

IN THE HIGH COURT OF SINDH, BENCH AT SUKKURCriminal Acquittal Appeal No.S- 173 of 2022

Appellant/complainant: Attaullah son of Abdul Rasheed
bycaste Kalhoro **through** Mr.
Muhammad Nawaz Qazi,
advocate.

Private respondents : Not on notice.

Date of hearing : 25-10-2023.

Date of decision : 25-10-2023.

JUDGMENT

IRSHAD ALI SHAH, J.-. It is alleged by the appellant that the private respondents after having formed an unlawful assembly and in prosecution of its common object fired at him with intention to commit his murder and then went away by causing fists, kicks and lathi injuries to his witnesses and insulting them. On the basis of such allegation, he lodged FIR for the said incident. At trial, the private respondents denied the charge and prosecution to prove the same examined the appellant and his witnesses and then closed its side. The private respondents in their statements recorded u/s 342 Cr.P.C denied the prosecution's allegation by pleading innocence. On conclusion of trial, they were acquitted by learned Ist Assistant Sessions Judge, Pano Aqil; vide judgment dated 12-11-2022, which the appellant has impugned before this Court by preferring the instant Crl. Acquittal Appeal.

2. It is contended by learned counsel for the appellant that the learned trial Court has recorded acquittal of the private respondents without assigning cogent reason and on the basis of conjecture and surmises; therefore their acquittal is to be examined by this Court.

3. Heard arguments and perused the record.

4. The FIR of the incident has been lodged with delay of about 05 days; such delay having not been explained plausibly could not be

over looked. The appellant has managed to save the firing though it was made upon him directly, which appears to be surprising. The parties are disputed over landed property. In these circumstances, learned trial Magistrate was right to record acquittal of the private respondents by extending them benefit of doubt by way of impugned judgment, which is not found arbitrary or cursory to be interfered with by this Court by way of instant CrI. Acquittal Appeal.

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

6. In view of the facts and reasons discussed above, instant criminal acquittal appeal fails and it is dismissed in limine together with listed applications.

J U D G E