IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Acquittal Appeal No.S – 08 of 2017

Appellant/Complainant	:	Manzoor Ahmed alias Raees Muhammad through Mr. Nusrat Ali Shar Baloch, Advocate
Respondent	:	Jato, Asghar Ali, Baroch, Mir Hassan, Yar Muhammad, Fida Hussain and Mehboob Ali present in person
		The State, through Mr. Khalil Ahmed Maitlo Deputy Prosecution General
Date of hearing	:	02.12.2019
Date of decision	:	02.12.2019

JUDGMENT

AFTAB AHMED GORAR, J.- By filing instant Criminal Acquittal Appeal, the appellant/complainant has impugned judgment dated 17.12.2016, passed by learned Additional Sessions Judge Ubauro, whereby the private respondents have been acquitted of the offence under Sections 337-F(v), 337-A(i), 337-L(ii), 148, 149 and 504 PPC arising out of Crime No.203 of 2011 registered at Police Station Daharki, District Ghotki while setting aside the judgment of conviction dated 27.02.2016 passed by learned 2nd Civil Judge and Judicial Magistrate Ubauro.

2. Precisely stated the facts of the prosecution case are that on 27.6.2011 at about 6:30 am, the complainant along with his brothers Ali Hassan, Soukat Ali and Qurban were present at their lands situated in Deh Gorheelo, there came all of a sudden accused Asghar Ali with Gun, Jatoi, Baroch, Mehboob, Fida Hussain, Amjad, with lathies. Out of them, accused Asghar Ali hurled abuses and asked them why they have come on their lands, on which the complainat and witnesses admonished him not to abuse, as such accused Asghar Ali caused Butt blow to Ali Hassan on his right hand wrist, accused Mir Hassan caused blow with lathi to Ali Hassan, accused Jatoi and Baroch caused lathi blows to Qurban Ali, accused Mehboob caused lathi blow to Shoukat Ali, Fida Hssain caused lathi blow to complainant, they all raised cries, which attracted the village people, who came there, on seeing them coming all the accused persons escaped away. Thereafter the injured were brought to the police station, wherefrom they were referred to Taluka Hospital Daharki for treatment and issuance of medical certificates, which were issued. Then the complainant went to police station and lodged the FIR, hence the case was challaned against private respondent Jatoi, whereas, remaining all the private respondents were shown absconders and ultimately

they were declared proclaimed offenders and proclamation under sections 87 Cr.P.C against them. Later-on all the absconding accused persons joined the trial.

3. At trial, the private respondents did not plead guilty to charge and the prosecution to prove it, examined PW-1 appellant/complainant Raees Manzoor Ahmed; who produced FIR; PW-2 Ali Hassan; PW-3 Shoukat; PW-4 Qurban; PW-5 Khair Muhammad, who produced mashirnamas of injures and arrest of accused, visiting place of incident; PW-6 SIOP Totomal; PW-7 Medical Officer Dr. Kelash, who produced medical certificates of injured persons; PW-7 ASI Sardar Ahmed and then closed the side.

4. The private respondents during the course of their examination u/s 342 Cr.PC denied the prosecutions' allegation by pleading innocence by stating that they have been involved in this case falsely by the appellant/complainant due to old enmity over the landed property. They did not examine any one in their defence or themselves on oath.

5. The learned trial Court on evaluation of evidence so produced by the prosecution, awarded conviction to the private respondents of the offence for which they were charged by way of

impugned judgment, as stated above. The private respondents challenged their conviction by filing Criminal Appeal No.05 of 2016 before the Court of learned Sessions Judge Ghotki, which was entrusted to the Court of learned Additional Sessions Judge Ubauro who vide judgment dated 17.12.2016 set-aside the impugned conviction judgment of the trial Court, hence this criminal acquittal appeal.

6. Learned counsel for the appellant/complainant contended that the prosecution has been able to prove its case against the private respondents beyond shadow of doubt by producing cogent evidence which has not been considered by learned appellate Court without lawful justification; that the version of the complainant has been fully supported by prosecution witnesses, although there are minor contradictions, which were not fatal to the prosecution case for recording the acquittal of the private respondents; there was sufficient material available on record for convicting the private respondents. He lastly prayed that the impugned judgment passed by learned appellate Court dated 17.12.2016 is liable to be set-aside and conviction and sentences awarded to the private respondents by learned trial Court may be maintained in accordance with law.

7. Learned DPG for the State and the private respondents by supporting the impugned judgment have sought for dismissal of the instant criminal acquittal appeal.

8. I have considered the above arguments and perused the record. The learned trial Court has awarded conviction and sentence to the private respondents and has also imposed fine, but the perusal of Section 337 PPC, it clearly shows that there is no punishment of fine provided in the said Section of Pakistan Penal Code. The learned appellate Court has rightly considered such aspect of the case. Admittedly, the incident has taken place in which the private respondents Jatoi, Baroch and Mehboob have also received injuries, therefore, the private respondent Asghar Ali has also lodged FIR bearing Crime No.247 of 2011 regarding the same incident at same police station, whereas, the prosecution witnesses of the present case namely Shoukat and Khair Muhammad along with other accused persons were awarded conviction and sentence by the learned trial Court and their appeal was also dismissed with some modification in their sentences by the learned appellate Court. The appellant/ complainant Manzoor in his evidence has not specifically stated that which of the private respondent caused injuries to which of the injured, whereas, PW

Ali Hassan has also admitted that they were treated as outdoor patients in the hospital, whereas, PW Shoukat has given different version by stating that they remained for 2 / 3 days in the hospital and then they were discharged. In that context, learned trial Court was right to record acquittal of the private respondents by extending them benefit of doubt with the following observation;

> "*If the evidence of eye witnesses who are also injured is examined, it appears that complainant himself who as per the evidence of other witnesses was also injured has not deposed at all that he or any other person was injured or assaulted by the accused persons. He stated that FIR was not read over to him and he does not know what was written in it, thus he disowned the FIR. PW Ali Hassan although has deposed that accused Asghar caused butt blow, but has not deposed on which part of the body such injury was caused. Similarly he has not deposed as to on which part of the bodies of other inured persons the injuries were caused by the accused persons. His evidence regarding admission in hospital is contradictory to evidence of PW Shoukat . Similarly PW Qurban has also not assigned any particular injury to any particular accused. Evidence of all the prosecution witnesses is shaky and does not inspire confidence and no punishment can be awarded to the accused persons. Although medical certificates are there, but*

considering the shaky nature of ocular evidence no punishment can be awarded to any of the appellants. For inflicting punishment in injury cases under Qisas and Diyat Ordinance, it is necessary that there should be specific evidence as to who had caused injury to whom and on which particular organ or part of body. Different punishments have been provided for different injuries under various provisions of Section 337 PPC. If seat of injury is not specified it is vague, the accused cannot be convicted under Qisas and Diyat Ordinance. Ocular evidence does not support the medical evidence.

Finding of the trial Court that there is no reason for false implication of the appellant is against the record. In fact the appellants were attacked by the prosecution witnesses of this case and several other accused, one of whom was armed with gun and he caused fire arm injury to one injured. The incident is admitted, but apparently the complainant party of this case was aggressor, they were tried in separate case and were convicted by the trial Court and their appeal has been dismissed today with some modification in their sentence. It is quite possible that appellants had caused any injury to the assailants in the incident, but such injuries have not been provided according to law. There is delay in lodging of FIR. Despite the fact that medical certificates were issued on 28.6.2011 but FIR was lodged on

11.07.2011 after 13 days for which there is no explanation. In view of above discussion, prosecution has failed to prove its case beyond reasonable shadow of doubt against all the appellants. All the appellants are acquitted and sentence awarded to them is set-aside. All appellants except appellant Fida Hussain are present on bail, their bail bonds are cancelled and sureties discharged. Appellant Fida Hussain is acquitted in absentia. Appeal is allowed."

11. In case of **State and others v. Abdul Khaliq and others (P L D 2011 SC-554),** it has been held by the Hon'ble Apex Court 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. 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. Judgment of acquittal should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous. The Court of appeal should not interfere simply for the reason that on the reappraisal 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".*

12. In view of the above, no such irregularity or infirmity is found in the impugned judgment dated 17.12.2016 passed by learned appellate Court calling for interference by this Court hence the instant criminal acquittal appeal is dismissed accordingly.

Judge

ARBROHI