

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Acquittal Appeal No.S- 98 of 2020

For Non-Prosecution

Mr. J.K. Jarwar Advocate for Appellant / Complainant.

Date of Hearing: **12-02-2021**

Date of Judgment: **12-02-2021**

J U D G M E N T

AFTAB AHMED GORAR J. Respondents / accused were tried by learned 1st Civil Judge & Judicial Magistrate (MTMC), Kandiaro in Crl. Case No.92 of 2020 (new), arising out of Crime No.128 of 2020, registered with P.S, Kandiaro, for offences under Sections 506/2, 504, 147, 148 & 149 PPC.

2. The charge against the respondents / accused is that on 30.07.2020 at about 2200 hours, the respondents / accused in association with two unidentified culprits in further of their common object being armed with pistols and Lathies intentionally insulted the complainant and also extended serious threats to the complainant by targeting pistol upon him with warning to withdraw the case so also used filthy language against him. Consequently, the above FIR was lodged.

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 19.10.2020.

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

5. Learned counsel appearing for the appellant 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. I have considered the arguments advanced by learned counsel for the appellant so also perused 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 learned trial Court has rightly held that there are material flaws appearing in the prosecution case rendering entire episode doubtful. Admittedly, it is a matter of record that complainant was maltreated by the accused persons with lathies in presence of his two sons, but surprisingly his both sons neither attempted to rescue their

father nor made any residence. Even otherwise, complainant only sustained one injury. Complainant has also deposed that his clothes were torn and he had given torn clothes to police, but the same had not been shown as case property. Besides, there are glaring contradictions in the evidence of prosecution witnesses creating serious doubt with regard to genuineness of alleged incident and credibility of the witnesses.

7. 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.

8. 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.”

9. Learned counsel for the appellant / complainant has not been able to point out any serious flaw or infirmity in the impugned judgment. 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.

10. For the aforesaid reasons, this CrI. Acquittal Appeal is meritless; therefore, the same stands ***dismissed in limine*** accordingly.

JUDGE