

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA**

**Cr. Acquittal Appeal No. S-14 of 2017**

**Appellant:** Peer Yar Muhammad Qureshi  
through Mr. Mazhar Ali Mangan, Advocate

**Respondent:** Khair Muhammad alias Kheral and another  
through Mr. Irfan Badar Abbasi, Advocate

**The State:** Through Mr. Raja Imtiaz Ali Solangi, A.P.G.

**Date of Hearing:** 11.06.2018

**Date of Decision:** 11.06.2018

**JUDGMENT**

**KHADIM HUSSAIN TUNIO, J.-** This criminal acquittal appeal is directed against the judgment, dated 25.02.2017 passed by learned Civil Judge and Judicial Magistrate-I Mehar arisen out of Crime No. 62 of 2015, registered at P.S. Radhan, for offence under sections 337-F(i), 506/2 and PPC, whereby the learned Civil Judge and Judicial Magistrate-I, Mehar acquitted the respondent. The appellant/complainant preferred this appeal and prays that the impugned judgment may be set-aside.

2. Precisely facts leading to lodging of FIR are that on 10.12.2015 the complainant Peer Yar Muhammad accompanied by his sons was at his land and at about 8:00 A.M. they spotted accused and two unknown persons duly armed with hatchets and lathies approaching their land. They inquired about why the complainant party had come to the land to which complainant party replied that it belonged to them and they reserved every right to be present there, annoyed, the accused persons assaulted him and caused hatchet blows to him, while the complainant's son sought mercy by giving the accused beseech of God. The accused persons warned the complainant that he will be murdered if seen again at the land, hence the FIR.

3. After usual investigation, police submitted the challan against the respondent, who was formally charged by the trial Court, to which he pleaded not guilty and claimed for trial. During trial in all 5 witnesses were examined namely complainant/PW-1 Pir Yar Muhammad, PW-2 Peer Javed Ali, PW-3 ASI Hakim Ali, PW-4 Peer Waheed Qureshi and PW-5 Dr. Niaz Ali Qureshi. Finally, the prosecution closed its side vide statement at Ex.9.

4. Mr. Mazhar Ali Mangan, learned counsel for the appellant has argued that the trial Court has failed to appreciate that all the PWs have fully supported the prosecution's version and their evidence has not been shattered during the cross-examination; that the trial Court has held that there is enmity between the complainant and accused, but has failed to realize that enmity is a double-edged sword and cuts both ways; that motive has been transpired rather than enmity based on ulterior motives; that the medical evidence transpires that injuries have been sustained by a sharp object which is also supported by the medical officer, but the trial Court has failed to appreciate it. Learned counsel for the appellant requests that impugned judgment may be set-aside and accused/respondent be punished according to law.

5. Conversely the learned A.P.G., while refuting the submissions of appellant's counsel contended that impugned judgment is according to law; this is an acquittal appeal, therefore, double presumption is attached with the impugned judgment, such cannot be set aside unless appellant proves that the impugned judgment is capricious, shocking and based on wrong inference.

6. Having heard the arguments of learned counsel for the appellant, respondent and the learned A.P.G. and perused the evidence available on record, I am of the view that the learned counsel for appellant has failed to refer any piece of evidence which could persuade to hold that the inference drawn by trial Court is against the principles of appreciation of evidence. The impugned judgment of the trial Court, while acquitting the respondents cannot be said to be perverse and the reasons thereof are not fanciful, capricious, speculative and artificial, thus, in absence of holding the order of acquittal as such, it cannot be interfered with. The trial Court has dilated upon all the contentions, as agitated by the counsel, in the judgment, in question, relevant portion whereof, is reproduced herein below for ready reference:-

*“Complainant Pw 01 Peer Yar Muhammad has deposed at Ex.04 that he has land bearing survey No:460. On 10.12.2015 at about 0800 hours he along with his sons Peer Javed Ali and Mubashir were standing at their land that accused Khair Muhammad @ Khairmal armed with hatchet came along with two unidentified persons who had lathis and started abusing language and asked why complainant had come to land, complainant claimed that the land is belonged to him and he has right to visit the land, on which accused Khair Muhammad got anger and caused six blows, viz: 1. Above left eye brow, 2. On left cheek, 3. Right cheek, 4. On head, 5. On forehead, and 6. Neck and his blood was oozing. His sons intervened and rescued him, on which accused warned them if they come again at land they will be murdered. After that this son brought him on motor cycle at PS Radhan, where ASIP MumtazChandio noted his injuries under memo in presence of mashirsWaheed Ali and Liaquat. Thereafter, ASIP issued letter for treatment of complainant and they went to hospital, where he got stitches on the injury which he sustained above the left eye-brow, after getting treatment he lodged FIR, ASIP Mumtaz Ali inspected place of incident in presence of two mashirs accompanied with complainant. On the next day of incident he went to hospital at Dadu along with referred letter. PW 02 Peer Javed Ali has deposed at Ex:05 the same facts as deposed by the complainant. It is worth mentioning ehre that complainant has purely failed to depose with what substance accused causes injuries to him. He also admitted that accused Khair Muhammad has filed civil suit before Honorable Court of Senior Civil Judge, Meharagainst him. PW 02 failed to depose anything regarding recording of his statement by police under section 161 Cr.P.C. Further, memo of injuries shows lathi blows but accused Khair Muhammad was not armed with lathi at the time of the alleged incident. Furthermore, PW 05 being doctor has admitted that no any injury was caused by sharp cutting weapon. He also admitted that accused has filed suit against him and complainant which was pending for adjudication before*

*Court. PW 04 being mashir has admitted that complainant is his uncle. It appears complainant and PW 02 has deposed that blood of complainant was oozing. PW 02 further added that shirt of complainant became full of blood but in this regard neither such shirt was shown nor produced before police and I.O also inspected place of incident and he found no blood drops dropped at place of incident. It also appears that accused was arrested but nothing was recovered from his possession at the time of his arrest, which connect the present accused with the commission of crime. It further appears that all the witnesses are sons and nephews of the complainant and no any independent witness has been cited in this case. Moreover, accused has also produced PS certified copy of suit which he has filed against complainant, his song Javed PW 02, and PW 05 Doctor Niaz which is pending and in order to take revenge and make pressurize accused Khair Muhammad they lodged FIR against him.”*

7. Suffice it to say that when an accused is acquitted from the charge by court of competent jurisdiction, then, it is well established principle of law that double presumption of innocence will remain attached with the judgment of acquittal, therefore, said judgment cannot be interfered unless it is proved that same is arbitrary, shocking, capricious, fanciful and against the settled principles of criminal administration of justice. In this respect, reliance may respectfully be placed on case of *State/Government of Sindh through Advocate General, Sindh, Karachi v. Sobharo (1993 SCMR 585)*.

8. Keeping in view of the above position, discussion and circumstances, appellant has failed to make out case to interfere with the impugned judgment, therefore, criminal acquittal appeal was dismissed by short order dated 11.06.2018.

These are the reasons for the same

**JUDGE**