

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Acquittal Appeal No.S- 33 of 2022

The appellant Mst. Wassan wdof Ghulam Akber Rajper
through Mr. Khan Muhammad Sangi
advocate.

The State. Mr. Shafi Muhammad Mahar, Deputy
Prosecutor General.

Date of hearing : 05-03-2024.
Date of decision : 05-03-2024.

JUDGMENT

IRSHAD ALI SHAH, J.-. It is alleged by the appellant that the private respondents after having formed an unlawful assembly and in prosecution of its common object by making trespass into her house, insulted and maltreated her and then went away by outraging her modesty. On the basis of such allegation she has filed the complaint, it was brought on record, the private respondents joined the trial and on conclusion whereof, were acquitted by learned Ist Judicial Magistrate /(MTMC) Kandiaro vide judgment dated 29-01-2022, which the appellant has impugned before this Court by preferring the instant CrI. Acquittal Appeal.

2. It is contended by learned counsel for the appellant that learned trial Magistrate has acquitted the private respondents on the basis of minor inconsistencies; therefore, their acquittal is to be examined by this Court by way of instant CrI. Acquittal Appeal, which is opposed by learned DPG for the State by supporting the impugned judgment.

3. Heard arguments and perused the record.

4. The complaint was filed by the appellant with a considerable delay; such delay having not been explained plausibly could not be over looked. PW Habib Rehman has not been examined by the appellant; the

presumption which could be drawn of his non examination in terms of Article 129 (g) of Qanune-Shahadat order, 1984 would be that he was not going to support the case of the appellant. The inconsistencies between the evidence of the complainant and her witnesses as are noticed in the impugned judgment could not be over looked. The parties are disputed over possession of the house. In these circumstances, learned trial Magistrate was right to record the acquittal of the private respondents by extending them benefit of doubt; it is not found arbitrarily or cursory to be interfered with by this Court by way of instant Crl. Acquittal Appeal.

5. In case of *State & others vs. Abdul Khaliq & 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”.

6. In view of above, instant criminal acquittal appeal fails and it is dismissed accordingly.

Judge