

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr. Acq. A.No. 734 of 2019

Before:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Irshad Ali Shah

Afzaal Anthony MasihAppellant
Versus
Mithar Sardar and another Respondent

Date of Hearing: 18.02.2020
Date of Decision: 18.02.2020

Mr. Muhammad Akbar, advocate for the appellant.

J U D G M E N T

IRSHAD ALI SHAH, J:- The appellant / complainant by way of instant acquittal appeal has impugned judgment dated 19.09.2019, passed by learned 1st Additional Sessions Judge/Model Criminal Trial Court, Malir Karachi, whereby the private respondent has been acquitted of the offence for which he was charged.

2. It is the case of the prosecution that the private respondent allegedly committed murder of his wife Abida Nasreen by way of torture for that he was booked and reported upon.

3. At trial, the private respondent did not plead guilty to the charge and prosecution to prove it examined appellant / complainant and his witnesses and then closed the side.

4. The private respondent in his statement recorded under Section 342 Cr.P.C denied the prosecution allegation by pleading innocence. He did not examine anyone in his defence or himself on oath to disprove the prosecution allegation against him.

5. On evaluation of evidence, so produced by the prosecution learned trial Court acquitted the private respondent of the charge by way of impugned judgment.

6. It is contended by learned counsel for the appellant / complainant that learned trial court has recorded acquittal of the private respondent on the basis of improper appraisal of evidence. By contending so, he sought for issuance of notice against the private respondent and state for regular hearing of the instant acquittal appeal.

7. We have considered the above arguments and perused the record.

8. The FIR of the incident has been lodged with the delay of about eight days such delay could not be overlooked. None indeed has seen the private respondent committing the alleged incident. The actual cause of death of the deceased as per medical evidence could not be ascertained. In these circumstances, learned trial Court was right to record acquittal of the private respondent by extending him benefit of doubt by making following observation;

“If we examine the entire prosecution evidence it is very unfortunate that I.O had not conducted proper investigation. There is no evidence as to who found dead body and taken it to the Hospital. Even there is no evidence as to who was in the last company of the deceased when she lost her life.

9. In case of ***State & ors Vs. Abdul Khaliq & ors (PLD 2011 SC-554)***, it has been held by the Hon’ble Apex Court 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. 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. Judgment of acquittal should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous. The Court of appeal should not interfere simply for the reason that on the reappraisal 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”.

10. Nothing has been brought on record, which may suggest that the private respondent has been acquitted by the learned trial Court in arbitrary or cursory manner, which may justify this Court to make interfere with his acquittal by way of instant Acquittal Appeal. It is dismissed in limine.

JUDGE

JUDGE