

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

Criminal Acquittal Appeal No.S-18 of 2023

Appellant/Complainant: Bheroo son of Gango,
Through Mr. Raja Hans Raj Naurang,
Advocate.

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

Respondents: Ramesh & others.
Through Mr. Kuldeep Sharma, Advocate.

Date of Hearing : 25.09.2025
Date of decision : 25.09.2025

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-18 of 2023, against the impugned judgment dated 05.10.2023, passed by learned Civil Judge & Judicial Magistrate-I/Model Trial Magistrate Court, Mithi, in Criminal Case No.40/2023 (Old Cr. Case No.113/2021) (Re. The State Vs. Ramesh & others) whereby the respondents namely Ramesh, Veersi, Togo, Mevo, Kewal, Neemon, Nirbho, Novo, Dalpati, Bhanji, Malo, Gangaram and Lachman, all by caste Kolhi were acquitted u/s.245-(1), Cr.PC, which 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 prosecution case are that on 08.09.2021 at about 1400 hours, complainant Bheru son of Ganog, by caste Kolhi, resident of Village Dod Wah, lodged an FIR at Police Station Nangarparkar. He stated that he resides at the aforementioned address and has a dispute with Khengo Kolhi. On 28.08.2021,

while he was sitting at his shop along with Hanjo son of Jaimal, Karnsingh, Paru son of Gango, Jagdish son of Paru, and Mahesh son of Karo Kolhi, at about 5:00 p.m. the accused persons arrived and attacked them. Out of them, accused Togo and Ramesh were armed with guns while the others were armed with hatchets. On the instigation of accused Chano, the accused persons opened fire and inflicted straight blows of hatchets upon the complainant, his elder brother, and his sons, causing them injuries. On hearing the commotion, the womenfolk of the complainant's house started raising cries, whereupon the accused persons also took away one gun, one pistol, packets of tea and cigarettes, valuable clothes, and an uncounted amount of cash from the shop, and then fled away. During the assault, the complainant received a hatchet blow on the right side of his head, another blow by Lachhman on the left side of his head, and a third blow by Kewal on the back of his head. Malo caused a hatchet blow on his right arm and left shoulder. Jagdish sustained three blows on his head and two on his back. Mevo inflicted a hatchet blow on the head of Jaimal and another blunt-side hatchet blow on the forehead of Ramesh. Dalpat caused a hatchet blow to Karnsingh on his hand, while Novo struck a blow on the bone of his foot. Khengo inflicted a hatchet blow on the head of Paru, while the remaining accused also assaulted them, causing further injuries, and then escaped. Due to the injuries sustained, the complainant party proceeded to Police Station Nangarparkar in a vehicle, wherefrom a letter for treatment was issued. Thereafter, they went to Taluka Hospital, Nangarparkar, for medical treatment. After receiving treatment, the complainant returned to the police station and 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 persons and pleas of accused were recorded, wherein they pleaded not guilty and claimed for trial.

4. At trial, the prosecution had examined eight witnesses, who have produced numerous documents. After examination of material witnesses the prosecution closed its side.

5. The statements of respondents/accused persons under section 342 Cr.P.C were recorded by the learned trial Court wherein they denied the prosecution allegations leveled against them and claimed their innocence. 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 Magistrate had acquitted the respondents on flimsy grounds. It is further argued that the FIR clearly states that respondent No. 01 to 13, duly armed with deadly weapons, attacked the complainant party without any lawful excuse, caused severe injuries, and also committed robbery/dacoity. It is further submitted that the accused persons are influential in the locality and managed to lodge a counter FIR (No. 78/2021) through accused Channo, in collusion with the SHO, in order to create a false defence. It is further argued that the learned Trial Court also failed to consider the medical evidence, including MLCs, X-ray reports, and CT scan reports, which corroborate the injuries inflicted upon the complainant party by the accused. It is further argued that the learned Magistrate has not considered the real facts as well as the evidence of PWs, which supported the case of the appellant/complainant and acquitted the accused persons by passing the impugned judgment, which is against the law, equity and natural norms of justice. Learned counsel further argued that the respondents/accused persons have caused significant loss to the appellant/complainant and they are not entitled for acquittal and prayed that the respondents/accused may be convicted.

7. On the other hand learned D.P.G and learned counsel for the respondents/accused have supported the impugned Judgment and state that the appellant/complainant deliberately lodged the

FIR with the delay of twelve (12) days. They have further argued that there is material contradiction in ocular evidence of PWs and submit that the instant criminal acquittal appeal may be dismissed.

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

9. From a meticulous examination of the record, it transpires that the appellant/complainant lodged the First Information Report (FIR) after an inordinate and unexplained delay of eleven (11) days. The testimony of the prosecution witnesses is riddled with material contradictions on several crucial aspects of the case. In particular, their statements are inconsistent with regard to the time and sequence of their arrival at the scene: PW-1 deposed that the prosecution witnesses reached the shop at 4:00 p.m., whereas PW-2 stated that they remained present from 6:00 a.m. until 5:30 p.m.; PW-4 claimed to have arrived at 3:00 p.m.; PW-5 at 5:00 p.m.; while PW-6 asserted that the others were already present. Their depositions are likewise contradictory concerning their respective positions at the time of the incident: PW-1 stated they were five (5) feet away; PW-2 claimed a distance of two to three (2–3) feet; PW-5 asserted forty (40) feet; PW-4 stated that the complainant was inside while others were outside; whereas PW-6 maintained that Bheru and Pirbhu were inside. Discrepancies are further evident regarding the number of women present, ranging from three (3) as per PW-1, to five to six (5–6) as per PW-2, to ten to fifteen (10–15) as per PW-4.

10. Similarly, PW-1 alleged straight firing, while PW-2 claimed only aerial firing. PW-3 stated that no neighbours arrived at the scene, whereas PW-6 asserted that 10–12 villagers gathered. Contradictions also emerge regarding the vehicle used to transport the injured, whether an ambulance or a car, the identities of the persons who accompanied injured Bheru to the hospital (different names being given by PW-2, PW-4, and PW-5), the medical

condition of injured Paru (conflicting versions given by PW-4, PW-5, and the medical officer PW-7), and the position of the injured in the jeep (lying on the floor according to PW-3, but on the seats according to PW-4). Likewise, PW-1, PW-2, PW-5, and PW-6 claimed that both a gun and a pistol were taken away, whereas PW-3 and PW-4 maintained that only a gun was taken. There are also inconsistencies with respect to the duration of hospitalization: PW-1 stated that Paru remained admitted for two (2) days while the others were discharged the same day; PW-6 deposed one (1) day and one (1) night; whereas PW-2, PW-3, PW-4, and PW-5 claimed eight to nine (8–9) days. PW-4 further stated that injured Bheru was immediately referred to Hyderabad, while PW-7 testified that he remained under treatment for three (3) hours at Nagarparkar. Lastly, PW-1 and PW-3 deposed that the police visited the scene in a mobile van with five officials and that the complainant accompanied them, whereas PW-8 (the Investigating Officer) stated that he travelled in a private vehicle with two constables and that the complainant and mashirs were already present.

11. These glaring contradictions on material particulars regarding presence, sequence, positions, nature of firing, medical treatment, and the police investigation go to the very root of the prosecution case and gravely undermine the credibility of the witnesses.

12. Furthermore, the evidence of the Investigating Officer reveals that the statements of the witnesses under Section 161, Cr.P.C., were recorded after an unexplained delay. It is a well-settled principle of law that even a delay of one or two days in recording such statements, if not satisfactorily explained, is fatal to the prosecution case. The complainant's assertion that one gun and one pistol were lying inside his shop at the time of the incident, yet no resistance was offered by the complainant's party to the accused persons, also appears inherently improbable.

13. Significantly, the record reflects that WHC Muhammad Uris issued the police letter for the medical treatment of the injured persons (Exhibit 5/A) and prepared the memo of their injuries (Exhibit 6/A) after having inspected them. However, despite his name being mentioned in the final challan, the prosecution failed to examine him as a witness. The withholding of his testimony gives rise to a presumption, in terms of Article 129(g) of the Qanun-e-Shahadat Order, 1984, that had he been produced, his evidence would have been unfavourable to the prosecution.

14. Moreover, no recovery whatsoever was effected from the accused persons to establish that they were armed with weapons or to connect them with the alleged offence, nor did the Investigating Officer succeed in recovering the articles allegedly stolen from the complainant as mentioned in the FIR. The conduct of the complainant and his witnesses, viewed collectively, appears unnatural and inconsistent with the normal course of human behaviour and fails to inspire confidence with respect to the material particulars of the prosecution case.

15. To establish the charges under the relevant statutory provisions, it was incumbent upon the prosecution to prove that the accused persons employed force and violence in furtherance of their common object, and that such force was accompanied by the use of weapons likely to cause death. However, upon a careful and comprehensive evaluation of the testimonies of the prosecution witnesses, the alleged use of force or violence in prosecution of a common object, as well as the employment of weapons of a nature likely to cause death to the complainant's relative, has not been substantiated.

16. It is pertinent to mention that the prosecution has not been able to prove the charge under Section 504, PPC against the accused persons. The prosecution has failed to establish the necessary ingredients of the said section, as no specific abusive or insulting words have been deposed by the complainant in his evidence. In the present case, the ocular account furnished by the

complainant, injured witnesses, mashir, and the Investigating Officer is inconsistent and does not tally with the medical evidence. The complainant and his witnesses are not on the same page regarding the allegations. The injured witnesses have not deposed about the specific location and nature of the injuries sustained by them, whereas the memo of injuries reflects otherwise. Furthermore, the evidence of the injured, the memo of injuries, the medical certificates, and the version of the mashir of the memo of injuries are not in consonance with each other. Hence, the testimony of the above-named PWs cannot be considered credible or trustworthy for reliance, as it lacks reliability.

17. However, the learned counsel for the appellant/complainant has failed provide any proof regarding falsify the observations given by learned Magistrate in the impugned judgment and the learned Magistrate has passed the judgment with cogent reasons

18. 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.

19. 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/accused 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

Adnan Ashraf Nizamani