

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

Criminal Acquittal Appeal No.S-120 of 2023

*(Waseem Murtaza Vs. The State & others)*

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1. For Orders on office objection.
  2. For Orders on M.A No. 7080/2023.
  3. For hearing of main case.

**ORDER.**

30-01-2024.

Mr. Achar Khan Gabole advocate for the appellant.

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1. Over ruled.

2& 3. It is alleged by the appellant that the private respondents with rest of the culprits in furtherance of their common intention have insulted and maltreated him. By making him, such allegation, he lodged an FIR. The private respondents joined the trial and on conclusion of trial, they were acquitted by IInd Judicial Magistrate/ (MCTC), Ghotki vide judgment dated 24-10-2023, which the appellant has impugned before this Court by preferring the instant Acquittal Appeal.

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.

Heard arguments and perused the record.

The FIR of the incident has been lodged with delay of about one day; such delay having not been explained plausibly could not be over looked, it is reflecting consultation and deliberation. PW Ali Hassan has not been examined by the prosecution for no obvious reason; therefore, his non-examination could not be over looked. Injuries sustained by the appellant were bailable in nature. The parties were disputed over landed property. In these circumstances, learned trial Magistrate 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.

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”.*

In view of above, instant criminal acquittal appeal fails and is dismissed in limine together with listed application.

JUDGE

Nasim/P.A