

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Acquittal Appeal No.451 of 2023

Date	Order with signature of Judge
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For hearing of main case

30.10.2023

Mr. Muhammad Daud Narejo advocate and Mr. Muhammad Yousif Narejo advocate for the appellant
Mr. Siraj Ali Khan, Additional PG
Respondent No.2 Abdul Hameed is present in person

Through this criminal acquittal appeal, the appellant has impugned the judgment dated 19.08.2023, passed by learned Civil Judge and Judicial Magistrate Thatta, in case No.40/2023, Re; Hameed Soomro, culminating from Crime No.93/2023, Police Station Makli, registered under Sections 506/2, 504 and 34 P.P.C; whereby the respondent No.2 has been acquitted under Section 245 (i) Cr.P.C.

At the outset, the learned counsel for the appellant submits that he would be satisfied if the observation recorded by the trial Court be set aside. He added that remarks passed by the trial Court against the appellant needs to expunged from judgment on the premise no man shall be condemned unheard and it is for this reason that the practice of making defamatory remarks against a person who is neither a party nor a witness in the case has been repeatedly condemned by superior Courts.

I have heard the learned counsel for the appellant and respondent No.2 who is present in person and perused the record with their assistance.

The charge against the private respondent is that on 03.07.2021 he abused the complainant thereby committed the offense punishable under Section 506-2, 504 read with Section 34 PPC.

After registration of the F.I.R usual investigation was started and after completing the same challan was submitted in the Court of law, a formal charge was framed against respondent No.2, to which, he pleaded not guilty and claimed to be tried. At trial the prosecution examined as many witnesses to prove the case; however, in the statement of the accused recorded under Section 342 Cr. P.C., respondent No.2 denied the allegation leveled against him by pleading his innocence. After recording evidence, the trial Court acquitted respondent No.2 as stated in para-1 supra.

I have noted from the record that the prosecution failed to prove the culpability of respondent No.2.

The Supreme Court has provided the guidelines and held that the proper and legal way of dealing with a criminal case is that the Court should first discuss the prosecution case and evidence to come to an independent finding about the reliability of the prosecution witnesses, particularly the eye-witnesses and the probability of the story told by them, and then examine the version of the accused whether in the shape of confession, judicial or extrajudicial, or statement recorded under section 342 or 340(2) of the Code. If the Court disbelieves rejects or excludes from consideration the prosecution evidence, then the Court must accept 'the statement' of the accused as a whole without scrutiny. If 'the statement' is exculpatory, then he must be acquitted. If 'the statement' when believed as a whole, constitutes some offense punishable under the law, then the accused should be convicted for that offense only.

It is well settled that the criticism in the judgment against the party should be well-informed. On the aforesaid proposition, I am guided by the decision of the Supreme Court in the case of Justice Qazi Faiz Essa Vs. President of Pakistan **PLD 2021 SC1**. However in the present case, respondent No.2 was acquitted from the charge vide judgment dated 19.08.2023, and a copy of the judgment was transmitted to I.G Sibndh, DIG Hyderabad, and SSP Thatta for taking legal action against the SIP Agha Asadullah, Investigation Officer namely ASI Farman Bhutto and SHO concerned who lodged of False FIR against the respondent No.2 and now the appellant Asadullah has sought expunge of the remarks. Prima facie the copy of the order has been transmitted to the concerned officials for taking legal action against the police officials who initiated criminal proceedings against respondent No.2 and the same culminated in the acquittal of respondent No.2 and in my tentative view that if any criminal case culminates into acquittal the aggrieved person has a right to take legal action against the persons who initiated the proceedings and in the present case the respondent No.2 has been acquitted with the full dressed trial, thus no interfered is required so far as the sending the copy of the judgment and other material to the competent authority for disciplinary action against the delinquent officials.

So far as the merits of the case are concerned, primarily the evidence brought on record does transpire that there was no material available with the prosecution to substantiate the allegation against respondent No.2 that on 03.07.2021 he abused the complainant to attract Section 506/2 PPC. This is the reason that respondent No.2 has been acquitted. In principle, Judgment of acquittal can be reversed where the trial Court committed glaring misreading or non-reading of evidence and

recorded its findings in a fanciful manner, contrary to the evidence brought on record.

I have noticed that the trial Court's Judgment is very elaborative and needs no further deliberation on my part as no illegality has been pointed out by the appellant; even otherwise it is a well-settled principle of law that the burden of proving the case is always upon the shoulders of prosecution which are bound to prove the same beyond the shadow of reasonable doubt and if a single circumstance creates doubt it goes in favor of accused, the benefit of which shall be extended to the accused not as a matter of grace but as a matter of right as laid down by the Supreme Court of Pakistan in the cases of Tariq Pervaiz v. The State (1995 SCMR 1345), Muhammad Akram v. The State (2009 SCMR 230), The State and others vs. Abdul Khaliq and others (PLD 2011 SC-554), and in the case of Muhammad Zafar and another v. Rustam and others (2017 SCMR 1639).

It is also a settled principle of law that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from an appeal against acquittal because the presumption of double innocence is attached. An order of acquittal can only be interfered with when it is found on the face of it as capricious, perverse, arbitrary, or foolish, which are lacking in this case. Reliance is placed on the cases of Inayat Ullah Butt v. Muhammad Javed etc. (PLD 2003 SC 563), Mst. Anwar Begum v. Akhtar Hussain alias Kaka and 2 others (2017 SCMR 1710).

In view of the above legal position of the case, the impugned judgment seems to be elaborated, speaking one hence does not suffer from misreading, non-reading, or non-appraisal of evidence, and it does not warrant the interference of this Court.

From the above, I have concluded that the acquittal of respondent No.2 does not suffer from any illegality to call for interference with the impugned judgment. The learned trial Judge has advanced valid and cogent reasons for passing a finding of acquittal in favor of respondent No.2 and I see no legal justification to disturb the same. As a result, the instant Criminal Acquittal Appeal is dismissed.

JUDGE