

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
**Criminal Acquittal Appeal No. S – 26 of 2016**

Appellant/Complainant : Muhammad Sharif Magsi  
in person

Private respondents : Shahzado Dreho in person  
Abdul Qayoom, Liaquat, Muzamil, Deedar  
and Shoaib called absent, despite  
issuance of notices.

: The State, through Mr. Khalil Ahmed Maitlo,  
Deputy Prosecution General

Date of hearing : 18.10.2019  
Date of decision : 18.10.2019

**JUDGMENT**

**AFTAB AHMED GORAR, J.-** Through instant Criminal Acquittal Appeal, the appellant/complainant has impugned judgment dated 19.2.2016, passed by learned Family / Civil Judge and Judicial Magistrate Sukkur, whereby the private respondents have been acquitted of the offence outcome of FIR Crime No.85/2014 registered at Police Station SITE Area Sukkur.

2. The facts of the prosecution case are that on 11.12.2014 the appellant/complainant approached the Police Station Site Area Sukkur and narrated the facts that on 10.10.2014, he along with his nephew Rasool Bux and Khalid Hussain were available at his shop situated near Naro Lal Mashaikh Sukkur, all of a sudden there came the private respondents having weapons and issued murderous threats to the appellant/complainant to withdraw from the cases, out of them private respondent Shahzado exposed himself to be an advocate and threatened that he would involve the appellant/complainant in false criminal cases. Thereafter the private respondents went away. After registration of the FIR and usual investigation, the private respondents were challaned to face their trial before the Court of Law.

3. At trial, the private respondents did not plead guilty to charge and the prosecution to substantiate its case, examined PW-1 complainant Muhammad Sharif at (Ex.12), he produced FIR at (Ex.12/A); PW-2 Rasool Bux; PW-3 Khalid Hussain at (Ex.14); PW-4 / mashir Imam Dino at (Ex.15), he produced memo of place of incident at (Ex/15/A); evidence of second mashir was given up on 13.11.2015 at (Ex.16); PW-5 Bashir Ahmed at

(Ex.17); PW-6 Muhammad Ramzan at (Ex.18); PW-7 Badaruddin at (Ex.19) and then learned ADPP closed the side of prosecution.

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.

5. The learned trial Court after hearing both the parties, learned ADPP and on evaluation of evidence so produced by the prosecution, the learned trial Court acquitted the private respondents of the offence for which they were charged by way of impugned judgment, as stated above.

6. It is contended by the appellant/complainant in person that the learned trial Court has recorded the acquittal of the private respondents without lawful justification, though the evidence of the prosecution witnesses was fully corroborated each other on all counts. The appellant/complainant lastly contended that the charge against the private respondents was fully proved therefore, he prayed that the judgment passed by the learned trial Court may be set-aside and the respondents shall be convicted.

7. Private respondent No.1 is present in person submits that the entire story as setout in the FIR is managed one and both the eye witnesses of the alleged incident are one is nephew of the complainant and another is his close friend have given contradictory evidence. Furthermore, the appellant/complainant besides the present FIR has got registered a number of FIRs against the private respondents.

8. Learned DPG for the State by supporting the impugned judgment has sought for dismissal of the instant criminal acquittal appeal by stating that as per version of the appellant/complainant the private respondents in furtherance of their common object duly armed with weapons came at the place of incident and only issued threats, but there is no such use of weapons nor any injury has been caused either to the appellant/complainant or his witnesses, who were available at the place of incident.

9. I have considered the above arguments and perused the record. The FIR of the incident has been lodged with delay of about 02 months and 12 days without any plausible explanation hence the same could not be overlooked.

10. In case of **Mehmood Ahmed & others vs. the State & another (1995 SCMR-127)**, it was observed by the Hon'ble Court that;

*“Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.*

11. Furthermore, the P.Ws Rasool Bux and Khalid Hussain in their evidence have admitted that they are witnesses of the appellant/complainant in 9/10 other criminal cases. If it is so, then they appear to be stock witnesses of the appellant/complainant, who could hardly be relied upon, therefore, the learned trial Court has rightly recorded the acquittal of the private respondents by extending them benefit of doubt.

12. The Honourable Supreme Court of Pakistan, in case of **State and others vs. Abdul Khaliq and others (PLD 2011 SC-554)**, has been pleased to held 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”.*

13. There is nothing on record which may suggest that the impugned judgment is arbitrary or cursory to be interfered with by way of instant Criminal Acquittal Appeal. Accordingly, the instant Criminal Acquittal Appeal is dismissed.

Judge

ARBROHI