

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.

Criminal Acquittal Appeal No.S-13 of 2024

Date of hearing: 25.10.2024

Date of decision: 25.10.2024

Appellant:- Ali Raza Qureshi, through Mr. Faiz Muhammad Brohi, Advocate

The State:- Through Mr. Imran Mobeen Khan, Assistant Prosecutor General

Nemo for the private respondents

JUDGMENT

ZULFIQAR ALI SANGI, J.- Through this Criminal Acquittal Appeal, the appellant has assailed the judgment dated 04.01.2024, passed by 2nd. Judicial Magistrate/MTMC, Naushahro Feroze, in Criminal Case No.99/2023, outcome of FIR bearing Crime No.160/2023, under Sections 337-F(vi), 147, 148 and 504 PPC, registered at PS Naushahro Feroze, whereby the private respondents/accused have been acquitted by extending them benefit of doubt.

2. The brief facts of the case are that on 24.05.2023, complainant Ali Raza Qureshi, registered the above FIR in respect of an offence alleged to have taken place on 11.05.2023 at 1200 hours. He has alleged that his cousin Mst. Shaheena had got khulla from her husband Imtiaz Ali Solangi through Court, who used to asked for return of Mst. Shaheena, which was refused on the ground that since she has got khulla, therefore, cannot be returned, on which he issued threats to the complainant party. On 11.05.2023, complainant along with his cousins Aamir and Muhammad Akram were going to Naushahro Feroze from Tharushah on motorcycle, when they reached at Tharushah bypass, it was 12:00 noon, they saw five persons chasing them on motorcycles and signaled them to stop. They were identified as Imtiaz having lathi, Ayaz having Pistol, Rashid, Mashooque and Riaz, they hurled abuses. Out of them, accused Imtiaz caused lathi blow to complainant on his right hand finger while rest of the accused caused kicks and fists blows to

complainant and PW Aamir. The complainant and witnesses entreated the accused in the name of Almighty Allah, as such the accused persons escaped away while hurling abuses. Thereafter the complainant and witnesses got letter for medical treatment and obtained such MLC from RHC Naushahro Feroze and then appeared at police station and lodged the FIR.

3. After full-fledged trial and hearing the parties, learned trial Court acquitted the private respondents vide impugned judgment dated 04.01.2024, hence, this criminal acquittal appeal.

4. Heard learned counsel for the appellant as well as learned Assistant PG for the State and perused the impugned judgment as well as the depositions available on record.

5. On careful assessment of the material available on record, it reflects that in the background of family dispute over khulla obtained by Mst. Shaheena from accused Imtiaz through Court, they were booked with the allegation that accused namely Imtiaz, Rashid, Mashooque, Riaz and Ayaz intercepted complainant party, out of whom accused Imtiaz caused lathi blow on right hand little finger of complainant, while other accused persons also caused kicks and fists blows to complainant and PWs. Both the eyewitnesses of the occurrence are admittedly close relatives of complainant and in the background of previous standing dispute between the parties, the testimony of such highly interested and partisan witnesses cannot be taken as gospel truth in absence of any other independent corroboration. The injury sustained by the complainant has been opined by the doctor as munaqqilah falling under Section 337-F(vi) PPC, and for the said injury the Medical Officer Dr. Muhammad Imran Rajput has deposed in his examination in chief that keeping in view the configuration of injury, the possibility of injury being self-suffered or self-inflicted cannot be absolutely ruled out.

6. I have also scanned the depositions of the complainant and PWs recorded at the trial, in which the prosecution witnesses have not supported each other on material aspects of the case.

The complainant has deposed in his evidence that on the day of incident, he along with his witnesses Aamir and Muhammad Akram while going to Naushahro Feroze for purchasing groceries were intercepted by five accused persons having lathi and pistol out of whom accused Imtiaz said to him that his wife be returned otherwise it will not be better for them whom he replied that divorce has already been pronounced, hence it is not viable on which accused Imtiaz caused lathi blow to complainant which hit on his right hand little finger, whereas, other accused persons caused kicks and fists blows to complainant and PWs. On the contrary PW Muhammad Amir Saleem has deposed that at the time of incident accused Imtiaz signaled them with show of pistol to stop which clarified that either the PW Muhammad Amir Saleem was not present at the place of incident or the complainant not received the injury as deposed by him. Besides, as far as injury sustained by complainant on his right hand little finger is concerned, the Medical Officer himself stated while recording his deposition that possibility of self-suffered injury cannot be ruled out. In such situation, the ocular account furnished by complainant and PW Muhammad Aamir Saleem is contradictory. On all these counts, prosecution evidence suffers from serious doubts into the veracity of prosecution case against the private respondents/accused, therefore, learned trial Court has rightly extending benefit of doubt while acquitting the private respondents/accused under impugned judgment which does not call for inference by this Court.

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. For what has been discussed above, the impugned judgment passed by learned trial Court does not suffer from any illegality or irregularity and the acquittal of the private respondents/accused is based on sound reasoning, therefore, the instant appeal being devoid of merits is dismissed.

JUDGE