

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

Criminal Acquittal Appeal No.S-100 of 2024

Date of hearing: 15.10.2024

Date of decision: 15.10.2024

Appellant:- Zahid Hussain Mangi, through Mr. Ali Gul Abbasi,
Advocate

JUDGMENT

ZULFIQAR ALI SANGI, J.- Through this Criminal Acquittal Appeal, the appellant/complainant has challenged the judgment dated 17.08.2024, passed by Civil Judge and Judicial Magistrate-I/MTMC, Mirpur Mathelo, in Criminal Case No.26-A/2022, outcome of FIR bearing Crime No.164/2021, u/s 506(ii) and 338-C PPC, registered at PS Mirpur Mathelo, District Ghotki, whereby the private respondents/accused have been acquitted by extending them benefit of doubt.

2. The brief facts of the case are that on 14-09-2021, complainant Zahid Hussain Mangi, registered the above FIR in respect of an offence alleged to have taken place on 28.05.2021 at 04.00 p.m, wherein he alleged that five months prior to lodging of the FIR, he had contracted love marriage with Mst. Shahida. On 12.05.2021, accused Shahzado came to his house and took away Mst. Shahida, when she was pregnant for five months, and after one week, he went to accused Shahzado for taking back his wife, who refused to return his wife by showing his displeasure that he does not want to continue the relationship with him. On 28.05.2021, he came to know that accused Shahzado, Abdul Wahab, Akram, Munawar and Mst. Shahida in connivance with each other have aborted the pregnancy of Mst. Shahida, hence he accompanied his brother Mujahid Ali and cousin Riaz Ahmed and went to Bhattai Medical Center and enquired the reason for miscarriage, on which accused Shahzado took out pistol from his fold and threatened him of dire-consequences. Thereafter, complainant filed an application before the Ex-Officio Justice of Peace and after getting such order, went to 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 17.08.2024, 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. Perusal of the impugned judgment reflects that the learned trial court has mainly acquitted the private respondents on the reasoning mentioned in Point No.1 of the impugned judgment which is reproduced as under:-

Point No.1

“13. I have perused the entire evidence produced by prosecution in support of the charge and come across that there are major contradictions and discrepancies in the evidence of prosecution witnesses. Observation of the relevant material on record, depositions of PWs and submissions disclosed that there are many material flaws, infirmities and lacunas in the case of prosecution.

14. It is matter of record that as per FIR Exh.3/D incident is shown to be taken place on 28.05.2021 and on 12.07.2021 after delay of one month and 15 days complainant has filed petition for lodgment of FIR before Court of Honourable III-Additional Sessions Judge, Mirpur Mathelo vide Cr. Misc. App.No.527/2021, even such order was maintained by Honourable High Court of Sindh Bench at Sukkur on 10.09.2021 and on 14.09.2021 complainant has registered FIR. However, it is to be noted that in absence of any plausible explanation, the delay in lodging of FIR is always considered to be fatal and casts a suspicion on the prosecution story, extending the benefit of doubt to the accused as FIR is always treated as a cornerstone of the prosecution case to establish guilt against those involved in a crime; thus, it has a significant role to play. If there is any delay in lodging of a FIR and commencement of investigation, it gives rise to a doubt, which, of course, cannot be extended to anyone else except to the accused. In this regard reliance is placed on the case of Abdul Shakoor v. The State and 8 others reported as 2021 YLR Note 55 (Sindh Larkana Bench).

15. Further complainant PW-1 Zahid Hussain in his examination-in-chief has stated that on 28.05.2021 all accused by their mutual consultation got miscarriage of his child and further stated that he enquired about health of his child from accused

Shahzado to which accused become annoyed and unfold pistol from his shalwar and aimed and also issued murderous threats, however, he in his cross-examination has admitted that no any one has seen while accused Shahzado taken pistol from his shalwar and issued dire-consequences to him. He has also admitted that he has not informed to any one from hospital about dire-consequences issued to him. He has also admitted that accused Mst. Shahida (his ex-wife) has also filed suit for dissolution against him.

16. Further Complainant PW-1 Zahid Hussain his cross examination has admitted that in Crl. Misc. Appln. No.527/2021 filed by him for registration of FIR, it is written that on 27.05.2021 he came to know about incident however in FIR he has mentioned date 28.05.2021. It is matter of record that other FIRs were also registered by Complainant Zahid Hussain against accused and he in his cross examination has admitted that "It is correct to suggest that I have also registered FIR vide crime No.369/2021 PS Daharki and crime No.87/2023 PS Ubauro against present accused. It is correct to suggest that I have also filed direct complaint under Illegal Dispossession Act against accused and same was dismissed on 15.04.2022 by Court of Honourable Additional Sessions Judge, Daharki. It is correct to suggest that FIR No.87/2023 PS Ubauro was disposed off in C class by concerned learned Magistrate". That PW-3 SIP Mushtaque Ali, Investigation Officer in his examination-in-chief has stated that on private car he went to visit place of incident, in his cross-examination has stated that Peer Bux Mahar was driver of taxi on which he has visited place of incident.

17. That PW-4 Mujahid Ali in his cross examination has admitted that issue on land is pending between them and accused persons. He has further admitted that his brother Rahib PW-6 has registered FIR No.369/2021 at PS Daharki against accused".

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. 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.

J U D G E