

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

Cr.Acq. Application No.S-33 of 2021

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DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on MA-1628/2021  
For orders on office objection  
For orders on MA-1629/2021  
For hearing of main case.

**03.03.2021**

Mr. Ghulamullah Chang, Advocate for appellant.

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1. Urgency granted.
2. Overruled.
3. Exemption granted subject to all just exceptions.
4. The facts in brief necessary for disposal of instant appeal are that the private respondents allegedly after having formed an unlawful assembly and in prosecution of their common object caused fist, kicks, lathies and hatchet blows to complainant Rijoo and then went away by insulting him, for that the present case was registered. After due trial, the private respondents were acquitted of the charge by learned Civil Judge & Judicial Magistrate-I/Model Trial Magistrate Court Tharparkar at Mithi vide his judgment dated 30.01.2021, which is impugned by the appellant before this Court.

It is contended by the learned counsel for the appellant that learned trial Magistrate has recorded acquittal of the private respondents on the basis of improper assessment of evidence; same is liable to be reappraised by this Court. By contending so, he sought for issuance of notice against the private respondents for regular hearing of instant Acquittal Appeal.

I have considered the above arguments and perused the record.

The F.I.R of the incident has been lodged with delay of more than one month even after discharged of the appellant from hospital, such delay having not been explained plausible could not be lost sight of. The parties are already disputed. In these circumstances, learned trial Magistrate was right to record acquittal of the private respondents by extending them benefit of doubt by making following observation;

*“In this case, the ocular version furnished by the complainant/injured Rihoo as PW-1, Witness/Mashir Inder Lal as PW-02 and Witness/Mashir Mukesh Kumar as PW-03 and Investigation Officer ASI Jan Khan as PW-5 are in-consistent and not tally with the medical evidence.”*

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 acquittal of the private respondents has been recorded by learned trial Magistrate in cursory or arbitrary manner, which may justify making interference with it by way of instant Acquittal Appeal, it is dismissed in *limine*.

JUDGE

Ahmed/Pa.