

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

Criminal Acquittal Appeal No.S-248 of 2021

Date of hearing: 13.08.2024
Date of decision: 13.08.2024

Appellant: Nadeem Hyder Tareen, through Mr. Muhammad Jamil Ahmed, advocate.

JUDGMENT

ZULFIQAR ALI SANGI, J.- Through this Criminal Acquittal Appeal, the appellant/complainant has assailed the judgment dated 15.09.2021, passed by 8th Addl. Sessions Judge, Hyderabad, in Sessions Case No.571 of 2018, outcome of FIR bearing Crime No.101/2018, under Sections 320, 337, 279 PPC, registered at PS Nasim Nagar, Hyderabad, whereby the private respondent/accused has been acquitted by extending him benefit of doubt.

2. Brief facts of the case are that on May 07, 2018, at 1700 hours, the complainant, Naseem Hyder Tareen, registered FIR No. 101/2018 at Police Station Nasim Nagar, Hyderabad. He stated that on May 3, 2018, he, along with his wife, Mst. Abida Khanum, was returning to his house from Jamshoro on a motorcycle. At approximately 1130 hours, when they reached Marhaba CNG, a white colour car coming from behind and hit the complainant's motorcycle from the right side. As a result, both the complainant and his wife fell on the ground. The complainant sustained injuries to his right hand and knees, and he observed that blood was oozing from his wife Abida Khanum's head. The car that hit the motorcycle stopped ahead and the occupants, including the driver and another person seated in the front passenger seat, took the injured complainant and his wife into the car. The injured couple was seated in the back seat, and the occupants of the car drove them to the hospital. After dropping them off at the hospital, the occupants left. The complainant noted the registration number of the car as GS-455-13, a white Swift. He then informed his brother, Nadeem, who, along with other relatives, arrived at the hospital. Unfortunately, despite receiving treatment, the complainant's wife, Mst. Abida Khanum, succumbed to her injuries at approximately 3:45 PM. The complainant subsequently informed the police at Police Station Nasim Nagar, who arrived at the hospital, completed the legal formalities, and handed over the deceased's body to her heirs/relatives. The complainant later learned that the accident was caused by a driver from the Sindh Text Book Board, Jamshoro. As a result, both the complainant and his wife sustained injuries, leading to his wife's death. Consequently, the complainant lodged the FIR.

3. After full-fledged trial, learned trial Court acquitted the private respondent vide impugned judgment dated 15.09.2021, 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 respondent/accused but learned trial Court acquitted him 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 respondent on the reasoning mentioned in paragraphs No.14 & 15 of impugned judgment which are reproduced as under:-

“14. From the perusal of entire evidence and material available on record it reveals the element of certain is not present in this case. There is no eye witness of alleged incident who could depose that the present accused Muhammad Jaffer while driving Suzuki Swift Car bearing Registration No.GS-455-b in rash and negligent manner hit the same to a motorcycle of complainant Naseem Hyder Tareen. In criminal cases conviction cannot be recorded merely on presumption and assumption, it requires a concert proof coupled with unimpeachable evidence, which is lacking in the instant case.

15. Prosecution examined ASI Nazeer Ahmed at Ex.04 his version is quite different from other prosecution witness/brother of the complainant namely Nadeem Hyder Tareen and contents of FIR. As ASI Nazeer Ahmed in examination in chief deposed that on 03.05.2018 he was posted at police station Naseem Nagar where complainant namely Naseem Tareen came at police station and disclosed about the incident thereby he kept such entry No.14 at about 1800 hours which he has produced at Ex.4/A the same entry was kept after death of complainant's wife namely Abida Khanum. Perusal of entry Ex.4/A reveals that in the alleged entry the name of present accused is not mentioned nor registration number, color and model of the car is mentioned. In entry mere mentioned that complainant alongwith his wife were going on motorcycle behind them one car hit to his motorcycle. When after passing four days of incident complainant registered the FIR he mentioned the registration number of the car but not mentioned that who had told the registration number of the car to him. As per contents of FIR he was in fully senses when from the place of incident proceeded to Civil Hospital but he failed to mention the name of the driver who was driving the car in his entry No.4/A as well as in FIR. In entry also failed to disclose the registration number, model and color of the car. According to the contents of FIR when police came at Civil Hospital on same date 03.05.2018 after the death of Mst. Abida Khanum for completing legal formalities at that time complainant as well as his brother Nadeem Hyder Tareen failed to disclose the name of driver and complainant also failed to get record his statement U/S 154 Cr.PC before police though after the death of his wife he appeared before police station Naseem Nagar on dated 03.05.2018 at 1800 hours despite of that complainant failed to get record his 154 Cr.PC statement.”

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 respondent/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