

HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Criminal Revision Application No.S-83 of 2024

Applicant/ Appellant : Dawood s/o Rahim Dino
Through Mr. Aziz Ahmed Laghari, Advocate.
Respondents : 1. Muzaffar Hussain @ Muzaffar & other
Nemo
The State : Through Mr. Ghulam Abbas Dalwani, D.P.G.
Date of hearing : 13.10.2026
Date of Judgment : 13.10.2026.

J U D G M E N T

NISAR AHMED BHANBHRO J.- This Criminal Revision Application has been directed against Judgment dated 23-06-2021 (impugned judgment) passed by learned Additional Sessions Judge-I, Tharparkar @ Mithi, (**Appellate Court**) in Criminal Appeal No. 08 of 2021 Re: *Muzaffar Hussain alias Muzaffar and others v. The State*, whereby the respondents/ accused were acquitted of the charge of Criminal Case No. 13 of 2021 Re: *State v. Muzaffar Hussain alias Muzaffar and others*, arising out of F.I.R., bearing Crime No. 19 of 2020 for offence punishable under sections 337-A(iv),337-A(i),337-L(ii),506,504,114,34 P.P.C., of P.S Jhun, District Tharparkar @ Mithi. The judgment dated 29-04-2021 through which the accused were convicted of the charge by learned Civil Judge and J.M (Consumer Protection Court) Tharparkar @ Mithi (**Trial Court**) was set aside .

2. Learned counsel for the respondents and respondents have chosen to remain absent. Since this matter is pending on Court file from year 2021, therefore, is being decided with the assistance of learned Prosecutor and learned counsel for the appellant.

3. The facts giving rise to the instant Revision Application are that complainant Dawood son of Rahim Dino, by caste Hingorjo, lodged F.I.R., bearing Crime No. 19 of 2020 at PS Jhun on 11-11-2020, alleging therein that he has had dispute with Ali Bahadur and others over land, paths and fields. On 11-10-2020, he after taking dinner was going to look after his land, when at about 2300 hours, he reached at *lak* situated on Bapuhar-Wijharayari pucca road, saw that Muzaffar Hussain alias Muzaffar son of Ayaz Hussain armed with hatchet, Mushtaque alias Mashooque Ali son of Ismail armed with hatchet, Ali Bahadur son of Muhammad Hamad alias Hamand armed with lathi and Raza Ali alias Photo son of Gujjan armed with lathi, all by caste Hingorjo, were present there. Muzaffar Hussain alias Muzaffar asked him that they have several times forbidden him not to pass from there; on which he replied that it is government road, which is going at his land. On his reply, Muzaffar Hussain alias Muzaffar instigated other accused persons not to spare him. Then accused Muzaffar Hussain alias Muzaffar caused hatchet blow above the ear on the right side of his head and Mushtaque alias Mashooque Ali caused hatchet blow above the ear on the left side of his head and he fell down on the surface. Ali Bahadur caused lathi blows to him on the left arm. Thereafter, all above named accused persons caused lathies and back side of hatchet blows to him. He raised cries, on his cries, Mataro son of Raheem Dino and Ghulam Hussain son of Majnoon came running there and rescued him from accused persons. Thereafter, all accused persons went away towards their home while abusing and issuing threats to him. Thereafter, he disclosed the above facts to Mataro and Ghulam Hussain, arranged the vehicle from village and came at the police station, obtained letter for medical treatment and reached at Islamkot Hospital, where from he was referred to Hyderabad for further treatment. After getting treatment he

returned village where notable asked him for *faisla* and he waited for *faisla* but till today no *faisla* was held; hence he lodged instant F.I.R.

4. After completion of investigation, a report under section 173 Cr.P.C was submitted with learned trial court. Formal charge was framed, in which the accused claimed trial. To prove its case, the prosecution examined P.W/ complainant Dawood, P.W Mataro, P.W Abdul Ghani, P.W ASI Photo Mal, P.W I.O ASI Bacho Mal and P.W Dr. Jasvant. Thereafter, prosecution closed its evidence side; then statement of accused under section 342 Cr.P.C were recorded wherein they professed their innocence.

5. Learned trial court, after conclusion of trial, convicted the respondents/ accused as under:

"For Offence under section 337-A(v) read with 34 PPC

To pay Arsh to the extent of one-third of Diyat in sum of Rs.925,784/- (Rupees Nine Lacs Twenty Five Thousand Seven Hundred Eighty Four Only) to injured Dawood son of Raheem Dino jointly by all accused.

For Offence under section 337A(i) read with 34 PPC

To pay Daman in sum of Rs.20,000/- (Rupees Twenty Thousand Only) to injured Dawood son of Raheem Dino jointly by all accused.

For Offence under section 337-L(ii) read with 34 PPC

To pay Daman in sum of Rs.20,000/- (Rupees Forty Thousand Only) to injured Dawood son of Raheem Dino jointly by all accused.

In default of payment of above awarded Arsh and Daman, the accused persons shall be dealt in accordance with the section 337-X and 337-Y P.P.C respectively."

6. The respondents/ accused assailed the conviction through Criminal Appeal No. 08/ 2021 under section 408 Cr.P.C. Learned Appellate court allowed the Appeal and acquitted the respondents from the charge of the case vide impugned judgment dated 23-06-2021.

7. Learned counsel for the applicant, when confronted as to maintainability of instant Criminal Revision Application against acquittal, concedes that an acquittal appeal under section 417 of Cr.P.C. would lie against the impugned judgment and requested that the Revision Application was filed within time and same may be converted into Appeal against acquittal, which has not been opposed by learned D.P.G. Order accordingly.

8. Learned counsel for the appellant contented that the prosecution proved its case beyond shadow of doubt. Learned Trial Court had rightly convicted the accused. He contended that respondents/ accused launched an attack upon the appellant/ complainant and caused injuries to him, which were declared as *shajjah-i-ammah, punishable under section 337-A(v) P.P.C.*, for ten years. He contended that evidence of injured witness (appellant/complainant) was in line with the Medical evidence. The contradictions in the evidence were minor in nature and result of passage of time in between the F.I.R., and recording of the evidence, that the conviction awarded to the respondents/ accused by the learned trial court, was based upon well reasoned findings, and appellate court committed error of misreading and non reading of the evidence. He

prayed to set aside the impugned judgment of appellate court and to maintain the conviction awarded by Learned Trial Court.

9. Learned D.P.G supported the arguments advanced by learned counsel for the appellant and contended that learned trial court has already taken a lenient view while awarding conviction and sentence of payment of *Arsh* and *Daman* only; that no reason existed to disturb such findings. Therefore, he prays that that instant Appeal may be allowed and sentence awarded to the respondents by the learned trial court may be maintained by setting aside the impugned judgment.

10. **Heard arguments and perused material available on record.** From re-appraisal of the evidence it transpired that complainant recorded F.I.R., with a delay of about one month and no explanation to that regard was tendered. It was the case of prosecution that the attack upon the injured / appellant was launched during mid-night hours i.e. at 11:00 p.m whereas per provisional Medico-legal Certificate (M.L.C) issued by the Medico-Legal Officer (M.L.O), it transpires that alleged incident had taken place at 08:00 p.m and injured appeared at the hospital at 4:00 a.m in night and per opinion of Medico-Legal Officer (M.L.O) the time between injuries and examination thereof was 08-09 hours, which belied the prosecution case that incident had occurred at 11:00 p.m in night. The injured Dawood (appellant) in his F.I.R and deposition before the trial court deposed that he sustained hatchet injuries, but it was not explained whether sharp cutting side or blunt side of the hatchet was used, whereas the Medico-Legal Officer (M.L.O) opined that injuries were result of weapon of *hard and blunt type*. It is further case of the prosecution, per evidence of injured Dawood, that he was alone at the time of incident; however, per deposition of PW Mataro it transpired that he and P.W Ghulam Hussain were present at the time of occurrence and they intervened and rescued

injured from the accused persons. But it is surprising to notice that the witnesses did not take effort to remove the injured to hospital promptly. Moreover, the injured and other witnesses appeared at the police station on the very day of incident; however, did not disclose the details of incident and only obtained letter for treatment. The injuries sustained by the injured/ appellant were not so serious in nature that he could not give details of incident on the very day of incident. Failure of injured Dawood to record his statement under section 154 Cr.P.C (F.I.R) promptly creates a serious doubt as to the veracity of the version developed latter on. Moreover, the clothes of the injured/ appellant were not produced to the police to say that same were blood stained. Even during the course of investigation, no recovery was effected from the possession of the respondents, therefore, learned appellate court had rightly resolved that the case of the prosecution was doubtful and its benefit ought to be given to the accused.

11. The prosecution is burdened to prove the guilt of the accused beyond shadow of doubt. Once the prosecution discharged its burden successfully then onus shifted towards the accused to prove the contrary, but in the instant case prosecution has failed to discharge its burden, as there are material contradictions in between the statements of injured witness and other P.Ws regarding the manner and time of incident so also the medical evidence is at variance to the venison given by the complainant and other witnesses. Reliance in this regard is placed on the case of **Bashir Ahmed alias Phero V. The State** (2026 S C M R 1463), wherein Honorable **Supreme Court of Pakistan has held that:**

10. If all these factors are considered in juxtaposition it would reveal that the present case is full of doubts, conjecture and surmises and the depositions of the PWs could also not be

considered to be confidence-inspiring. The discussion above clearly demonstrates the material flaws in the prosecution case, rendering it doubtful. Since the instant case is one that is replete with reasonable doubts we are of the view that the prosecution has failed to prove its case against the present petitioner beyond reasonable doubt.

12. A witness cannot be declared as a trustworthy solely for the reason that he sustained injuries during the occurrence. Real test of the evidence is that it must be confidence inspiring and trustworthy and should provide a complete picture of the occurrence. If evidence of the injured did not ring truth, it can be discarded. It is by now well settled that if there is a single circumstance, which creates doubt in the prosecution case then the same is sufficient to acquit the accused, whereas the instant case is replete with number of circumstances, which have created serious doubts in the prosecution story. Reliance in this regard may be placed on the cases reported as *Tajamal Hussain v. The State* (2022 SCMR 1567), *Sajjad Hussain v. The State* (2022 SCMR 1540), *Abdul Ghafoor v. The State* (2022 SCMR 1527 SC), *The State v. Ahmed Omer Sheikh* (2021 SCMR 873), *Najaf Ali Shah v. The State* (2021 SCMR 736), *Muhammad Imran v. The State* (2020 SCMR 857), *Abdul Jabbar v. The State* (2019 SCMR 129), *Mst. Asia Bibi v. The State* (PLD 2019 SC 64), and *Tariq Pervaiz v. The State* (1995 SCMR 1345)."

13. The parameters for interference into an Appeal against acquittal are quite different to that of Appeal against conviction. Strong circumstances were required to interfere with findings of acquittal viz-aviz the same suffered from misreading or non-reading of evidence or an error apparent on the face of the record and that being not the case in hand thus did not warrant interference.

14. For the foregoing reason, this Acquittal Appeal fails and is accordingly **dismissed**.

Approved for reporting

Judge

“Saleem”