IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Acquittal Appeal No.S-**106** of 2024
(***Shahzado Chachar v. Janan Khan @ Janan & others***)

Date of hearing: 16-10-2024
Date of decision: 16-10-2024

Appellant: Shahzado Chachar through Mr. Achar Khan Gabol, Advocate.

JUDGMENT

ZULFIQAR ALI SANGI, J.- Through this Criminal Acquittal Appeal, the appellant/complainant has assailed the judgment dated 06.09.2024, passed by Judicial Magistrate-I, Ghotki, in Criminal Case No.01 of 2024, arising out of FIR bearing Crime No.17 of 2023, under sections 337F(iii), L(ii), 504 & 34 PPC, registered at P.S, Kacho Bindi-1, whereby the private respondents/accused have been acquitted of the charge by extending them benefit of doubt.

2. The brief facts of the case are that on 08.12.2023, complainant Shahzado lodged the above FIR, wherein he has alleged that on 13.11.2023, he in company of Jagan and Nazeer was going to Ghotki and when they reached at Niaman Landhi, accused persons came there. Accused Janan caused lathi blow on left arm of complainant, he again caused him lathi blow at thigh of left leg. Thereafter accused persons went away while abusing the complainant party. Consequently, above FIR was lodged.

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

4. Per learned counsel for the appellant/complainant that learned trial Court has passed the impugned judgment in violation of law as there was sufficient material available on record to convict the private respondents/accused, but learned trial 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 trial Court has mainly acquitted the private respondents on the reasoning mentioned in point No.1 of impugned judgment which are reproduced as under:-

> *"From perusal of depositions of PWs it appears that there are major contradictions in their evidence As PW I Complainant deposed in examination in chief that after incident his brother took him at police picket and police issued letter for treatment but in FIR he stated that they went at PS and received letter for treatment. PW 1 Complainant deposed in examination in chief that he became unconscious at place of incident but he is silent about unconsciousness in FIR. PW 1 Complainant deposed in examination in chief that he was admitted in hospital for 2 days and PW 2 Nazir Ahmed deposed that Complainant was admitted in hospital for 15 days and PW 4 MO Abdul Rauf deposed that Complainant was admitted at hospital for one day. PW 1 Complainant deposed that they left village at 1100 hours but PW 2 Nazir Ahmed deposed that they left village at 1030 hours. PW 1 Complainant deposed that IO consumed 30 mints in proceedings at place of incident but PW 3 Jagan deposed that IO consumed 20 mints in proceedings and difference of 10 mints cannot be overlooked.PW 1 Complainant deposed that fight lasted for 20 mints but PW 2 Nazir Ahmed deposed that accused person fought for 10 mints and PW 3 Jaggan deposed that accused persons fought for 25 mints and difference of 15 mints cannot be overlooked. PW 1 Complainant deposed that they untied cloth from injury at picket but PW 2 Nazeer deposed that Doctor untied/ removed cloth from injury of complainant at hospital. Consultation before FIR is also admitted by Complainant which creates doubt in prosecution story and it is well settled rule that benefit of doubt goes to accused at any stage of case.*
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> ……..
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> *Apart from this complainant and IO have admittedly not engaged any private/independent mashir which is violation of Section 103 CrPC which also creates doubt in the prosecution story. PW.7 Zahoor Ahmed who held faisla between parties is also examined by prosecution but he has produced copy of Faisla in court. He also admitted that faisla is not written on letter pad but same in on simple paper. Even his statement u/s 161 is not recorded by IO".*

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 been pleased to hold 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 upshot of above discussion is that the learned trial 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 merits no consideration and is **dismissed** accordingly together with pending application(s).

JUDGE

AHMAD