

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Acquittal Appeal No.S-185 of 2022
(*Niaz Hussain v. The State & others*)

Date of hearing: 16-10-2024
Date of decision: 16-10-2024

Appellant: Niaz Hussain through Mr. Ubedullah Malano,
Advocate.

JUDGMENT

ZULFIQAR ALI SANGI, J.- Through this Criminal Acquittal Appeal, the appellant/complainant has assailed the judgment dated 26.10.2022, passed by learned Sessions Judge, Naushahro Feroze, in Sessions Case No.417 of 2018, arising out of FIR bearing Crime No.126 of 2018, registered at P.S, Bhiria City, under Sections 392, 353, PPC, 15, 17 & 24 Gas Theft Act, 2016, whereby the private respondent/accused has been acquitted of the charge by extending him benefit of doubt.

2. The brief facts of the case are that on 22.10.2018, complainant Niaz Hussain registered the above FIR alleging that on 22.10.2018 at about 03:30 p.m, in the shop of accused Gulzar alias Gul in Bhira City, accused committed theft of Gas by installing two generators on direct connection and deterred the complainant from discharging his duty by using criminal force and snatched mobile from him. Consequently, above FIR was lodged.

3. After full-fledged trial and hearing the parties, learned trial Court acquitted the private respondent 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 respondent/accused, but learned trial Court acquitted him 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 respondent for the reasons that there appears series of contradictions in the evidence of prosecution witnesses on material points, whereas accused had already filed a Suit No.02 of 2023 for restoration of his gas

connection. PW-2 Abdul Khalique, who acted as Mashir has also not supported the case of prosecution by deposing that he had signed Mashirnama of place of incident at Police Station, where Mashirnama of arrest of accused was prepared accused was brought and his signature was obtained. However, his evidence is totally contradictory to what has been deposed by I.O/PW-3 ASI Abdul Ghafoor. These contradictions and discrepancies were fatal to the prosecution case and favours in acquittal of the accused/respondent.

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 respondent/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 pending application(s).

JUDGE

Ahmad