

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

Criminal Acquittal Appeal No.S-24 of 2022

Date of hearing: 21.08.2024
Date of decision: 21.08.2024

Appellant: Vishno Mal, through Mr. Muhammad Hashim Laghari,
advocate.

JUDGMENT

ZULFIQAR ALI SANGI, J.- Through this Criminal Acquittal Appeal, the appellant/complainant has assailed the judgment dated 08.01.2022, passed by Addl. Sessions Judge-II, Hyderabad, in Sessions Case No.348 of 2018, outcome of FIR bearing Crime No.89/2018, under Sections 493-A, 506(ii) PPC, registered at PS Market Hyderabad, whereby the private respondent/accused has been acquitted by extending him benefit of doubt.

2. The complainant lodged the FIR stating that he has five daughters and two sons. His daughter, Pooja Devi alias Jiaparada, aged 28, was engaged with Rajesh Kumar, son of Pehlaj Mal, on 21-05-2012. The marriage date was to be decided later. After the engagement, Rajesh Kumar visited the complainant's house frequently and, in the absence of others, coerced Pooja into a sexual relationship by telling her she was becoming his wife and threatening her with murder if she disclosed the matter. When the complainant learned of this, he reported it to community elders, who confirmed the misconduct but Rajesh Kumar refused to marry Pooja. The complainant then approached the police, leading to the lodging of the FIR.

3. After full-fledged trial, learned trial Court acquitted the private respondent vide impugned judgment dated 08.01.2024, hence, this criminal acquittal appeal.

4. Per learned counsel for 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, 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 trial court has mainly acquitted the private respondent on the reasoning mentioned in paragraphs No.24 & 25 of impugned judgment which are reproduced as under:-

“24. In this matter undoubtedly the DNA has not been conducted, which adversely affects the prosecution case. It is also relevant to mention that Honouable Superior Courts have time and again held that it is not only the positive report of availability of human sperm but matching thereof and positive DNA report which are conclusive proof of commission of zina by specific person which is lacking in this case.

25. Apart from the above discrepant and laconic evidence of the prosecution, the circumstantial evidence gathered on the record reveals that after two days of performing the sexual intercourse for the last time with the accused as alleged on 28-05-2017, the accused broken the engagement with the victim on 30-05-2017, but despite of that she did not disclose the above said fact to her father or anybody else nor even told her father to lodge the FIR against the accused and get her medically examined but she remained silent and lodged the FIR on 08-06-2018 after the delay of more than one year from the alleged last meeting of her with the accused. The record further reveals that prior to lodging the FIR by the complainant party dispute was arose between the parties over the matter of money transaction and such Constitutional Petition was also filed by the accused Dr. Rajesh against the complainant, victim and their other family members including the dispute that engagement of the other sisters of the victim and sisters of the accused were also broken meaning thereby the dispute between the parties was over the money transaction due to which their relationships were broken. The assessment and evaluation of evidence further shows that, after the investigation the I.O. had also recommended the case for disposal under cancelled class holding that there was no sufficient evidence with the prosecution to send the case for trial of the accused. The scanning of evidence brought on record clearly manifest that there is no evidence at all with the prosecution to connect the accused with the commission of offence of rape or cohabitation caused by deceitfully inducing the victim on belief of marriage and whole the prosecution story is pregnant with major discrepancies, contradictions and loopholes which leads to the conclusion to hold that the prosecution has not been able to discharge its prime duty of proving the guilt of accused beyond any reasonable shadow of doubt.”

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 applications.

JUDGE

Irfan Ali