLR 325 (Lahore High Court) wherein it has been held that;-

“Since the place of recovery of 30-Bore pistol allegedly effected at the instance of accused was not in the exclusive possession of accused, no reliance could be placed on said recovery in order to connect accused with commission of crime”

13. So far, FSL report is concerned, though, the same is not reliable as recovery was affected on 06.10.2015, yet sealed parcel of recovered weapon was received to FSL authorities on 14.10.2015 with delay of about 08 days and at no occasion prosecution has able to explain such inordinate delay and on the other hand, prosecution did not bother to examine Incharge Malkhana to prove the safe custody of sealed parcel during above intervening period, as such, it cannot be said that during the said intervening period in whose custody, the property did remain and the same was not tampered with at any stage. Reliance is placed on case law reported as 2019 YLR 1264 (Federal Shariat Court) wherein it has been held that;-

“Investigation Officer of the case at no occasion had offered any explanation for keeping the said parcels at Police Station for sixteen days---said delay gave rise to suspicion of manipulation and tampering with the said articles, which was deprecated. No explicit reliance could be placed on such Forensic Science Laboratory report, in circumstances”.

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 trial Court has committed no illegality or irregularity while recording acquittal of the private respondent/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 application.

**JUDGE**