

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

Criminal Acquittal Appeal No.S-02 of 2023

Date of hearing: 22.08.2024

Date of decision: 22.08.2024

Appellant: Hanco, through Mr. Farhad Ali Abro, advocate.

JUDGMENT

ZULFIQAR ALI SANGI, J.- Through this Criminal Acquittal Appeal, the appellant/complainant has assailed the judgment dated 02.12.2022, passed by Additional Sessions Judge-VI, Sakrand, in Sessions Case No.375/2019, outcome of FIR bearing Crime No.16/2019, for offence punishable under Section 322 PPC, registered at PS Mari Jalbani, whereby the private respondents/accused have been acquitted by extending them benefit of doubt.

2. The brief facts of the persecution case are that on 25-05-2019 complainant Hanco son of Megho Kolhi lodged present FIR at police station Mari Jalbani, alleging therein that he has 08 sons, out of whom Chandar aged about 18 years was fifth. His nephew Mohan son of Hero Kolhi resided with him in the same village. On 23-04-2019 complainant along with his wife Jamna Kolhi and other inmates went to Hinglaj, province of Balochistan for performing their religious ceremonies. On 28-04-2019 early in the morning, complainant party were coming back to their village from Hinglaj, Balochistan province, brother of complainant Neelo Kolhi informed to complainant through mobile phone that early in the morning at about 06:00 am (morning time) his son Chandar Kolhi has committed suicide with kerchief by hanging in the Neem tree. So they were taking the dead body of deceased Chandar Kolhi to Taluka Hospital Sakrand for conducting his post mortem through police. In the evening when complainant party reached at his village where they saw dead body of his son Chandar Kolhi, then complainant along with his relatives took the dead body of his son to Matiari for burial. Having returned, complainant party started receiving condolences of his son at his house and the complainant kept enquiring for the reason of commission of suicide by his son. His brother Neelo Kolhi then informed him that after their departure to Hinglaj, complainant son Chandar Kolhi disclosed to him that accused Mohan and Kanjhi have been teasing him by blaming him to have illicit relation with Shrimati Jamni wife of Kanjhi for which they would take account, whereupon he had disclosed to have become tired of life as they are ruining his character by foisting fake allegations and therefore would end his life. On such information the complainant enquired from accused Kanjhi and Mohan the reason for compelling his son to

commit suicide, whereupon they allegedly disclosed that his son had committed himself to death. Complainant narrated such facts to his landlord, who said to him to lodge FIR and then complainant came at police station Mari Jalbani and lodged present FIR against the accused/private respondents.

3. After full-fledged trial and hearing the parties, learned trial Court acquitted the private respondents vide impugned judgment dated 02.12.2022, 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.2 of impugned judgment and relevant portion thereof is reproduced as under:-

“In the mashirnama of place of incident produced by mashir Neelo at Exh.04/E and the sketch of the place of incident produced by I.O at Exh.08/A, several Neem trees were shown to be available there, yet no one was specifically been shown, with which the deceased had committed suicide by hanging himself. Even the requirement of police rules viz. 25-32, 25-33 and 25-35 have not been complied with by the preventing the destruction of evidence as to cause of death, preventing the crowd around the body, covering up foot prints, drawing up correct plan of scene of death with all features, particulars of the height and sufficiency of the support and the nature of thing used to bear the weight of the body and the means of climbing thereon.

In this case, said lady Shrimati Jamni wife of Kanjhi is the prime witness around whom the whole story revolved but I.O had admitted that her statement so as to verify said allegations has not been recorded by him at all. Even the I.O had admitted that he had not recorded the statements of co-villagers so as to verify the truthfulness of the ground of accusation against the present accused leveled by complainant party. Thus, in order to saddle the accused with the responsibility of death of said deceased, the prosecution through these witnesses had to establish that present accused had done any unlawful act which became cause for the death of said deceased which allegation due to above contradictory and self-destructive evidence of these witnesses has become unreliable as such heavily doubtful.”

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