

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Acq. A. No.S-17 of 2016.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For katcha peshi.

24.10.2016.

Mr. Badal Gahoti, Advocate for appellant.

Mr. Muhammad Jameel Ahmed, Advocate for respondents No.1, 2, 4, 5 and 6.

Mr. Shahid Ahmed Shaikh, A.P.G.

Private respondents are present in Court.

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Through instant criminal acquittal appeal, appellant has challenged judgment dated 13.02.2016, passed by the Court of Civil Judge & Judicial Magistrate-II, Hala in Case No.147/2014, whereby private respondents have been acquitted from charge.

2. At the outset, learned counsel for complainant/appellant contends that complainant and other witnesses received many injuries, but learned trial Judge failed to appreciate the evidence brought on record and examine the same within the parameters of criminal administration of justice; eye-witnesses as well injured witnesses have supported the version of F.I.R. and this is a fit case whereby impugned judgment can be set aside.

3. In contra, learned A.P.G. and counsel for private respondents contend that impugned judgment is well reasoned and no illegality is committed by the trial Court.

4. Since this is a criminal acquittal appeal and criterion of acquittal appeal is that accused shall be treated as having earned double presumption of innocence and it is also to be considered while minutely examining the

judgment whether same is shocking, perverse and illegal in its entirety. At this juncture, it would be conducive to refer the relevant paras of impugned judgment, which read as:

“ As far as the medical evidence is concerned, it is matter of record that doctor Masood (Ex.13) reserved injuries of prosecution witness/injured Mumtaz, Muhammad Raheem, Khamiso and Mahboob Ali and sent the same for x-ray, however he has not produced any report of the radiologist or any opinion of the radiologist on the basis of which he has prepared final medical certificates.

*Aforesaid evidence of the complainant reveals that he has made improvements in his evidence as he has not earlier said that he become un-conscious. As per F.I.R. the accused themselves came at police station however, complainant has stated in his evidence that **I and other injured person were carried by my brother Aijaz and Mushtaq in Qinqchi Rikshaw brought at police Hala. Moreover there is also neither any recovery of alleged weapon/hatchet or lathi from any accused nor any blood stained clothes of injured were produced as case property before court.***

In view of the aforesaid discussion of evidence available on record and keeping in view the principle of law, that stamp of injuries on the person of witness was not a yardstick to determine truthfulness or falsehood of injured witness and a single infirmity might make the entire statement doubtful, I am of the opinion that the prosecution has miserably failed to prove its case against accused beyond reasonable doubt.”

The approach of Trial Court to the effect that mere injuries are not sufficient to believe all what is said by injured as *gospel truth* therefore, insist of the appellant that judgment of acquittal be reversed for reason that there were injuries cannot be *legally* approved. Further, the perusal of impugned judgment as well evidence, suggest that certain contradictions are available in the evidence of prosecution witnesses and since for acquittal a single doubt is sufficient, if causing dent on the prosecution case, therefore, the judgment of acquittal cannot be disturbed merely for reason that another view is possible. The appellant *prima facie* has failed to establish that judgment is either illegal, perverse or based on *entire* misreading of the available record and in absence thereof the judgment of acquittal *legally* cannot be disturbed. Accordingly, instant criminal acquittal appeal is dismissed.

JUDGE

