

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Acquittal Appeal No.S-85 of 2023

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

30.05.2023

Ms. RameshanOad, Assistant Prosecutor General, Sindh representing appellant.

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Learned APG for the State submits that learned Trial Court on flimsy grounds has acquitted the respondent / accused from the charge otherwise sufficient material is / was available on record to connect said accused with the commissions of alleged offence; however, when she was confronted with the evidence of the complainant wherein he has stated that some unidentified accused person tried to commit sodomy with his son, as such, she was unable to reply this question and says that due to compromise the complainant party has not supported the prosecution's case hence Trial Court has acquitted the accused / respondent otherwise the medical evidence is supporting the prosecution case. Since complainant and his witnesses have not supported the case at trial and they have stated that some unidentified accused person tried to commit sodomy with son of complainant and even the accused was not identified in Court by the witnesses. As far as the contention in respect of medical evidence is concerned suffice to say that medical evidence can only give details of the offence but cannot identify the culprits. In this context, reliance is placed upon the case of **Zaffar v. The State (2018 SCMR 326)**, wherein the Hon'ble Supreme court Of Pakistan has held that:-

"11. Having discussed all the aforesaid aspect of the case, it has been observed by us that, medical evidence, motive, recovery and for that matter absconding of appellant are merely supportive/corroborative piece of evidence and presence of eyewitnesses at the place of occurrence at the relevant time has been found by us to be doubtful, no reliance can be placed on the supportive/corroborative piece of evidence to convict the appellant on capital charge."

I have also carefully perused the record of the case and feel no hesitation to observe that impugned judgment is speaking one and elaborate which does not suffer from any illegality, gross irregularity, infirmity, hence, it does not require any interference by this Court. It is settled law that if a simple circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right.

It is not out of context to make here necessary clarification that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from the appeal against the acquittal because the presumption of double innocence is attached in the later case. Order of acquittal can only be interfered with, if it is found on its face to be capricious, perverse, and arbitrary in nature or based on a misreading, non-appraisal of evidence or is artificial, arbitrary and lead to a gross miscarriage of justice. Mere disregard of technicalities in a criminal trial without resulting injustice is not enough for interference in the judgment of acquittal gives rise to a strong presumption of innocence rather double presumption of innocence is attached to such an order. While examining the facts in the

order/Judgment of acquittal, substantial weight should be given to the findings of the lower Courts, whereby accused were exonerated from the commission of crime as held by the Apex Court in the case of MUHAMMAD IJAZ AHMAD v. FAHIM AFZAL (1998 SCMR 1281) and JEHANGIR v. AMINULLAH AND OTHERS (2010 SCMR 491). It is also a settled principle of law as held in a plethora of case law that acquittal would be unquestionable when it could not be said that acquittal was either perverse or that acquittal judgment was improper or incorrect as it is settled that whenever there is doubt about guilt of accused, its benefit must go to him and Court would never come to the rescue of prosecution to fill-up the lacuna appearing in evidence of prosecution case as it would be against established principles of dispensation of criminal justice.

Suffice it to say that there is hardly any improbability or infirmity in the impugned judgment of acquittal recorded by the learned trial Court, which is based on sound and cogent reasons that do not warrant any interference by this Court. The appellant has miserably failed to establish extraordinary reasons and circumstances, whereby the acquittal judgment recorded by the trial Court may be interfered with by this Court.

In case of *State and others vs. Abdul Khaliq and others (PLD 2011 SC-554)*, it has been observed 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”.

This is a Criminal Acquittal Appeal and I cannot lose sight of the doctrine of double innocence, which is attached to such proceedings. Consequently, the instant Criminal Acquittal Appeal is dismissed in *limine*.

JUDGE