

ORDER SHEET
**IN THE HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD.**
Cr.Acq.Appeal No.S- 131 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection
2. For hearing of main case.

18.10.2019.

Mr. Masood Rasool Babar, advocate for appellant
Ms. Safa Hisbani, A.P.G.
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The appellant / complainant by way of instant acquittal appeal has impugned judgment dated 29.07.2019 passed by learned Assistant Sessions Judge, Matiyari, whereby he has acquitted the private respondent of the offence for which he was charged by him.

It is alleged by the prosecution that the private respondent has fired at the appellant /complainant with intention to commit his murder in order to satisfy his dispute with him over shop for that he was booked and challaned by the police to face trial for the above said offence.

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.

The private respondent in his statement recorded U/S 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 charge against him.

On evaluation of the evidence, so produced by the prosecution, the private respondent was acquitted of the offence by learned trial Court for which he was charged by way of judgment which is impugned by the appellant / complainant before this Court by way of instant Acquittal Appeal, as stated above.

It is contended by learned counsel for the appellant / complainant that the prosecution was able to prove its case against the private respondent by producing cogent evidence; there was recovery of crime weapon; yet the private respondent has been acquitted by learned trial Court without any cogent reason, on the basis of improper assessment of the evidence. By contending so, he sought for issuance of notice against the private respondent for regular hearing of the instant acquittal appeal.

Learned A.P.G did not support the impugned judgment.

I have considered the above arguments and perused the record.

The FIR of the incident has been lodged with delay of about six hours without any plausible explanation, such delay could not be lost sight of. It is reflecting deliberation and consultation. The fire allegedly was made at the appellant / complainant within close range with object to commit his murder, yet it proves to be ineffective one, which appears to be surprising. The private

respondent could hardly be connected with the recovery of crime weapon which admittedly has been affected from on 3rd day of his arrest. The parties are already disputed over shop. In these circumstances, learned trial Court was right to record acquittal of the private respondent by extending him benefit of doubt.

Acquittals of the accused could only be examined when those have been found to be perverse or arbitrary as has been held to be in case of ***State and others vs. Abdul Khaliq and others (PLD 2011 SC-554)***, by Hon'ble apex Court by making observation 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”.

Nothing has been brought on record by learned counsel for the appellant / complainant or by learned A.P.G for the State, which may suggest that the acquittal of the private respondent has been recorded by learned trial Court, was perverse or arbitrary, which may justify this Court to make interference with his acquittal by way of instant Acquittal Appeal, it is dismissed.

JUDGE