

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

Crl. Acquittal Appeal No.S- 20 of 2020

- 1.For orders on office objection.
- 2.For orders on MA 939/2020.
- 3.For hearing of main case.

Mr. Illahi Bux Jamali Advocate for Appellant.  
Mr. Khalil Ahmed Maitlo, Deputy P.G for the State.

Date of Hearing: **22-03-2021**  
Date of Judgment: **22-03-2021**

**J U D G M E N T**

**AFTAB AHMED GORAR L.** Respondents / accused were tried by learned Assistant Sessions Judge-1, Khairpur in Sessions Case No.323 of 2019, arising out of Crime No. 04 of 2018, registered at P.S, Hassan Shaheed, under Sections 324, 337F(iii), 337F(v), 148 & 149 PPC.

2. The charge against the respondents / accused is that on 03.07.2018 at about 11:00 a.m, they in association with absconding accused, duly armed with deadly weapons, formed an unlawful assembly by gathering at agricultural land of complainant Sijawal alias Achar Jamali, situated in Lundi Jamali, Taluka Kandiaro, where the complainant was working in the field along with Bakht Ali and Niaz Hussain, and accused persons along with absconding accused abused the complainant party and made straight fires upon them hitting with intention to commit their murder, which hit on right and left leg of injured Niaz Hussain, the nephew of the complainant. Consequently, above FIR was lodged on 14.07.2018 at about 1630 hours.

3. Charge was framed against accused, to which they pleaded 'not guilty' and claimed to be tried. Thereafter, prosecution led the evidence of prosecution witnesses and statements of accused / respondents were recorded in terms of Section 342 Cr.P.C and then on the assessment of evidence available on record and hearing the learned counsel for the parties, learned trial Court acquitted the accused / respondents vide impugned judgment dated 15.01.2020.

4. The appellant/complainant being dissatisfied with the acquittal of the accused has filed this CrI. Acquittal Appeal.

5. Learned counsel for the appellant/complainant argued that there was sufficient evidence connecting the private respondents with the commission of offence, but the learned trial Court illegally acquitted them of the charge; that respondents failed to create any dent in the prosecution case but even then the trial Court illegally, unlawfully and without any justifiable reason acquitted them of the charge and while acquitting the respondents, the trial Court has failed to record any cogent reason.

6. On the other hand, learned Deputy P.G supported the impugned judgment and argued that sufficient material was available on record creating reasonable shadow of doubt and by giving them such benefit, respondents / accused have been rightly acquitted by learned trial Court.

7. Heard learned counsel for the appellant and learned Deputy P.G for the State so also with their assistance scanned the entire material available on record and have reached to a conclusion that the respondents / accused have rightly been acquitted by the learned trial Court for the reasons that the PWs have contradictory and inconsistent versions to each other on material points so also PWs have made dishonest major improvements in their evidence. Admittedly, there is inordinate delay of 11-days in lodgement of FIR, which gives presumption of false implication of the respondents/accused after due deliberation and consultation. It is an admitted fact that during examination-in-chief, when the complainant was confronted with the FIR, he deposed that it bears only his thumb impression but he did not know its contents. It is also an admitted fact that PW-1/I.O of the case has deposed to have prepared memo of injuries at 1230 hours but this version of the I.O is contradicted by PW-2/MLO, who deposed that injured Niaz Ali was brought before him at about 11:40 a.m, whereas, PW-3 Khabar (Exh.17) deposed that they reached at P.S at about 12:00 p.m. Learned trial Court has also rightly determined that medical evidence is in direct conflict with the ocular account furnished by the PWs, as PWs have deposed that accused persons fired from close distance, whereas, evidence of MLO shows that pellets of same cartridge had spread and injured had wounds in both legs, which proved sheer contradiction and are fatal to the prosecution case. As such, from a cumulative assessment of the evidence the learned trial Court determined that the prosecution had failed to prove the

participation of the Respondents in the crime, hence duly extending them the benefit of doubt, resulting in their acquittal.

8. It is settled law that any acquittal order cannot be lightly interfered with by the Appellate Court, though it has wide powers to review the evidence and to come to its own conclusion. These powers must be exercised with care and caution because the presumption of innocence is further strengthened by the acquittal of an accused.

9. In the judgment in the case of *Zulfiqar Ali v. Imtiaz and others* (**2019 SCMR 1315**), Hon'ble Supreme Court has held as under:

“2. According to the autopsy report, deceased was brought dead through a police constable and there is nothing on the record to even obliquely suggest witnesses’ presence in the hospital; there is no medico legal report to postulate hypothesis of arrival in the hospital in injured condition. The witnesses claimed to have come across the deceased and the assailants per chance while they were on way to Chak No.504/GB. There is a reference to M/s Zahoor Ahmed and Ali Sher, strangers to the accused as well as the witnesses, who had first seen the deceased lying critically injured at the canal bank and it is on the record that they escorted the deceased to the hospital. Ali Sher was cited as a witness, however, given up by the complainant. These aspects of the case conjointly lead the learned Judge-in-Chamber to view the occurrence as being un-witnessed so as to extend benefit of the doubt consequent thereupon. View taken by the learned Judge is a possible view, structured in evidence available on the record and as such not open to any legitimate exception. It is by now well-settled that acquittal once granted cannot be recalled merely on the possibility of a

contra view. Unless, the impugned view is found on the fringes of impossibility, resulting into miscarriage of justice, freedom cannot be recalled. Criminal Appeal fails. Appeal dismissed.”

10. When called upon to demonstrate the misreading or non-reading of evidence or other infirmity afflicting the impugned judgment, learned counsel for the appellant was found wanting and could not point out any such error or omission. View taken by the learned trial Court is a possible view, structured in evidence available on record and as such not open to any legitimate exception. It is by now well settled that acquittal once granted cannot be recalled merely on the possibility of a contra view. Unless, impugned view is found on fringes of impossibility, resulting into miscarriage of justice, freedom cannot be recalled.

11. For the aforesaid reasons, this CrI. Acquittal Appeal is meritless; therefore, the same stands ***dismissed*** accordingly along with pending listed application.

**J U D G E**

When called upon to demonstrate the misreading or non-reading of evidence or other infirmity afflicting the impugned judgment, learned counsel for the appellant was found wanting and could not point out any such error or omission. View taken by the learned trial Court is a possible view, structured in evidence available on record and as such not open to any legitimate exception. It is by now well settled that acquittal once granted cannot be recalled merely on the possibility of a contra view. Unless, impugned view is found on fringes of impossibility, resulting into miscarriage of justice, freedom cannot be recalled.

As such, from a cumulative assessment of the evidence the learned trial Court determined that the prosecution had failed to prove the participation of the Respondents in the crime, hence duly extending them the benefit of doubt, resulting in their acquittal.