

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Special Anti-Terrorism Acquittal Appeal No. 153 of 2022
(The State vs Syed Umar Kamal)

Date	Order with signature of Judge
	Before: Mr. Justice Salahuddin Panhwar Mr. Justice Adnan-ul-karim Memon

Date of hearing and Order:- 12.11.2024

Mr. Ali Hyder Saleem advocate for the appellant
Nemo for respondent

ORDER

Adnan-ul-Karim Memon, J:- The appellant through Prosecutor General Sindh is appealing the acquittal judgment of the Anti-Terrorism Court in Special Case No. 380-A/2021. The appellant is dissatisfied with the trial court's decision to acquit the respondent Syed Umar Kamal in Special Case No. 380-A/2021. An excerpt of the order dated 29.07.2022 is reproduced as under:-

“ In view of the above facts and circumstances this case cannot end the conviction of the accused and scheme of the section 265-K suggests that the process of the court should not be abused, moreover the parties should not unnecessarily be put in the process of hardship for going to the full dressed trial which have no chance for conviction. Keeping I view above facts and circumstance and the fact that there is no previous criminal record of the accused; he is admittedly working in freelancing which is a white collar profession, the applicant/accused is acquitted”.

2. The complainant, Qadir Bux, a law student, was kidnapped by 10-12 individuals, on July 6, 2021. He was taken to an unknown location, blindfolded, and held captive. The kidnappers demanded a ransom of Rs. 400,000, which was allegedly partially paid. The complainant sought legal action against the kidnappers for his kidnapping and wrongful confinement. Inspector Tassawar Ameer investigated the abduction case, arrested the main accused Jahanzeb, and seized his belongings. After further investigation, he arrested other involved individuals and submitted the case to the Anti-Terrorism Courts for legal proceedings.

3. The trial court charged the accused and recorded their plea. The prosecution presented eight witnesses, including the victim, witnesses of ransom payment, and arresting ASI. After hearing both sides, the trial court acquitted all the accused. The accused

denied the charges and presented alibi evidence. The accused ASI Ramzan claimed the recovered amount was from a vehicle sale.

4. The respondent, after absconding, surrendered and filed an acquittal application under Section 265-K/249-A Cr.P.C. The trial court granted the application and acquitted the respondent based on the judgment dated July 29, 2022, passed in the main case, an excerpt whereof is reproduced as under:-

“25. I am of the considered view that the prosecution since has failed to bring home the guilt of the accused beyond any reasonable doubt and for giving the benefit of the doubt to an accused it is not necessary that there should be many circumstances creating doubt. One single circumstance leading towards the real doubt is sufficient to acquit the accused. I, therefore, extend the benefit of the doubt to the accused namely 1. Jahanzaib Khan S/o Qayyum Khan, 2. Muhammad Ramzan S/o Muhammad Khan, 3. Mumtaz Ahmed S/o Muhammad Ali, 4. Muhammad Ali S/o Nabi Bux, 5. Israr Ahmed S/o Qayyum Khan, 6. Asif Ali S/o Sabir Ali Muhammad Zeeshan S/o Muhammad Sajjad and acquit them in the above case under Section 265-H(1) CrPC. All accused are produced in custody and remanded back to jail with direction to release them forthwith, if not required in any other custody case.”

5. Learned Additional PG argues that the trial court's acquittal of the respondent was erroneous. He contends that the respondent was specifically named in the FIR, absconded to avoid justice, and was implicated by prosecution witnesses. The prosecution further argues that the trial court misapplied Section 249-A Cr.P.C. and that the respondent's role was distinct from the co-accused. He claims the judgment was speculative and arbitrary. The prosecution seeks the reversal of the acquittal of the respondent, remand for further evidence, or a retrial by a competent court.

6. We have heard the learned Additional PG and perused the record with his assistance.

7. The findings of the trial court are that the prosecution's case against the accused is primarily based on the testimony of two main witnesses. However, there are significant inconsistencies in the complainant's statements and the witnesses' accounts. The delayed FIR filing, lack of independent witnesses, and incomplete investigation raise doubts about the credibility of the prosecution's narrative. The recovery of the ransom amount from co-accused ASI Ramzan is questionable due to the lack of details and evidence

linking it to the ransom paid. The investigation into the place of captivity at SIU/CIA police station Saddar is incomplete, and the online transaction of the ransom amount is unclear. These issues, along with the accused's alibi and inconsistencies in witness statements, weaken the prosecution's case. Because of the above the trial court acquitted all co-accused from the charge and the Government/State and /or complainant failed to file an Appeal against the aforesaid decision as per prosecution APG which has attained finality.

8. Taking this opportunity the respondent surrendered before the trial court and succeeded in obtaining an acquittal order in his favor vide impugned order due to insufficient evidence by invoking section 249-A/265-K Cr.P.C. The trial court also opined that proceeding with a full trial would be an unnecessary burden on the parties and the court system. Besides the respondent accused had no prior criminal history. Additionally, the court considered the principle of equal justice, noting that the respondent's situation is similar to that of the acquitted co-accused.

9. The perusal of the judgment passed in the main case, would also show that based on the same set of evidence co-accused were acquitted. We are conscious that the law would demand from the court of law to make such judgment sustainable that reasons for believing the same set of evidence for one and disbelieving for other accused persons must be explained else such judgment would not stand. Thus, we are clear in our mind that in the instant case, the trial court has given reasonable legal justification and explanation to acquit the respondent under section 249-A/265-K Cr. P.C based on the main judgment where the co-accused were acquitted of the charge. Thus the respondent could not be convicted on the same set of charges which prompted the trial court to acquit him without recording evidence in his case as evidence had already been recorded in the main case. Reference can be made to the case of Muhammad Ali V. The State (2015 SCMR 137) wherein it is held:-

“The same set of evidence has been disbelieved qua the involvement of Noor Muhammad, Riaz and Akram co-accused who were ascribed specific roles of causing injuries on the person of the deceased. Reliance in this regard is placed on Muhammad Akram v. The State (2012 SCMR 440) wherein this Court while considering other

actors held that the same set of evidence which was disbelieved qua the involvement of co-accused could not be relied upon to convict the accused on a capital charge and acquitted the accused.”

10. It is a well-settled principle of law that where the direct evidence fails the corroborative piece(s) of evidence will be of no help to the prosecution as portrayed by the learned APG. Reliance can be made to the case of 'Abid Ali & 2 others 2011 SCMR 208' wherein it was held:-

“Although where the ocular account has been disbelieved the recovered articles which are carrying corroborative value cannot substantiate the charge against the appellants because, in the absence of direct evidence, corroborative evidence by itself cannot bring home the charge of murder against the appellants.”

11. The evidence of prosecution has been discarded for the co-accused, while at the same time, it cannot be used against the respondent accused who surrendered later on. Thus the prosecution evidence seems to be doubtful and does not inspire confidence to allow the trial court to lead the evidence on the same set of evidence already recorded in the main case and the respondent was rightly acquitted by the trial court based on available evidence in terms of section 265-k/249-ACr.P.C. beside the complaint has not come forward to assail the legality of main judgment, even the trial court's fresh order.

12. 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.

13. The learned APG failed to identify any misreading or non-reading of evidence by the trial court. The trial court's reasons for acquitting the respondent 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.

14. The Supreme Court in *Muhammad Zafar and another v. Rustom 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 as it lacked merit.

JUDGE

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