

## **IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

Crl. Acquittal Appeal No.S- 39 of 2020

- 1.For orders on office objection.
- 2.For orders on MA 570/2020.
- 3.For hearing of main case.

Appellant Wali Muhammad Shaikh is present in person.  
Mr. Ghulam Mujtaba Jakhar Advocate along with private respondents.  
Mr. Atab Ahmed Shar, Additional P.G for the State.

Date of Hearing: **22-02-2021**

Date of Judgment: **22-02-2021**

### **J U D G M E N T**

**AFTAB AHMED GORAR L.** Respondents / accused were tried by learned Judge, Consumer Protection Court/CJMM, Khairpur in Criminal Case No.41 of 2019, arising out of Crime No. 08 of 2019 registered at P.s, A-section, Khairpur under Sections 506/2 & 504 PPC.

2. The charge against the respondents / accused is that on 22.02.2018, accused Abdul Sattar and Irfan Ahmed alias Ehsan beaten the complainant and on the show of weapons issued threats of murder for ousting from the house so also mixed something in the milk.

3. Charge was framed against accused, to which they pleaded 'not guilty' and claimed to be tried. Thereafter, prosecution led the evidence of prosecution witnesses and statements of accused / respondents were recorded in terms of Section 342 Cr.P.C and then on the assessment of evidence available on record and hearing the learned

counsel for the parties, learned trial Court acquitted the accused / respondents vide impugned judgment dated 29.02.2020.

4. The appellant/complainant being dissatisfied with the acquittal of the accused has filed this CrI. Acquittal Appeal.

5. Record reveals that since inception, learned counsel for the appellant is not appearing, as such appellant is heard in person so also learned counsel for the private respondents as well as learned Additional P.G for the State and perused the entire material available on record and have reached to a conclusion that the respondents / accused have rightly been acquitted by the learned trial Court for the reasons that the FIR was registered with an inordinate delay of about 11-months, for which no plausible explanation has been furnished, as such false implication of the respondents/accused after due deliberation and consultation cannot be ruled out. Moreover, in the FIR as well as in his evidence, the complainant has not attributed any specific role to the accused persons. It is also a matter of record that there is no medical record produced by the prosecution about allegations of complainant against the accused persons with regard to mixing of something in the milk. It is also an admitted fact that in his evidence complainant has not specifically deposed any word of abusive language, used by the accused persons, as alleged in the FIR by the complainant so also there is no any description of the weapons. Besides above, there are certain infirmities and contradictions in the evidence

of the prosecution witnesses which have rightly been discussed and considered by the learned trial Court being fatal to the prosecution case.

6. It is settled law that any acquittal order cannot be lightly interfered with by the Appellate Court, though it has wide powers to review the evidence and to come to its own conclusion. These powers must be exercised with care and caution because the presumption of innocence is further strengthened by the acquittal of an accused.

7. In the judgment in the case of *Zulfiqar Ali v. Imtiaz and others* (**2019 SCMR 1315**), Hon'ble Supreme Court has held as under:

“2. According to the autopsy report, deceased was brought dead through a police constable and there is nothing on the record to even obliquely suggest witnesses' presence in the hospital; there is no medico legal report to postulate hypothesis of arrival in the hospital in injured condition. The witnesses claimed to have come across the deceased and the assailants per chance while they were on way to Chak No.504/GB. There is a reference to M/s Zahoor Ahmed and Ali Sher, strangers to the accused as well as the witnesses, who had first seen the deceased lying critically injured at the canal bank and it is on the record that they escorted the deceased to the hospital. Ali Sher was cited as a witness, however, given up by the complainant. These aspects of the case conjointly lead the learned Judge-in-Chamber to view the occurrence as being un-witnessed so as to extend benefit of the doubt consequent thereupon. View taken by the learned Judge is a possible view, structured in evidence available on the record and as such not open to any legitimate exception. It is by now well-settled that acquittal once granted cannot be recalled merely on the possibility of a

contra view. Unless, the impugned view is found on the fringes of impossibility, resulting into miscarriage of justice, freedom cannot be recalled. Criminal Appeal fails. Appeal dismissed.”

8. The appellant / complainant has not been able to point out any serious flaw or infirmity in the impugned judgment. View taken by the learned trial Court is a possible view, structured in evidence available on record and as such not open to any legitimate exception. It is by now well settled that acquittal once granted cannot be recalled merely on the possibility of a contra view. Unless, impugned view is found on fringes of impossibility, resulting into miscarriage of justice, freedom cannot be recalled.

9. For the aforesaid reasons, this CrI. Acquittal Appeal is meritless; therefore, the same stands ***dismissed*** accordingly along with pending listed application.

**J U D G E**