

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

Criminal Acquittal Appeal No.S-116 of 2024

Date of hearing: 24.10.2024

Date of decision: 24.10.2024

**Appellant:-** Muhammad Saleem Shar, through Mr. Muhammad Aslam Gadani, Advocate

**JUDGMENT**

**ZULFIQAR ALI SANGI, J.-** Through this Criminal Acquittal Appeal, the appellant has assailed the judgment dated 07.09.2024, passed by Additional Sessions Judge-IV/Special Court for G.B.V, Khairpur, in Sessions Case No.521/2019, outcome of FIR bearing Crime No.75/2019, u/s 365-B and 34 PPC, registered at PS Mirwah, District Khairpur, whereby the private respondents/accused have been acquitted by extending them benefit of doubt.

**2.** The brief facts of the case are that on 27-04-2019, complainant Liaquat Ali Shar registered the above FIR in respect of an offence alleged to have taken place on 14.04.2019, alleging therein that on 24.04.2019, he along with his daughter Ms. Nazia and son Muhammad Saleem left his house by motorcycle to Girls High School, Mirwah. When they reached at Rasoolpur Dhori where they noticed that one car was coming behind them and while crossed stopped in front of them wherefrom four persons alighted. The accused persons were identified to be Ali Raza having KK, Habibullah having pistol, Ghulam Abbass along with one unknown person. Accused Ali Raza Shar caught hold Ms. Nazia of her arm and forcibly put her in the car and abducted her daughter and went away. Meanwhile, his nephew Muhammad Asif Shar came there on his motorcycle and witnessed the alleged incident. Thereafter, he returned back at his village and apprised such facts to bigwig of his community, who met with the accused persons and asked that they will return the hand of abductee but accused persons refused. Hence the complainant appeared at PS and lodged FIR as stated above.

**3.** After full-fledged trial and hearing the parties, learned trial Court acquitted the private respondents vide impugned judgment dated 07.09.2024, hence, this criminal acquittal appeal.

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

5. On assessment of the evidence and perusal of the impugned judgment, it reflects that the private respondents were acquitted on the ground that the neither 161 CrPC statement of the alleged abductee Mst. Nazia was recorded by the police nor she has been produced before the concerned Magistrate for recording her 164, CrPC statement in support of the version of the complainant. Further the alleged abductee has not been produced before the trial Court however, the evidence has come on record that she has died by natural death on 05.12.2021 at SIUT, Karachi. It further reflects from the evidence that the said abductee Mst. Nazia had contracted marriage with one of the private respondents, namely Ali Raza, who in his statement recorded under Section 342 CrPC before the trial Court has produced nikahanama and free will affidavit. Further the said abductee has appeared before this Court at Hyderabad where she filed C.P No.D-1730 of 2019 wherein her statement was recorded and protection was provided. The learned trial Court while considering all these factor has rightly recorded acquittal of the private respondents.

6. 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.”*

**7.** For what has been discussed above 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 applications.

**Judge**

ARBROHI