

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Acq. A. No.S- 178 of 2021

1. For orders on office objection.
2. For hearing of main case.

Date of hearing and order: **20.05.2022**

Mr. Rizwan Ali Memon, Advocate for the appellant.

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ORDER

SALAHUDDIN PANHWAR, J.-Through this criminal acquittal appeal, appellant has assailed the judgment dated 10.07.2021, passed by the learned Civil Judge and Judicial Magistrate-III/MTMC, Tando Allahyar, in Cr. Case No.26 of 2021, where after full-fledged trial, private respondents were acquitted of the charge.

2. Facts of the prosecution case as unfolded in the FIR lodged by complainant Imran Khan are that, he possessed land in Deh Neelofari on which he engaged/employed workers and he also visited his land on weekends. That previously accused persons used to damage his crops on which he forbid them. On 01.03.2021 at 1500 hours, in front of his otaq situated at Deh Neelofari, accused/respondents Mukhtiar Ali, Naju, Jevo @ Jevan and Chanbar duly armed with hatchets and lathis, came and insulted complainant Imran Khan by using abusive language against him. Thereafter, accused/respondents Mukhtiar, Naju, Jevan @ Jevo and Chandar caused hatchet and lathi injuries to complainant on different parts of his body. Thereafter PWs intervened and the accused/respondents while issuing threats of murder to complainant went away, then complainant went to police station and lodged FIR.

2. Per learned counsel for appellant, the learned trial Judge has passed the impugned judgment and acquitted the private respondents of the charge only on flimsy grounds and without considering/evaluating the evidence brought on record by prosecution; that the prosecution witnesses have fully supported the complainant's version; that the defence taken before the trial Court by the respondents was based on malafide and not believable as they have failed to produce any document to prove any previous dispute between them and the complainant; that the evidence of prosecution witnesses was very much corroborative with each other and the medical evidence was also in consistence; hence, the impugned judgment is liable to be set aside and the respondents may be convicted in accordance with law.

3. Heard learned counsel for the appellant and perused the record. As regard the contention of learned counsel for the appellant that prosecution witnesses have fully supported the complainant's version and the defence taken before the trial Court by the respondents was based on malafide and not believable as they have failed to produce any document to prove any previous dispute between them and the complainant and that the evidence of prosecution witnesses was very much corroborative with each other as well as the medical evidence was also in consistence with the ocular version; hence, the impugned judgment is liable to be set aside and the respondents may be convicted in accordance with law; needless to mention that in criminal administration of justice while hearing acquittal appeal Court has to examine very consciously whether the judgment of acquittal is perverse, shocking and contrary to law. While keeping such principle in mind I have examined the impugned judgment as well as other record, which reveals that this is a case which is filled with contradictions and the prosecution witnesses are not supporting each other on ocular/material points. While passing the impugned

judgment, the learned trial Court in relevant paragraphs 15 and 16 of the impugned judgment, observed that;-

“15. Further, it is to be noted that one of the accused namely Chandar has an amputated right arm, which fact is admitted by complainant as well. However, the complainant has shown accused Chandar carrying lathie in his hand, which is very unbelievable that a person with one hand could attack complainant in presence of his two witnesses and nobody retaliates against the aggressiveness of a disable person. It is very hard to believe that four accused persons attacked the complainant with lathies and axes, however the complainant’s two employees/witnesses present at that time with him did not retaliate and also left the accused go unscathed. I have seen the documents produced by the accused counsel. Previous applications filed by complainant before lodging of this FIR shows that complainant has stated different version of events in previous applications, which are also creating doubts in the story of prosecution being managed one.

16. The eye witness of complainant Ehsan did not attribute any accused person carrying any axe in their hands and he contradicted the version of complainant in regard of tearing down his cloths, which is an exaggeration. Further, complainant also admitted that when he filed an application in honourable Sessions Court for registration of FIR, the district complaint center personnel visited his village and recorded statements of his witnesses and he admitted that these witnesses did not mention that complainant received the injuries on his little finger or accused caused any blows to him. The previous enmity on agricultural land is admitted one and witnesses of complainant are interested one as they are his own employees and previous round of litigation between parties at different forums show that parties are already at odd with each other own land disputes. The weapon in incident and injury received by complainant do not corroborate each other.”

5. Perusal of above, reflects that trial Court has referred different portions of facts brought on record in shape of evidence of prosecution witnesses and the statements of the respondents and which are sufficient whereby private respondents were acquitted. Furthermore, it is also a well-settled law that after getting acquittal from the trial Court, a double presumption of innocence is earned by the accused. The Court sitting in appeal against acquittal, always remain slow in reversing the judgment of acquittal, unless it is found to be arbitrary, fanciful and capricious on the face of it or is the result of bare misreading or non-reading of any material evidence. In the case of **Muhammad Mansha Kousar v. Muhammad Asghar and others** (2003 SCMR 477), the Honourable Apex Court observed as under:-

“ That the law relating to a reappraisal of evidence in appeals against acquittal is stringent in that the presumption of innocence is

doubled and multiplied after a finding of not guilty recorded by a competent court of law. Such findings cannot be reversed, upset and disturbed except when the judgment is found to be perverse, shocking, alarming, artificial and suffering from error of jurisdiction or misreading, non-reading of evidence... Law requires that a judgment of acquittal shall not be disturbed even though second opinion may be reasonably possible”.

7. Similar view was taken by the Honourable Apex Court in the case of **Muhammad Tasaweer v. Zulkarnain and 2 others** (PLD 2009 SC 53), in the following words:-

“ Needless to emphasize that when an accused person is acquitted from the charge by a court of competent jurisdiction then, the double presumption of innocence is attached to its order, with which the superior courts do not interfere unless the impugned order is arbitrary, capricious, fanciful and against the record.”

8. The upshot of the above discussion is that the impugned judgment is based on proper and cogent reasoning as well as appraisal of the evidence which the prosecution could be able to bring on record and thus, it does not call for any interference by this Court. Even otherwise, it is reiterated that the acquittal recorded by the Court of competent jurisdiction, would not be disturbed until there is any misreading or non-reading of the evidence or improper assessment of the record resulting in miscarriage of justice, which, as elaborated above, has not been noticed here. Consequently, the instant appeal against acquittal is dismissed in limine.

JUDGE