

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Acquittal Appeal No.S-64 of 2024
(*Naveed Ahmed v. The State & others*)

Date of hearing: 15-10-2024
Date of decision: 15-10-2024

Appellant: Naveed Ahmed Kalwar through Mr. Gul Feroze Kalwar,
Advocate.

JUDGMENT

ZULFIQAR ALI SANGI, J.- Through this Criminal Acquittal Appeal, the appellant/complainant has challenged the judgment dated 30.04.2023, passed by Judicial Magistrate-II, Mirpur Mathelo, in Criminal Case No.130 of 2023, arising out of FIR bearing Crime No.188 of 2023, under sections 430, 504, 506/2 & 34 PPC, registered at P.S, Mirpur Mathelo, whereby the private respondents/accused have been acquitted of the charge by extending them benefit of doubt.

2. The brief facts of the case are that on 19.07.2023, complainant Naveed Ahmed registered the above FIR in respect of an incident occurred on the same day, where he alleged that private respondents/accused in furtherance of their common intention committed mischief by doing an act of blocking the watercourse which caused a diminution of the supply of water to Survey No.264, land of the complainant situated in Deh Sajjan Khan Chandio, which is used for agricultural purpose and also abused and threatened the complainant party.

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

4. Per learned counsel for the appellant/complainant that learned trial Court has passed the impugned judgment in violation of law as there was sufficient material available on record to convict the private respondents/accused, but learned trial Court acquitted them on flimsy grounds. Lastly, he prayed for setting aside of the impugned judgment and allowing of the instant criminal acquittal appeal.

5. Heard learned counsel for the appellant/complainant and perused the material made available on the record.

6. It reflects from the impugned judgment that the learned trial Court has mainly acquitted the private respondents on the reasoning mentioned in paragraphs No.10 & 11 of impugned judgment which are reproduced as under:-

“10. The total story hanged on two things, ownership, entitlement of the complainant and occurrence of the incident. Throughout the evidence, any single document has been produced by the complainant and witnesses to show that he was/is entitled for the water through said water course. Secondly, the complainant and witnesses deposed that on 17.03.2023 accused persons fight/quarrel with them. The complainant has submitted Application to Engineer Irrigation department and complained him about blockage of water course on 17.07.2023. Furthermore, on 17.07.2023 the Engineer Irrigation department send his officer i.e ABDAR to visit the water course and he submitted his report on same day. The Engineer Irrigation department has issued a letter to SHO PS Mirpur Mathelo for registration of FIR 17.07.2023. But, surprisingly the report of ABDAR contains a Note/Order of Engineer Irrigation department which shows date 19.07.2023. The same aspect has been admitted by the complainant, which cuts the main root of the case.

11. Apart from above, it is admitted position that the date of commission of offence is shown in the FIR is 19-07-2023 but the letter was issued to the complainant by the Irrigation department contains dated:17.07.2023, which create serious dent in the prosecution case. Furthermore, the even otherwise, the complainant has failed to explain delay of 02 days in registration of the FIR. Although, an FIR is not a substantive piece of evidence and the complainant was an ample opportunity in his evidence to explain such inordinate delay, but he did not prefer to explain his failure to lodge FIR immediately after getting letter from Irrigation Department. It is settled law that delays in lodging F.1.R must be explained by the complainant plausibly, if complainant, had failed to furnish the circumstances beyond his control or sound justification in that regard, the allegations levelled in F.I.R could be presumed to be the result of deliberation, negotiation, discussion and afterthought: with sole drive, and ulterior motive to get accused convicted. Such deliberation delay could not be ignored by the Court in routine manner. The failure of prosecution to plausibly explain such delay creates doubt over the prosecution case. The reliance is placed upon 2013 P Cr. LJ 663 Sindh and PLJ 2004 S.C. 552.”

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 been pleased to hold 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. The upshot 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 merits no consideration and is **dismissed** accordingly together with pending application(s).

JUDGE

AHMAD