

ORDER SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO

Cr. Acquittal Appeal No. D- 34 of 2021

Date 22.11.2023. Order with signature of Judge

1. For orders on office objection-A.
2. For orders on MA No.4287 of 2021. E/A
3. For orders on maintainability of main case.

PRESENT:

Mr. Justice Muhammad Saleem Jessar
Mr. Justice Khadim Hussain Soomro

Mr. Zafar Ali Malgani, Advocate for the appellant a/w appellant.
Mr. Ali Anwar Kandhro, Additional Prosecutor General, Sindh

JUDGMENT

Muhammad Saleem Jessar, J- Impugned is the judgment dated 28.07.2021 handed down by Special Judge, Anti Terrorism, Kashmore @ Kandhkot, *vide Special Case No.26 of 2020, re: State V. Manjhi Malik & others* being outcome of crime No. 14 of 2020, Police Station Durani Mahar, offence under sections 324,353,337-A i,Fi,224,440,506/2,426,148,149 PPC & 6/7 ATA.

2. The appellant SHO-Ali Gohar being complainant as well injured is aggrieved by that judgment has maintained instant appeal against acquittal of the respondents and submits that court below has not appreciated the evidence adduced before it and thereby has wrongly acquitted the respondents which caused miscarriage of justice. Hence, he prays for interference of this Court.

3. Learned counsel along with appellant submits that all the respondents were nominated in the F.I.R with specific role who allegedly had made straight fires upon police party headed by appellant thereby intercepted and deterred them from performing their lawful duties besides attempted to commit their Qatl-e-amd, hence they are liable to be convicted but the trial court had not appreciated the evidence.

4. Mr. Ali Anwar Kandhro, Additional Prosecutor General, Sindh who is present before court in connection with other cases waives notice of the appeal who after going through the file submits that prosecution itself had

spoiled its own case thus the impugned judgment does not suffers from any illegality or infirmity which may warrant interference by this Court.

5. In support of his arguments he has referred to the relevant para of impugned judgment through typed pages 18 to 20 vide Page No.49 to 53 of Court file. We have gone through the impugned judgment and found that the trial court has discussed each and every aspect of the case as well lacuna/contradictions made by the PWs therefore, the impugned judgment in our view does not suffers from any illegality or infirmity which may warrant interference by this court. It is settled law that the accused after getting acquittal earns double presumption of his innocence and superior court have avoided to interfere in the findings of acquittal made by the courts below. The basic ingredient for maintaining appeal against acquittal as has been enshrined by the Apex court in the case of **Ghulam Sikandar and another vs. Mamraz Khan and others (PLD 1985 SC 11)** which reads as under:-

13 ".....The Courts often in such like difficult situation have applied test of "impossibility" by asking questions; whether it was impossible for any reasonable person to have held the impugned view on appreciation of evidence on account of which the acquittal took place." and "The Court would not interfere with acquittal merely because on reappraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible." And "The important test visualized in these cases, in this behalf was that the findings sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous."

Same is also lacking in this case. Consequently, instant criminal acquittal appeal merits no consideration and therefore, is hereby dismissed in limine along with pending application.

JUDGE
21/11/2023
JUDGE

Ashfaq/