

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD.

Crl. Acq. Appeal No.S-46 of 2018.

Muhammad Hassan.Appellant.

Versus.

Meer Muhammad & others.Respondents.

Mr. Abdul Hameed Bajwa, Advocate for the appellant.

Mr. Mushtaque Ahmed Memon, Advocate for the private respondents.

Ms. Sobia Bhatti, A.P.G.

Date of hearing and judgment: 27.06.2018.

JUDGMENT

IRSHAD ALI SHAH, J.-The appellant by way of instant criminal acquittal appeal has impugned judgment dated 10.02.2018 of learned IIIrd Judicial Magistrate, Tando Muhammad Khan, whereby she has acquitted the private respondents of the charge.

2. the facts in brief necessary for disposal of the instant criminal acquittal appeal are that, the private respondents allegedly after having formed an unlawful assembly and in prosecution of their common object caused hatchets and lathis blows to complainant Muhammad Hassan, P.Ws. Mumtaz Ali, Mukhtar Ali, Muhammad and Muhammad Ismail and then went away by insulting the complainant party, for that they were booked and challaned for the above said offence.

3. At trial, the private respondents denied the charge and prosecution to prove examined P.W-1 appellant, produced through him FIR of the present case, mashirnama of injuries, mashirnama of place of place of incident and sketch of vardat, P.W-2 Mumtaz Ali, P.W-3

Mukhtar Ali, P.W-4 SIO/SIP Muhammad Ibrahim, P.W-5 SIO/SIP Rabdino, P.W-6 Dr. Zulfiqar Ali, produced through him provisional and final medical certificates in respect of injuries sustained by the complainant and his witnesses together with ancillary documents, P.W-7 Muhammad, while P.W. Muhammad Ismail was given up and then prosecution closed its side.

4. The private respondents during course of their examination under section 342 Cr.P.C. denied the prosecution allegations by pleading innocence. They did not examine anyone in their defense or themselves on oath in disproof of the prosecution allegation.

5. On evaluation of evidence, so produced by the prosecution, the learned IIIrd Judicial Magistrate, Tando Muhammad Khan acquitted the private respondents of the charge by way of judgment which is impugned by the appellant before this Court by way of instant criminal acquittal appeal, as stated above.

6. It is contended by the learned counsel for the appellant that there was counter version of the incident, both the cases ought to have been tried by same Court, it was not done and the learned trial Court has acquitted the private respondents without proper appreciation of evidence. By contending so he sought for remand of the case for its trial with the counter case and/or admission of the instant acquittal appeal to its regular appeal. In support of his contention he relied upon the cases of **Abdul Rauf v. The State and another (2003 SCMR 522)**, (2) **Sana-ur-Rehman and others v. Nayyar Ahmed and others (2006 SCMR 1550)**, (3) **Mehr Ghulam Dastgir Lak v. Mureed**

Sultan and another (2002 SCMR 492) and (4) Sardar Masih v. Heera Masih and others 2001 PCr.LJ 1961).

7. It is contended by the learned counsel for the complainant that the appellant did not raise any objection to separate trial of the case of the private respondents, as such they could not claim retrial of the case of the private respondents under the pretext that it was ought to have been tried with counter case. By contending so, he sought for dismissal of the instant criminal acquittal appeal.

8. Learned APG has supported the impugned judgment by contending that it is well reasoned, it is neither arbitrary nor has caused miscarriage of justice.

9. I have considered the above arguments and perused the record.

10. The appellant and his witnesses on 30.03.2017, soon after incident, were referred to hospital for examination of their injuries, treatment and certificates by police, without recording incident even into "Roznamcha", which appears to be significant. The final medical certificates in respect of injuries sustained by the appellant and his witnesses were issued on 14.03.2017, yet the FIR of the incident was lodged by the complainant on 15.04.2017 with delay of one day, such delay could not be lost sight of. As per appellant, he and his witnesses were caused injuries with hatchets and lathis. No injury with sharp cutting weapon, as per their medical certificates, was found on persons of the appellant and his witnesses. They as per Medical Officer Dr. Zulfiqar Ali, were found sustaining injuries, which were caused to them with some hard and blunt substance, such conflict of medical and ocular evidence could not be lost sight of. The dispute between the

parties is over possession of landed property for that the civil litigation between them is going on. P.W. Muhammad Ismail was given up by the prosecution. His non-examination, prima facie, indicates that he was not going to support the case of the prosecution. SIO/SIP Rabbino, during course of his examination stated that he saw the injuries of the injured at hospital and then prepared such memo at the place of incident. By stating so he belied the contents of memo of injuries, wherein it is written that it was prepared at P.P. Mataro of PS: Tando Ghulam Haider. In that situation, no much reliance could be placed on memo of injuries. SIO/SIP Muhammad Ibrahim was fair enough to admit that he recorded 161 Cr.P.C. statements of the P.Ws. on 16.04.2017. If it was so, then it was with delay of one day to FIR.

11. In case of **Abdul Khaliq v. the State (1996 SCMR 1553)**, it is held that late recording of statements of the prosecution witnesses under section 161 Cr.P.C. reduces its value to nil unless such delay is explained plausibly. In the instant case no plausible explanation in recording 161 Cr.P.C. statements of the P.Ws. with delay of one day is offered by the prosecution.

12. The case law which is relied upon by the learned counsel for the appellant is on distinguishable facts and circumstances. In case of **Abdul Rauf (Supra)**, it was held that evidence of related witnesses if inspire confidence would hardly need any corroboration. It was murder case, wherein acquittal of the accused was set aside by the Peshawar High Court and the appeal preferred against such acquittal was dismissed by Honourable Supreme Court of Pakistan. In the instant case none has been killed, parties are inimical and acquittal of the

accused has been recorded by the learned trial Magistrate with cogent reasons. In case of **Sana-ur-Rehman** (Supra), the acquittal recorded by trial Magistrate was set aside by Peshawar High Court. The appeal preferred against judgment of Peshawar High Court was dismissed by Honourable Supreme Court of Pakistan by making an observation that medical evidence lent full corroboration to ocular evidence furnished by doctor. In the instant case the appellant alleged in his FIR that he and his witnesses were caused hatchets and lathis injuries. No injury with sharp cutting weapon was found on their persons by Medical Officer at the time of examination of their injuries. In case of **Mehr Ghulam Dastgir Lak** (Supra), the FIR was lodged promptly. In the instant case the FIR was not lodged promptly. In case of **Sardar Masih** (Supra), the acquittal of the accused was set aside by Lahore High Court by making an observation that it has been recorded on flimsy grounds as accused has caused three knife injuries to the victim on his left side of buttock, right side of buttock and left side of chest. In the instant matter, no knife is used and acquittal of the private respondents is recorded by the learned trial Magistrate by extending them benefit of doubt by recording cogent reason.

13. In case of **State vs. Rasheed Ahmed**, which is reported at **NLR 2004 Cr. 286**, it was held by Hon'able Division Bench of Lahore High Court that the judgment of acquittal which is neither arbitrary nor causes miscarriage of justice would not warrant interference by High Court.

14. In case of **Muhammad Tassawur vs. Hafiz Zulqarnain and others**, which is reported at **PLD 2009 SC 53**, it was held by Hon'able

Supreme Court of Pakistan that when an accused person is acquitted of the charge by the court of competent jurisdiction then he carried with him double presumption of innocence.

15. In view of above, the instant criminal acquittal appeal is dismissed in limine.

JUDGE

Shamshad/P.S.