

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

Criminal Acquittal Appeal No.S-199 of 2022

Date of hearing: 15.08.2024
Date of decision: 15.08.2024

Appellant: Muhammad Ramzan, through Mr. Muhammad Hassan Chang, advocate.

JUDGMENT

ZULFIQAR ALI SANGI, J.- Through the instant Criminal Acquittal Appeal, the appellant/complainant has assailed the judgment dated 21.09.2022, passed by Judicial Magistrate-I, Badin, in Cr. Case No.88/2021, outcome of FIR bearing Crime No.29/2021, under Sections 337-F(vi), 337-F(i), 337-A(i), 337-L(ii), 504, 34 PPC, registered at PS Kadhan, whereby the private respondents/accused have been acquitted by extending them benefit of doubt.

2. The brief facts of the prosecution case as narrated in the FIR are that on 22-06-2021 at 1900 hours, complainant namely Muhammad Ramzan son of Saleh Mallah R/O village Muhammad Juman Mallah Taluka Badin lodged above mentioned crime at PS Kadhan which mentions that "As on 11-05-2021 injured/complainant of this case registered NC in roznamcha entry no 12 at 1530 hours in which injured/complainant and injured/Witness Jan Muhammad alias Janan were given letter for treatment for RHC Kadhan as final medical certificates MLC 167 dated 17-05-2021 of injured under section 337-F(vi), 337-F(i), 337-A(i), 337-L(ii) being cognizable offence were reached as facts of earlier registered NC are as under:

Complaint is that I reside at above address, Gulam Mallah and co-accused are my relatives who do not have good term over brotherly issues. On 11-05-2021 I, my brother in law Janan son of Karim Bux Mallah and Muhammad Hassan alias Porho Mallah were going on motorcycle to catch fish from village to western side of simnali when at 0300 of the evening reached beside the houses of Ghulam Mustafa where everyone 1) Gulam son of Moosa Mallah having iron rod in the hand, 2) Mashooque son of Moosa Mallah having lathi in the hand, 3) Muhammad Bux son of Manthar Mallah having lathi in the hand, 4) Mehboob son of Muhammad Rafique Mallah having lathi in the hand were standing as they stopped and abused us and to whom we said be decent not to abuse meanwhile by common intention, accused Gulam Mallah caused iron rod blow on my left arm and accused Muhammad Bux Mallah caused lathi blow on my head, accused Mashooque Mallah also caused blows of lathi to me. I became injured meanwhile accused Mehboob Mallah caused lathi blow to my brother in law Jan Muhammad alias Janan who also became injured then Muhammad Hassan gave names of Allah Almighty to above accused and rescued us then accused went away by abusing."

3. After full-fledged trial and hearing the parties, learned trial Court acquitted the private respondents vide impugned judgment dated 21.09.2022, 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 point No.1 of impugned judgment and relevant portion is reproduced as under:-

“Since the perusal of all above reproduced evidences and discussion have enlightened that both parties are close relatives and there is existence of no good terms between them over the brotherly issue which have also been brought on the record though in such admitted circumstances the element/argument of dragging into false criminal litigation could not be ignored.

The above scenario and discussion have brought case of prosecution to the conclusion that there are inconsistencies, contradictions, lacunas and discrepancies as well as variations in the statements of witnesses as discussed and underlined supra which have made the case of prosecution doubtful Since, there is well settled principle of criminal jurisprudence that it is the duty of prosecution to prove its case against the cited accused beyond any reasonable doubt and if any single doubt is found then its benefit would go to accused not as a matter of grace but as right and in this regards the reliance is also sought from case law TARIQ PERVEZ v. THE STATE (1995 S.C.M.R 1345)”

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 application.

JUDGE

Irfan Ali