

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

Criminal Acquittal Appeal No.S-92 of 2024

Appellant: Abdul Rehman s/o Abdul Salam
Brohi(called absent),
Through Mr. Suleman Dahiri,
Advocate. (called absent)

The State: Through Mr. Neel Parkash, D.P.G.

Respondents: Ali Nawaz & others (called absent)

Date of Hearing : 08.09.2025
Date of decision : 08.09.2025

J U D G M E N T

Amjad Ali Sahito, J.- Through this Criminal Acquittal Appeal, the appellant has impugned the judgment dated 19.11.2022, passed by learned Model Trial Magistrate (MTMC)/Civil Judge & Judicial Magistrate-I, Sanghar in Criminal Case No.58/2022 (Criminal Case No.138/2022 (Old)) whereby the respondents/accused persons were acquitted u/s.245-(1), Cr.P.C. Being aggrieved the appellant/complainant filed the instant Criminal Acquittal Appeal.

2. The brief facts of the prosecution case are that on 26.05.2022, a dispute arose between the conductor of the complainant's van, namely Zulfiqar son of Ghulam Qadir Brohi, and Aslam Kumhar, the conductor of a van belonging to transporter Shahzad Jamali, over van passengers at Nawabshah. On the same day, at about 1100 hours, the complainant Abdul Rehman, along with other transporters namely Basheer Ahmed, Rasool Bux, and Faiz Muhammad were present at Taj Badshah Hotel, situated in front of UBL Bank, Sanghar, to hold mediation

talks with Shahzad Jamali regarding the earlier dispute. In that context, the accused persons namely Ali Nawaz Jamali (armed with a lathi), Ghulam Nabi alias Nabban (armed with a lathi), Shahzad Jamali (armed with a lathi), Ali Hassan Jamali (armed with an iron rod), and Hameed alias Hamid Chakrani (armed with a lathi), alighted from a van bearing registration No. OKA-1774. They abused the complainant and then attacked him. Accused Ali Nawaz Jamali struck the complainant on the head with a lathi; Ghulam Nabi alias Nabban hit him on the nose, lips, and teeth with a lathi; Shahzad Jamali also struck him on the head with a lathi; and Ali Hassan Jamali inflicted blows on his right arm and back with an iron rod. The complainant was rescued by his companions mentioned above, after which all the accused fled the scene with their weapons. The complainant was taken to Civil Hospital, Sanghar, for medical examination and first aid. Subsequently, on 27.05.2022, complainant lodged the FIR. On completion of investigation, the police submitted report u/s 173 Cr.P.C before the competent Court of law.

3. The necessary papers were supplied to the accused and the formal charge was framed against accused at Exh.2, to which the accused pleaded not guilty and claimed for trial.

4. At trial, the prosecution examined PW-01 Abdul Rehman Brohi as the complainant at Exh:03, who presented his F.LR at Exh:03/A PW-02 Basheer Ahmed Brohi as an eye witness/Mashir at Exh 04, who presented memo of injuries at Ex.04/A The learned ADPP, however, gave up its eye witnesses namely Faiz Muhammad Brohi, Rasool Bux Brohi and Zulfiqar Brohi and filed statement at Exh:05. PW-03 HC-Gul Muhammad at Exh.06, who presented attested copy of entry No.20 at Exh:06/A. PW-04 Dr. Shaheed Nawaz as Medical Officer (MLO) at Exh.07, who presented police letter for medical at Exh:07/A, final medico-legal certificate bearing MLC No.733/2022, dated 30.05.2022 at Exh:07/8, Outdoor patient's slip at Exh. 07C, Dental opinion at Exh.07/D, radiologist expert opinion/ report dated 30.05.2022 at Exh:07/E, admission file at Exh 07/F and two X-ray films at Exh. 07/G to Exh.07/H respectively in respect of complainant/injured Abdul Rehman. PW-05 P.I Wali Muhammad Bhamnbhro as the

investigation officer at Exh:08, who presented entry No.16 dated 27.05.2022, entry No.18 dated 27.05.2022, memo of place of incident, entry No.24 dated 27.05.2022, pre-arrest bail letter of accused, memo of injury and entry No.59 at Exh 08/A, to Exh: 08/G respectively. After examination of material witnesses the prosecution closed its side.

5. The statements of respondents/accused under section 342 Cr.P.C was recorded at Ex.10 to Ex.14, in which they denied the prosecution allegations leveled against them and they falsely been implicated in this. However, they did not examine themselves on oath nor led any evidence in their defence. After observing all formalities including recording of statements and hearing the learned counsel for parties, the learned trial Court acquitted the accused by extending them benefit of doubt.

6. The complainant/appellant is called absent, and no intimation has been received. It is observed that the instant Criminal Acquittal Appeal was filed on 13.12.2022; however, despite repeated adjournments sought by the learned counsel for the complainant/appellant on one pretext or another, no substantial progress has been made in the matter. The position remains the same even today.

7. On the other hand learned D.P.G supported the impugned Judgment. He states that the appellant/complainant deliberately lodged the FIR with inordinate delay. He has further argued that there is material contradiction in ocular evidence of PWs and submit that the instant criminal acquittal appeal may be dismissed.

8. Heard and perused.

9. Upon perusal of the record, it transpires that the appellant/complainant lodged the FIR with a delay of one day, without furnishing any plausible explanation. The prosecution asserts that the incident allegedly occurred on 26.05.2022, whereas the FIR was registered on 27.05.2022. Significantly, the complainant himself appeared at the police station on the date of the alleged incident but refrained from disclosing any material

facts of the occurrence or naming the accused/respondents. Instead, he merely sought a medical letter regarding certain injuries said to have been sustained in a quarrel, as reflected in Entry No.20 dated 26.05.2022 (Exh:06/A), without offering details of the assailants or the cause of the incident. This omission, coupled with the subsequent delay, indicates that the complainant and others may have availed the intervening period to deliberate and fabricate or tailor a version of events. Such conduct casts grave doubt on the veracity of the prosecution's case.

10. It further appears that no material has been brought on record to suggest that the police had either obstructed or declined to record the complainant's statement at the relevant time. Considering that the police station is situated merely 75 meters from the place of occurrence, connected by a metaled road, the delay assumes greater significance and cannot be brushed aside as inconsequential. In criminal jurisprudence, unexplained delay in lodging the FIR, particularly in circumstances where the complainant had direct and immediate access to law enforcement, is fatal to the prosecution, as it undermines both the spontaneity and the reliability of the FIR, which is required to be the earliest version of the occurrence.

11. Moreover, the testimony of PW-02 Bashir Ahmed, who was examined as a mashir as well as an eyewitness, does not inspire confidence. His contradictions with respect to the injury memo, his absence at the time of issuance of the medical letter, and his failure to confirm the site and seizure memos, negate his credibility and render his presence at the place of occurrence doubtful. The fact that the prosecution chose to abandon the remaining eyewitnesses further weakens its stance.

12. In view of the foregoing, the unexplained delay in lodging the FIR, coupled with material contradictions and deficiencies in the prosecution evidence, creates serious doubts about the authenticity and truthfulness of the prosecution's case.

13. It is pertinent to mention here that FIR attributes specific roles to each accused, the complainant's testimony assigns collective responsibility without detailing individual acts. The

alleged motive is also confused and unsupported, as the persons involved in the prior dispute were neither cited as witnesses nor examined in court. Furthermore, the medical certificate shows the complainant was at the hospital before the time of the alleged incident, casting serious doubt on the prosecution's timeline and overall reliability of the complainant's version. Moreover, investigation suffers from serious lapses, as the investigating officer failed to record statements of independent and material witnesses, such as the hotel owner, waiter, or any member of the public present at the scene, despite their availability. This omission undermines the transparency and credibility of the investigation. Consequently, an adverse inference can be drawn against the prosecution for withholding independent evidence that could have either corroborated or contradicted its version of events.

14. The prosecution's case is riddled with material contradictions, unexplained delay in lodging the FIR, unreliable witness testimony, and serious investigative lapses. The complainant's version lacks consistency, the only eyewitness failed to support key facts, and independent witnesses were not examined. These deficiencies create reasonable doubt, and under settled principles of criminal law, benefit of such doubt must be extended to the accused.

15. 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.

16. The over-all discussion involved a conclusion that 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. Consequently, the instant appeal filed by the appellant/complainant merits no consideration, which is dismissed accordingly.

J U D G E

Adnan Ashraf Nizamani