

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Acquittal Appeal No.S-110 of 2023

Appellant/complainant: Khalique Dad son of Muhammad Nazal Dal **through** Mr. Irfan Ali Soomro advocate.

Private respondent : Not on notice.

Date of hearing : 23-11-2023.

Date of decision : 23-11-2023.

JUDGMENT

IRSHAD ALI SHAH, J.-. It is alleged by the appellant that the private respondents by making encroachment over portion of his house has committed theft of construction material. On the basis of such allegation, he lodged the FIR of the present case. On investigation, the private respondents were challaned and they after due trial were acquitted by learned IInd Civil Judge & Judicial Magistrate, Sukkur vide judgment dated 11-09-2023, which is impugned by the appellant before this Court by preferring the instant CrI. Acquittal Appeal.

2. Heard arguments and perused the record.

3. No exact time and date of the alleged incident has been disclosed by the appellant in his FIR. The dispute between the parties over the subject house is going on before the Civil Court having jurisdiction. In these circumstances, learned trial Magistrate was right to record acquittal of the private respondents by way of impugned judgment, which is not found to be arbitrarily or cursory to be interfere with by this Court.

4. 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”.

5. In view of above, instant criminal acquittal appeal fails and is dismissed in limine together with listed application.

J U D G E

Nasim/P.A