

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
MIRPURKHAS.**

Criminal Acquittal Appeal No.26 of 2023

Appellant: Mooroo son of Saroopo Bheel,
Through Mr. Afzal Karim Virk, Advocate.

The State: Through Mr. Ghulam Abbas Dalwani, D.P.G.

Date of Hearing: 07.08.2025
Date of decision: 07.08.2025

J U D G M E N T

Amjad Ali Sahito, J.- By this judgment, I intend to dispose of Crl. Acquittal Appeal No.S-26 of 2023, against the judgment dated 14.11.2023, passed by learned Additional Sessions Judge-II, Tharparkar @ Mithi, in Sessions Case No.80/2023, whereby the respondents namely 1. Dhero, 2. Kanji, 3. Bhutto, 4. Jani, 5. Wanko, 6. Chehno, 7. Arjan, 8. Kalo, 9. Ooto, 10. Sahu, 11. Omo and 12.Mahesso were acquitted u/s.265-H(i), Cr.PC, which the appellant/complainant has impugned the Judgment before this Court against the above named respondents by way of filing instant Criminal Acquittal Appeal.

2. The facts of the case are that on 07.03.2023 at 1030 hours when complainant along with PWs namely Mooloo son of Mithu, his cousin Dosu son of Doonger, Lalo, Kesro, Surto sons of Mooloo all by caste Bheel, were standing in the vacate plot in front of house of Kessro nearby hut, where all the above named accused with hatchets, wooden sticks and iron-rods arrived there. Accused Omoon, Wanko, Dheero and Ajio instigated other co-accused, on such instigation co-accused Omoo allegedly caused hatchet blow on the head of uncle of complainant namely Mooloo with intention to kill him, accused Chehno inflicted lathi blow on head of Mooloo and other parts of body, accused Wanko caused hatchet blow to his cousin Surto on his head, accused Dheero caused hatchet blow on the head of complainant on its left temporal region, accused Kanji caused lathi blow to left arm and hand of complainant so also right shoulder, accused Ajio caused hatchet blow to Lalo and Kessro, cousins of complainant, accused Bhuto

caused lathi blow to Dosu, on his right arm, and then all accused jointly caused hatchet, lathi and iron rod blows to complainant party, Thereafter accused persons went away towards their houses, and then injured were shifted to hospital at Chachro for their medical treatment, where first aid treatment was provided, then the injured were referred to Hyderabad for further treatment and then complainant went to PS and lodged the instant FIR. On completion of investigation, the police submitted report u/s 173 Cr.P.C before the competent Court of law.

3. After submission of the relevant documents, a formal charge was framed against the accused for offences punishable under Sections 324, 147, 148, 149, 504, 114, 337-A(i), 337-F(i), 337-F(vi), 337-F(v), 337-F(iv), 337-F(ii), 337-A(ii), 337-A(vi), and 34 of the Pakistan Penal Code (PPC), as recorded at Ex.05. The accused pleaded not guilty to the charges and claimed trial, with their respective pleas recorded from Ex.05/A to Ex.05/L.

4. To substantiate its assertions, the prosecution examined PW-1 Dr. Mumtaz Ali Rahimoon at Ex.06, he produced police letter at Ex.6/A, provisional and final MLC of injured Dosu at Ex.6/B & Ex.6/C respectively, provisional and final MLC of injured Moru at Ex.6/D & Ex.6/E respectively; provisional and final MLC of injured Surto at Ex.6/F & Ex.6/G respectively; provisional and final MLC of injured Molo at Ex.6/H. & Ex.6/1 respectively; provisional and final MLC of injured Lalo at Ex.6/J & Ex.6/K respectively; provisional and final MLC of injured Kessro at Ex.6/L & Ex.6/M respectively; and certificates of Moru, Lalo and Surto challenged before medical board at Ex.6/N to Ex.6/P respectively. PW-02/Complainant Moru examined at Ex.07; he produced FIR, mashirnama of place of incident and mashirnama of arrest of accused at Ex.07/A to 07/C respectively. PW-03/Injured Kessro examined at Ex.08, he produced mashirnama of injuries & mashirnama of place of incident at Ex.5/A & 5/B respectively. PW-04/injured Lalo examined at Ex.09. PW-05/injured Surto examined at Ex.10. PW-06/injured Dossu examined at Ex.11. he produced mashinama of injuries at Ex.11/A. PW-07/Jani examined at Ex.12. PW-08/injured Mooloo examined at Ex.13. PW-09 1.0/ASI Mithoo Mal examined at Ex.14, he produced entry No.15, entry No.6, entry No.11, entry No.24 and entry No.28 at Ex.14/A to 14/E respectively.

Thereafter, learned ADPP for the State closed the prosecution side, vide his statement Ex.15.

5. The respondents in their statements recorded under section 342 Cr.PC denied the prosecution allegations leveled against them and claimed that they are innocent and falsely been implicated in this case. However, they did not examine themselves on oath nor led any evidence in their defence.

6. Per learned counsel for the appellant/complainant sufficient record is available against the respondents, but the learned trial Court without considering the actual facts and medical record acquitted the respondents on filmsy grounds and he prayed that notice be issued to the respondents.

7. On the other hand learned D.P.G supported the impugned Judgment and states that there is conflict between the ocular evidence and medical evidence and submits that the instant criminal acquittal appeal may be dismissed and he further states that the FIR was registered with the delay.

8. I have heard learned counsel for the appellant/complainant and learned D.P.G for the State and have perused the record.

9. From the perusal of record, it appears that the incident has taken place on 07.03.2023 and the FIR was registered on 09.03.2023 with the delay of 02 days without any plausible explanation. As per the contents of the FIR the respondents have caused injuries to the injured persons with hatchets, but Dr. Mumtaz Ali Rahimoon in his deposition states that the weapon used in all certificates is hard and blunt substance not sharp cutting weapon used in crime. It is admitted fact that about 40/50 persons participated in the commission of the offence but the complainant has only disclosed the role each respondent and no any crime weapons were recovered from the possession of the respondents.

10. It is also important to point out here that during investigation I.O of this case has failed to collect blood stained clothes, mud or any other article, which connects the respondents in this case and there is conflict between the ocular evidence and medical evidence. Admittedly, the counter case is also pending in between the respondents and complainant party. So also it is pertinent to mention here that PW

Mooro admitted that there was dispute over plot. These facts collectively suggest that, due to the pre-existing dispute, the complainant has concocted a baseless and fabricated narrative in order to falsely implicate the respondents in a criminal case. Moreover, the learned counsel for the appellant/complainant has failed to produce any substantive evidence to controvert the well-reasoned findings of the learned Additional Sessions Judge-II recorded in the impugned judgment. The judgment has been passed with due application of judicial mind and on the basis of cogent and convincing reasons.

11. I am fully satisfied with appraisal of evidence done by the learned trial Court and I am of the view that while evaluating the evidence, the difference is to be maintained in appeal from conviction and acquittal appeal and in the latter case interference is to be made only when there is gross misreading of evidence resulting in miscarriage of justice.

12. The over-all discussion involved a conclusion that the learned counsel for the appellant/complainant has miserably failed to establish the guilt against the respondents beyond any shadow of doubt, in these circumstances, the learned trial Court has rightly evaluated the evidence while recording acquittal of the respondents. It is well settled principle of law that in criminal cases every accused is innocent unless proved guilty and upon acquittal by a Court of competent jurisdiction such presumption doubles. Very strong and cogent reasons are required to dislodge such presumption. The reasons given by the learned trial Court in its judgment have not been found by us to be arbitrary, fanciful or capricious, requiring any interference by this Court. Consequently, the instant appeal filed by the appellant/complainant merits no consideration, which is dismissed accordingly.

J U D G E