

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

Criminal Acquittal Appeal No.S-80 of 2024

Appellant: Mst Samina d/o Manthar,
Through Mr. Mian Taj Muhammad
Keerio, Advocate.

Respondents: Hyder Ali & others.

Date of Hearing : 30.09.2025
Date of decision : 30.09.2025

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-80 of 2024, against the impugned judgment dated 30.05.2023, passed by learned Additional Sessions Judge-II, Tharparkar At Mithi, in Sessions Case No.30/2023 (Re. The State Vs. Hyder Ali & another) arising out of crime No.43/2022 under sections 324, 337-A(i), 337-F(i), 337-F(ii), 337-F(iii), 334, 34 PPC, registered at PS Islamkot, whereby the respondents namely Hyder Ali Shah and Mst Sajidah Shah were acquitted u/s.265-H(i), Cr.P.C, 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 complainant Allah Warayo s/o Manthar, by caste Junejo, R/o village Gul Muhammad Junejo, Taluka Jhudo, District Mirpurkhas, presently R/o Soomra Colony Mithi lodged FIR at PS Islamkot on 28.08.2022 at 0400 hours wherein he stated that his sister Samina D/o Manthar who is working in an NGO as Staff Nurse, is posted at RHC Islamkot and residing at the house of

one Abdul Sattar Dohat with one Sajida Shah on rent basis, situated towards western side of RHC Islamkot. On 27.08.2022 in early morning complainant was present at his house, at the meantime namely Ghulam Mustafa s/o Gul Muhammad Junejo came at his house and informed that on 27.08.2022 at about 02:40 am he heard the cries from the house of Samina (sister of complainant) and suddenly he woke up and went there and saw that each namely Hyder Shah, Sajida Shah and one unknown person running out from the house of Samina (sister of complainant) and he on the light seen that Hyder Shah having knife in his hand, and he saw inside the house that Samina was lying on the floor and was making cries.

3. He went close to her and saw injury on right side of her neck and blood was oozing and injury over her eye and also blood was oozing and he immediately shifted her to RHC Islamkot and admitted her, wherefrom she was shifted to Civil Hospital Mithi, on such information, complainant along with his brother Mashoor Ali and Ghulam Mustafa came at Civil Hospital, where they saw his sister Samina was injured and unconscious condition, wherefrom she was again referred, complainant along with his brother Mashooque Ali brought her at Civil Hospital Hyderabad, from where she recovered and became conscious and she disclosed that on 26.08.2022, she and Sajida Shah slept after taking dinner, at about 0240 hours, she heard voice of someone's taking and she woke up and saw one Hyder Ali Shah, Sajidah Shah and another unknown person, to whom she will identify on seeing, Sajida and that unknown person, caught hold her from hands and got her fallen on the cot backside and Hyder Ali Shah caused direct sharp blows through knife available in his hand on the neck, eye and chest with intention to cause her murder, she made cries which attracted to one Ghulam Mustafa Junejo residing near to them who came running there and on seeing him coming above named three accused persons fled away.

Hence this FIR. On completion of investigation, the police submitted report u/s 173 Cr.P.C before the competent Court of law.

4. The necessary papers were supplied to the accused, and a formal charge was framed against them. The pleas of the accused were recorded, to which they pleaded not guilty and claimed trial.

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

6. 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.

7. Per learned counsel for the appellant/complainant, sufficient material was available on record against the respondents; however, the learned trial Court acquitted them on flimsy and untenable grounds. It is further submitted that the learned trial Court failed to properly appreciate the ocular as well as medical evidence, which fully corroborated the prosecution case. Learned counsel argued that the complainant, the injured eyewitness Mst. Samina, and eyewitness Ghulam Mustafa consistently supported the version set forth in the FIR, and their testimonies, duly corroborated by the medical evidence including the statement of the Woman Medico-Legal Officer regarding knife injuries inflicted on vital parts of the body of the injured, remained unshaken during cross-examination.

8. Learned counsel further contended that the contradictions noted in the impugned judgment are trivial in nature and do not affect the substratum of the prosecution

case. It is a settled proposition of law that minor discrepancies are natural in every case and cannot be made a basis for acquittal where the material aspects of the case stand proved. He further argued that respondents No.1 and 2/accused failed to discharge the burden of disproving the prosecution allegations, as they neither examined themselves on oath nor produced any defence evidence, yet the learned trial Court acquitted them unlawfully. It was also submitted that subsequent to their acquittal, the respondents have continuously been issuing threats to the complainant party, which further reflects their conduct. Learned counsel emphasized that the prosecution had successfully proved its case beyond reasonable doubt through consistent ocular testimony corroborated by medical evidence, but the learned trial Court, while misappreciating the evidence, erroneously acquitted the accused. Therefore, the impugned judgment dated 30.05.2023 is illegal, perverse, and liable to be set aside.

9. I have heard the learned counsel for the appellant/complainant and perused the record.

10. Upon meticulous scrutiny of the record, it becomes evident that the prosecution case is fraught with serious infirmities, material contradictions, and legal flaws. The first information report was incorrectly recorded at the inception, thereby casting doubt on the very foundation of the case. An unexplained delay of 25 hours in lodging the FIR further diminishes the credibility of the prosecution story. The medical evidence does not fully support the prosecution case, as even the medical officer admitted to having heard that the incident related to mobile snatching, and his statement was not declared hostile. Furthermore, the alleged motive of a rent dispute stands unsubstantiated, since neither the landlord was produced nor any documentary evidence of tenancy was furnished.

11. The material contradictions exist between the statements of the complainant and the injured regarding the place of occurrence (house versus quarter), the number of holes in the mosquito net, and the preparation of memo/mashirnamas by unauthorized police officials. The medical file, showing the case as a “road traffic accident” and containing documents pertaining to another individual, further undermines the prosecution version. Even the bloodstained shirt produced in Court was not confronted with the injured to prove ownership. The complainant’s claim of a confession by the accused at the police station is contradicted by the arrest and recovery memo/mashirnama, which reflects arrest at a different place and time.

12. Further, no independent witnesses from the locality of the alleged incident were produced. The testimonies of the prosecution witnesses are not only contradictory but also inconsistent with the FIR. Variations in the time of occurrence and admitted enmity between the parties further strengthen the possibility of false implication. In view of the above circumstances, the prosecution evidence appears self-contradictory, unreliable, and insufficient to establish the charge beyond reasonable doubt. The material discrepancies and legal infirmities seriously undermine the credibility of the prosecution case, thereby entitling the accused to the benefit of doubt.

13. The learned counsel for the appellant/complainant has also failed to advance any convincing material to discredit or falsify the findings recorded by the learned trial Court, which has passed the impugned judgment with cogent and well-reasoned observations.

14. 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.

15. 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.

16. 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 me 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