

IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS

Criminal Acquittal Appeal No. D-59 of 2024

Before;
Adnan-ul-Karim Memon, J
Amjad Ali Bohio, J

Appellant/
Complainant : Habibullah
Through Mr. Kanji Mal Meghwar, Advocate

Respondents : **Mst. Zareena & Ahsan**

The State : Through Mr. Dhani Bux Mari,
Assistant Prosecutor General, Sindh

Date of Hearing : 02-09-2024

Date of Judgment : 02-09-2024

J U D G M E N T

Adnan-ul-Karim Memon, J. The appellant, Habibullah, has filed an appeal against the acquittal of Mst. Zareena and Ahsan in Sessions Case No. 172 of 2023. The accused were charged with murder and related offenses under Sections 302, 34, and 496-B of the Pakistan Penal Code. The trial court acquitted the accused, finding that the prosecution had failed to prove their guilt beyond a reasonable doubt. As a result, the accused were ordered to be released from custody with the following reasoning:-

“In view of my findings on points No. 1 & 2 above, the prosecution has miserably failed to prove its case against the accused persons beyond a reasonable shadow of a doubt, and the benefit of the doubt is extended to the accused and as a result thereof, the accused namely 1. Mst. Zareena w/o Nawaz d/o Mubarak Parho and 2. Ahsan son of Muhammad Bux Parho are acquitted of the charge U/S 265-H(1) Cr.PC. Since both accused were produced under custody and remanded back to concerned jail authorities with directions to release the above-named accused forthwith if they are required in any other custody case. Such release writ be issued.

2. The appellant's lawyer argued that the trial court failed to consider and discuss the confessional statement of Mst. Zareena in its judgment, led to the acquittal of the respondents. The confessional statement was recorded by a Judicial Magistrate and presented as evidence in the case.

3. We have heard arguments from the appellant's lawyer on the maintainability of this Acquittal Appeal. We have reviewed the trial court's

reasoning and the evidence, including the deposition of the complainant, Habibullah, who admitted to not witnessing any immoral activities between Ahsan and Mst. Zareena. The trial court also noted and discussed the confessional statement of Mst. Zareena found that it was recorded under questionable circumstances, including the delay in recording it and potential police coercion.

4. The scope of interference in an appeal against acquittal is very narrow and limited. This is because the presumption of innocence is strengthened in acquittal cases, meaning the accused is considered innocent until proven guilty. Courts are hesitant to interfere with acquittal judgments unless they are wrong, violate the law, or are based on serious errors in interpreting or understanding the evidence. Such judgments should not be overturned lightly, and the prosecution has a heavy burden to prove that the accused is guilty despite the acquittal. Interference in an acquittal judgment is rare, and the prosecution must demonstrate that the court made glaring errors of law or fact that led to a grave miscarriage of justice. The acquittal judgment must be perfunctory, artificial, or based on a shocking conclusion. The appellate court should not interfere simply because it could reach a different conclusion by re-evaluating the evidence. Factual conclusions should only be overturned if they are wrong or suffer from serious factual flaws.

5. The appellant's counsel failed to identify any misreading or non-reading of evidence by the trial court. The trial court's reasons for acquitting the respondents were supported by the evidence and did not involve any misreading. This court finds that the lower court provided valid and convincing reasons for the acquittal, which were not arbitrary, capricious, or fanciful.

6. The Supreme Court in Muhammad Zafar and another v. Rustam and others (2017 SCMR 1639) also emphasized that it is always cautious about interfering with acquittal judgments due to the presumption of innocence and the double presumption that arises after acquittal. Therefore, the present Criminal Acquittal Appeal is dismissed *in limine* as it lacked merit.

JUDGE

JUDGE

“Ali Sher”