

ORDER SHEET
**IN THE HIGH COURT OF SINDH, CIRCUITCOURT,
HYDERABAD**

Criminal Acquittal Appeal No.S-194 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
	<ol style="list-style-type: none">1. For orders on M.A. No.7926/2020.2. For orders on office objection.3. For orders on M.A.No.7927/2020.4. For hearing of main case.

16.11.2020.

Mr. Muhammad Aslam Bhatti, Advocate for appellant.

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1. Urgency granted.
2. Overruled.
3. Exemption granted subject to all just exceptions.
4. The appellant by way of instant acquittal appeal, has impugned judgment dated 19.09.2020 passed by learned Model Trial Magistrate Hyderabad, whereby the private respondent has been acquitted of the offence for which he was charged.

The allegation against the private respondent is that he with rest of the culprits in furtherance of their common intention by using criminal force threatened the appellant of murder and then went away by making aerial firing to create harassment, for that the present case was registered.

At trial, the private respondent did not plead guilty to the charge and prosecution to prove it examined appellant and his witnesses and then closed the side.

The private respondent in his statement recorded u/s 342 Cr.P.C denied the prosecution allegation by stating that he is disputed with the appellant over bungalow, he however did not examine anyone in his defence or himself on oath to disprove the allegation of prosecution against him.

On evaluation of evidence so produced by the prosecution learned trial Court acquitted the private respondent by way of impugned judgment.

It is contended by the learned counsel for the appellant that learned trial Court has recorded acquittal of the private respondent on the basis of improper assessment of evidence. By contending so, he sought for issuance of notice against the private respondent for hearing of instant appeal on regular basis.

I have considered the above arguments and perused the record.

Admittedly there is property dispute between the parties, such dispute between them is going on before civil court having jurisdiction. The appellant in his statement has made omission and improvement. In these circumstances, learned trial Court was right to record acquittal of the private respondent by extending him benefit of doubt by making following observation;

“Complainant omitted material facts during his evidence, he did not depose that, accused made aerial firing in order to harass them rather improved his version of FIR. Complainant did not depose who was present with him during said incident, whether any labor was present or not. While, it is not mentioned in FIR that, both accused were armed with 222 Gun and Pistol and firstly both uttered words of caution and restraint then made firing and issued threats. FIR is silent about collection of empties on said day of first incident. Complainant changed the sequence of story by deposing that he moved application to Police about incident then informed the owner Muhammad Yameen. Surprisingly, Complainant took veil of rubble after accused persons departure from place of incident.”

In case of ***State and others vs. Abdul Khaliq and others (PLD 2011 SC-554)***, it has been held by the Hon’ble Apex Court that;

“The scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal

the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. Interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Judgment of acquittal should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous. The Court of appeal should not interfere simply for the reason that on the reappraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities”.

Nothing has been brought on record which may suggest that the impugned judgment has been passed by learned Magistrate in cursory or arbitrary manner which may justify this Court to make interference with it by way of instant acquittal, it is dismissed.

JUDGE