

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS
CRIMINAL ACQUITTAL APPEAL No.S-123 of 2024

Appellant/ Complainant: Ghulam Rasool s/o Bux Ali
Through Mir Pervez Akhter Talpur, Advocate.

Respondents/ accused: 1. Muhammad Azam s/o Ghulam Muhammad.
2. Ghulam Murtaza alias Papoo s/o Kamaluddin.
3. Muhammad Nawaz s/o Kamaluddin.
4. Asad Kamal s/o Kamaluddin.
5. Anwar Ali s/o Ghulam Sarwar.
Through Mr. Nadeem Abbasi advocate.
6. The State:
Through Mr. Neel Parkash, DPG.

Date of hearing: 28.01.2026

Date of judgment: 02.02.2026

J U D G M E N T

Miran Muhammad Shah, J. Through the captioned Criminal Acquittal Appeal, appellant/ complainant has called in question impugned judgment dated 03-07-2024 passed by learned Additional Sessions Judge-I, Sanghar in Sessions Case No. 399/ 2021 arising out of F.I.R No.54/ 2021 for offence under sections 324, 147, 148, 149, 337-A(i), 337-F(i), 337-A(v), 337-L(2), 109 PPC of PS Mangli, whereby he acquitted the respondents/ accused.

2. The brief facts of the Prosecution's case as stated in the FIR lodged by the complainant at Police Station Mangli alleging therein that his younger brother namely Ghulam Qadir is journalist, who being reporter and publication of true news, the Nek Mard Kamal Din Shar and his son Ghulam Murtaza @ Papu Shar were annoyed. On 13.08.2021 at about 0700 hours in the evening time, he, his brother Ghulam Qadir and cousin Soomar were going to village from Workshop, when they reached at Village Bachal Faqeer Khaskheli, where accused Anwar Ali S/o Ghulam Sarwar Shar having lathi in his hand, Muhammad Nawaz S/o Kamal Din Shar having lathi in his hand, Asad Kamal S/o Kamal Din Shar having lathi in his hand, Ghulam Murtaza @ Papu S/o Kamal Din and an unknown person having pistol in his hand were present. The accused Ghulam Murtaza @ Papu Shar

and unknown person said the complainant and Soomar to take side. The accused Asad Kamal inflicted lathi blow to the brother of complainant namely Ghulam Qadir on his head with intention to kill him, accused Anwar Ali inflicted lathi blow to Ghulam Qadir on his right leg and abdomen, and accused Muhammad Nawaz inflicted lathi blow to him on face, due to which blood was oozing and he said that you are publishing the News against their Kamal Din and their companions, and Kamal Din has stated them to kill complainant. On their seeing accused persons boarded upon their motorcycles, and ran away towards western side and main workshop road.

3. After completion of the usual investigation, the I.O submitted a police report under section 173 Cr.P.C before the trial court. After supplying copies of necessary documents charge was framed against the respondents/ accused, to which they pleaded not guilty and claimed trial. It is pertinent to mention here that accused Kamal Din was expired during trial, hence his case was abated.

4. In order to prove its case, the prosecution examined as many as nine (09) witnesses, who produced numerous documents and thereafter, the prosecution closed its side. Thereafter, statements of the respondents/ accused under section 342 Cr.P.C were recorded wherein they denied the allegations being false and claimed their innocence. However, they did not examine themselves on oath as required under section 340(2) Cr.P.C nor lead evidence in their defence. After hearing learned counsel for both parties, learned trial Court acquitted the respondents/ accused; hence this Criminal Acquittal Appeal.

5. Learned counsel for the appellant/complainant has contended that impugned judgment of learned trial Court is opposed to facts, law and material available on record; that impugned judgment is result of non-reading and mis-reading of the evidence available on record; that learned trial court while passing impugned judgment has wrongly evaluated the evidence and acquittal of the respondents is in utter violation of the law; that learned trial court has failed to consider that medical officer issued MLC of injured Ghulam Qadir, the respondents challenged MLC of injured before Special Medical Board and the Medical

Board affirmed the finding of the MLO; that learned trial court has failed to consider that complaint and P.Ws have fully supported the case of prosecution; that learned trial court has failed to consider that the contradictions in the statement of PWs are minor in nature which occur due to passage of time; that learned trial court has failed to consider that prosecution has successfully proved the charge against the respondents /accused beyond reasonable doubt. Lastly he prayed for setting aside impugned judgment of learned trial court and conviction of the respondents/ accused.

6. On the other hand, learned counsel appearing for the respondents/accused has supported the impugned judgment by arguing that there are major contradictions in the evidence of the P.Ws; that there is also contradiction in the number of injuries allegedly received by the injured; that impugned judgment is based upon the evidence available on record. Lastly he prayed for dismissal of instant acquittal appeal.

7. Learned D.P.G did not support the impugned judgment by adopting the arguments of learned counsel for the appellant.

8. Heard, perused.

9. This Criminal Acquittal Appeal filed by the appellant/complainant of the case against the respondents/ accused, who have been acquitted from the charge by the learned trial Court. In this case number of people gathered and targeted a person by carrying different arms. In such like cases, some sort of enmity do exist between the two parties. In this case there was only one victim namely PW Ghulam Qadir, brother of the complainant, upon whom eight injuries were inflicted; some of them were grievous in nature whereas others were caused on non-vital part of his body and not applied any ballistic weapon but merely lathies. Case of the prosecution is that his brother Ghulam Qadir being journalist was targeted for writing article, allegedly against the present respondents/ accused party. In order to achieve such score they all got together and attacked him. From perusal of the trial record, it is admitted position that enmity exists between two parties, which may go either side. Enmity is double edged sword

which can be used by the accused as well as complainant party as per facts of the case. Despite being case of attack with common intention, each accused is given specific role and most of them were carrying lathies which hit on the head, right leg and face of the injured/victim whereas two accused, who were carrying fire arm weapon i.e pistols did not cause any injury to the victim. The victim, as per medical report was inflicted eight injuries upon him. The injuries caused with lathies blows on the head and face by accused Asad and Muhammad Nawaz could have easily caused death of the injured/victim as they were all on the vital parts of the body and they caused severe hurts to the injured/victim.

10. After going through the impugned judgment and evidence so also medical report, it seems that learned trial Court has only placed his reliance on the contradictions in the evidence of P.Ws, which infact are minor in nature and not in much substance. The question of common intention is to be considered only at earlier stage of the case when bail application(s) is being heard where tentatively it is to be decided if the common intention is there or not for making case of further inquiry; however at the time of conclusion of trial such question does not arise as the entire evidence is concluded and case comes out clear and transparent and matter is to be decided based on the evidence and then only benefit of doubt is to be considered. The statement of all four accused also does not inspire any confidence as to the innocence of the present respondents / accused. A person was targeted by about 06-07 people, who totally targeted him to settle their score. Three of the accused namely Anwar, Ghulam Murtaza @ Papoo and Muhammad Azam (who was shown as unknown in the FIR while his name has come on surface during investigation) perhaps did not desire or had the intent to bring the death of the victim as Anwar gave him lathi blow on the right leg, which obviously would not cause his death whereas Ghulam Murtaza @ Papoo and Muhammad Azam inspite of carrying fire arm weapons in their hands did not inflict any wound upon him and did not use their weapons, who can be given benefit of doubt and they may not be having any intention of killing the injured/ victim, which is main ingredient of prosecution story. However, lathi blows given by the respondent/ accused Asad on the head and by the respondent/

accused Nawaz on the face of the injured were brutal and deadly in nature and supported by the medical evidence as well as eye witnesses' account. There was hardly any contraction in the evidence that who caused which injury to the victim/ injured. Learned trial court has erred in distinguishing the case of each accused in their own role. Two of the accused have major role in inflicting injuries upon the injured/victim. Their lathies blows were on the vital parts of the body which might have resulted in his death, which is main ingredient of section 324 PPC, which carries punishment of imprisonment for either description for a term which may extend to ten years and shall also be liable to fine. Whereas other three accused, two of them were carrying pistols which they never used for the purpose of attacking the victim; hence their intention and desire to kill the victim is doubtful whereas accused Anwar caused lathi blow on the right leg of the victim, which also on non-vital part of the body and there is no likelihood of such hurt causing death to a person or even minor injury. In such circumstances, the respondents / accused Anwar Ali s/o Ghulam Sarwar, Ghulam Murtaza alias Pappu s/o Kamal Din and Muhammad Azam s/o Ghulam Muhammad, have rightly been given the benefit of doubt while acquitting them; however, the role of the respondents/ accused Asad Kamal s/o Kamal Din and Muhammad Nawaz s/o Kamal Din is clear cut and they both cannot be given such benefit. Both have specific role to play with desire intention to cause death of the injured/victim; hence their role is distinguishable and similar benefit of doubt granted to the co-accused cannot be provided to them, who are guilty of causing these hurts to the victim/injured. Therefore, their acquittal order passed by learned trial court is set aside and they are convicted for the offence punishable under section 324 PPC and sentenced to suffer R.I for 07 years and to pay fine of Rs.50,000/= each and in case of default in payment of fine to suffer S.I for 02 months more. Respondent/ accused Asad is also convicted for causing injury on the head of injured punishable under sections 337-A(v) PPC and sentenced to pay *arsh* one third of the diyat amount and to suffer R.I for 07 years as Tazir. The respondent/ accused Muhammad Nawaz is also convicted for causing injuries on the face of the injured punishable under sections 337-L(2) and 337-A(i) P.P.C and

sentenced to suffer R.I for 02 years on each count. However, all the sentences shall run concurrently. Since the respondents/ accused namely Asad Kamal and Muhammad Nawaz, who have been convicted are called absent, therefore, perpetual N.B.Ws be issued against them with direction to the concerned S.H.O to arrest them and send them to the concerned Jail to serve out the sentence awarded to them. The impugned judgment to the extent of respondents/ accused Muhammad Azam, Ghulam Murtaza alias Papoo and Anwar Ali is maintained.

11. The instant Criminal Acquittal Appeal is partly allowed and partly dismissed in above terms.

JUDGE

Saleem

