

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
Criminal Acquittal Appeal No.D-28 OF 2021

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**Before;**

*Mr. Justice Irshad Ali Shah,*  
*Mr. Justice Zulfiqar Ali Sangi.*

Appellant/complainant	Najaf Ali son of Fakir Ghulam Abbas by caste Hisbani <b>Through</b> Mr. Rehmat Ali @ Raza Ali Shaikh, advocate.
Private respondents	Not on notice.
The State	<b>Through</b> Mr. Aftab Ahmed Shar, Additional, Prosecutor General.
Date of hearing	: 02-01-2024.
Date of decision	: 02-01-2024.

**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 committed murder of his father Fakir Ghulam Abbas Hisbani by causing him fire shot injury and then went away by threatening him and his witnesses of murder, for that the present case was registered. On conclusion of trial, the private respondents were acquitted by learned Additional Sessions Judge, Kandiaro vide judgment dated 31-07-2021, which the appellant has impugned before this Court by preferring the instant Acquittal Appeal.

2. It is contended by learned counsel for the appellant that learned appellate Court has recorded acquittal of the private respondents on the basis of improper assessment of the evidence; therefore their acquittal is to be examined by this Court, which is opposed by learned APG for the State by supporting the impugned judgment by contending that it is well reasoned.

3. Heard arguments and perused the record.

4. The FIR of the incident has been lodged with delay of about 06 days; such delay having not been explained plausibly could not be over

looked, it is reflecting consultation and deliberation. The 161 Cr.P.C statements of the PWs have been recorded with further delay of one day even to FIR, such delay could not be ignored, it obviously has reduced evidentiary value of their evidence. The alleged crime weapon and empty secured from the place of incident have been dispatched to ballistic expert jointly, it was to have been dispatched separately in order to maintain transparency; such omission on part of investigating officer could not be lost sight of. The private respondents during course of their examination u/s 342 Cr.P.C have pleaded innocence; their such plea could not be overlooked. In these circumstances, learned trial Court was right to record acquittal of the private respondents by extending them benefit of doubt by way of impugned judgment, which is not found arbitrarily or cursory to be interfered with by this Court.

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 actual infirmities”.*

6. In view of above, instant criminal acquittal appeal fails and is dismissed accordingly.

JUDGE

JUDGE

Nasim/P.A