

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

CrI. Acquittal Appeal No.S- 26 of 2013

For hearing of Main Case

Mr. Rukhsar Ahmed M. Junejo Advocate for the Appellant.  
Mr. Muhammad Ali Dayo Advocate for Private Respondents/Accused.  
Mr. Khalil Ahmed Maitlo, Deputy P.G for the State.

Date of Hearing: **12-04-2021**

Date of Judgment: **12-04-2021**

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

**AFTAB AHMED GORAR L.** Respondents / accused were tried by learned Additional Sessions Judge, Naushehro Feroze in Sessions Case No.259 of 2008 re: State-Versus Muhammad Ishaque and others, arising out of Crime No. 138 of 2008, registered at P.S, Padidan, under Sections 324, 337A(ii), 337A(iii), 337F(i), 337L(2), 149 PPC.

2. The charge against the respondents / accused is that on 10.06.2008 at 10:00 a.m, at the land of complainant situated near village Umed Ali Brohi, they formed an unlawful assembly and committed rioting by arming themselves with deadly weapons. It is further alleged that the private respondents/accused caused Lathies and hatchets blows to complainant Abdul Qayoom and injured Yakoob, Muhammad Yousif, Muhammad Younis and Abdul Malik with intention to commit their qatl-e-amd. Consequently, above FIR was lodged on 17.06.2008 at 2230 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 27.02.2013.

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 counsel appearing on behalf of the private respondents/accused as well as learned Deputy P.G supported the impugned judgment by arguing 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, learned counsel for the private respondents/accused 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 ocular account furnished by the complainant and injured witnesses is not in line with the medical evidence, furnished by the Medical Officers. It is a matter of fact that in FIR, complainant alleged that accused Amir Bux caused straight hatchet blow on the head of PW-Muhammad Yousif, but in his evidence, he deposed that accused caused backside of hatchet to Muhammad Yousif, It has also rightly been observed by learned trial Court that in FIR, specific role has only been attributed to accused Amir Bux, but in evidence complainant made improvement by deposing that accused Aziz caused hatchet blow on the head of Abdul Malik, accused Faiz Rehman caused hatchet blows to PW-Khalid. This version of the complainant is also contradicted by the Medical Officer, who deposed that he did not see any hatchet injury on the person of any of the injured. It is also a matter of fact that complainant deposed to have received injuries on his nose which was broken, but this fact is also denied by the Medical Officer who deposed that there was no fracture on the nose of the complainant.

8. Furthermore, it is also an admitted position that as many as eleven accused are alleged to have caused injuries to seven injured

persons, but Dr. Muhammad Aslam while replying to a suggestion admitted that injured Muhammad Yousif and Muhammad Younis had received injuries through hard and blunt substance, which includes stone or falling on earth, as such it has rightly been observed by learned trial Court that the defence plea taken by the accused appears to have some weight. Besides, there is also delay of about seven days in lodgement of the FIR, for which no plausible explanation has been furnished by the complainant, which gives presumption of false implication of the respondents/accused after due deliberation and consultation. Moreover, there are also glaring contradictions and inconsistency in the evidence of the PWs, which have rightly been discussed and considered by learned trial Court, which 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.

9. 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.

10. 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.”

11. 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.

12. For the aforesaid reasons, this CrI. Acquittal Appeal being meritless stands ***dismissed*** accordingly.

**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.