

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Acquittal Appeal No.S-52 of 2023

Date of hearing: 09.09.2024

Date of decision: 09.09.2024

Appellant: Imtiaz Ali through Mr. Ahsan Gul Dahri, advocate.

JUDGMENT

ZULFIQAR ALI SANGI, J.- Through this Criminal Acquittal Appeal, the appellant/complainant has assailed the judgment dated 25.01.2023, passed by Judicial Magistrate-II, Kazi Ahmed, in Cr. Case No.262/2022, outcome of FIR bearing Crime No.217/2022, for offence punishable under Sections 380, 381 PPC, registered at PS Kazi Ahmed, whereby the private respondents/accused have been acquitted by extending them benefit of doubt.

2. Brief facts of the case are that the complainant, a landlord, left his house on 25-08-2022 and went to Karachi, leaving Rs.300,000 and gold ornaments in a room under the care of his servants, Mour Unnar, Manthaar Unnar, and Mst. Seema Unnar. Upon returning on 28-09-2022, the complainant found the money and jewelry missing. Upon questioning, the three servants admitted to stealing the items along with two others, Shabir and Saleem Unnar. Hence, the FIR was registered.

3. After full-fledged trial and hearing the parties, learned trial Court acquitted the private respondents vide impugned judgment dated 25.01.2023, hence, this criminal acquittal appeal.

4. Per learned counsel for the appellant/complainant that learned trial Court has passed the judgment in violation of law and there was sufficient material available on record to convict the private respondents/accused but learned trial Court acquitted them on flimsy grounds. Lastly, he prayed for setting aside of the impugned judgment and allowing of the instant criminal acquittal appeal.

5. Heard learned counsel for the appellant/complainant and perused the material made available on the record.

6. It reflects from the impugned judgment that the learned trial court has mainly acquitted the private respondents on the reasoning mentioned in paragraphs No.18 and 19 of impugned judgment and relevant portion thereof is reproduced as under:-

“18. Complainant admitted that, he neither produced the receipt of golden ornaments before the court nor handed over to IO, complainant deposed that, my house has two rooms while IO who has visited the place of incident deposed that, house of complainant consisted upon 06/07 rooms, I.O admitted that he has neither collected the broken locks of cupboard/almariah nor recovered the empty box of gold from complainant, I.O failed to mentioned pictures in memo of occurrence, prosecution examined the mashir Lakha Dino Solangi, during examination in chief, he neither disclosed about inspection the place of incident by I.O nor deposed that, I.O prepared memo of occurrence in my presence, moreover he deposed that, we went to PS and police obtained signatures from us, I have no knowledge on which day police came at house of complainant. I.O failed to record the statement of other servants of complainant or any family member of complainant.

19. From perusal of above discussion prosecution miserably failed to prove the charge against the accused of offence U/S: 380-381 P.P.C, as time of theft complainant was not dwelling at his House Situated at Naz Bagh Kazi Ahmed, total incident mentioned in FIR by complainant unseen and no any eye witness of the case, moreover complainant deposed that, he returned from Karachi on 28-09-2022, but he lodged FIR on 18-10-2022 with delay of 20 days, when accused Mst: Seema Unnar filed application of heinous offence against his mother and husband of his sister, therefore complainant lodged FIR against accused persons.”

7. It is well settled by now that the scope of appeal against acquittal is very narrow and there is a double presumption of innocence and that the Courts generally do not interfere with the same unless they find the reasoning in the impugned judgment to be perverse, arbitrary, foolish, artificial, speculative and ridiculous as was held by the Honourable Supreme Court in the case of State Versus Abdul Khaliq and others (PLD 2011 SC 554), wherein the Hon'ble Supreme Court has held as under;-

“From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced 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. It has been categorically held in a plethora of judgments that 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. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be

interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the re-appraisal 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. It is averred in The State v. Muhammad Sharif (1995 SCMR 635) and Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals.”

8. The sequel of above discussion is that the learned trial Court has committed no illegality or irregularity while recording acquittal of the private respondents/accused by way of impugned judgment, which even otherwise does not call for any interference by this Court by way of instant Criminal Acquittal Appeal, the same fails and is dismissed accordingly together with listed applications.

JUDGE

Irfan Ali