

ORDER SHEET
**IN THE HIGH COURT OF SINDH, CIRCUITCOURT,
HYDERABAD**

Criminal Acquittal Appeal No.S-34 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objections.

For hearing of main case.

18.03.2021.

Mr. Mushtaque Ali Tagar, Advocate for the appellant.

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The appellant by way of instant acquittal appeal, has impugned judgment dated 30.01.2021 passed by learned Additional Sessions Judge, Khipro, whereby the private respondents have been acquitted of the offence for which they have been charged.

2. The facts in brief necessary for disposal of instant appeal are that the private respondents not only obtained obscene photographs of PW/victim Shahnawaz alias Nauman, but attempted to commit sodomy with him, for that they were booked and reported upon.

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

4. The private respondents in their statements recorded u/s 342 Cr.P.C denied the prosecution allegation by pleading innocence they did not examine anyone in their defence or themselves on oath to disprove the allegation of prosecution against them.

5. On conclusion of trial, learned trial Court acquitted the private respondents by way of impugned judgment.

6. It is contended by the learned counsel for the appellant that learned trial Court has recorded acquittal of the private respondents on the basis

of improper assessment of evidence; same is liable to be reappraised by this Court. By contending so, he sought for issuance of notices against the private respondents for regular hearing of instant Criminal Acquittal Appeal.

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

8. The F.I.R of the incident has been lodged with delay of about [23] days, such delay having not been explained plausibly could not be overlooked. The appellant is not an eye witness of the incident. No obscene photograph of victim/PW Shahnawaz alias Nauman is brought on record. PW/victim Shahnawaz alias Nauman has not been subjected to sodomy. As has come on record, the parties are inimical with each other since long. In these circumstances, learned trial Magistrate was right to record acquittal of the private respondents by extending them benefit of doubt such acquittal is not found to be arbitrary or cursory to be interfered with by this Court by way of instant Criminal Acquittal Appeal.

9. In case of *State and others vs. Abdul Khaliq and others* (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. In view of the facts and reasons discussed above, the instant Criminal Acquittal Appeal is dismissed in *limine*.

JUDGE

Ahmed/Pa,