

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

CrI. Acquittal Appeal No.S- 12 of 2021

1.For orders on Office Objection.

2.For hearing of Main Case

Mr. Aamir Mustafa Kamario Advocate for the Appellant.

Mr. Aftab Ahmed Shar, Additional P.G for the State.

Date of Hearing: **30-04-2021**

Date of Judgment:**30-04-2021**

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

**AFTAB AHMED GORAR J.** Respondents / Accused, namely, Abdul Malik and 05-others were tried by learned II-Judicial Magistrate (MTMC), Khairpur in Criminal Case No.157 of 2018 re: State-Versus Abdul Malik and others, arising out of Crime No.191 of 2018, registered at P.S, B-section, Khairpur, under Sections 337A(i), 337A(ii), 337H(2), 506/2, 147,148 & 149 PPC.

2. The charge against the respondents / accused is that on 28.08.2018 at about 1630 hours, at the plot situated near Areesha Colony, Khairpur, the respondents/accused being armed with iron rods, repeater and Lathies in their hands formed an unlawful assembly and in prosecution of their common object, accused Abdul Malik caused injuries to Muhammad Aslam on his head with iron rod while accused Abdul Qadir caused iron rod blows to Muhammad Siddique on his head and other parts of his body and

thereafter accused persons fled away from the scene of offence. Consequently, above FIR was lodged on 03.09.2018.

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 11.03.2020.

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 Additional 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 and learned Additional P.G for the State so also with their assistance scanned the entire material available on record and I have reached to a conclusion that learned trial Court has rightly acquitted the respondents/accused for the reasons that after registration of the FIR, the investigation was conducted by the I.O and eventually the FIR of the instant incident was recommended to be disposed of under cancellation C-class, but cognizance was taken by learned Magistrate. Furthermore, it is a matter of record that in the instant case, eyewitnesses shown by the complainant, are his son and labour though it is an admitted position that place of occurrence is surrounded by the shops and houses and so many people gathered when the incident took place, but none of the private persons, gathered at the spot, is shown to be eyewitness in the prosecution case.

8. Moreover, there are glaring contradictions and inconsistency in the evidence of the prosecution witnesses on

material aspects of the case. In his evidence, complainant deposed that all the accused started beating him, but no other witness has stated so in their evidence so also medical evidence also does not show any injury or bruise or any sign showing beating by the accused to the complainant. It is also a matter of record that the medical certificate issued by the MLO, Civil Hospital Khairpur was disapproved by the Medical Board headed by Principal, GMMC, Hospital, Sukkur, as such it has rightly been observed by learned trial Court that the ocular account is not fully corroborated by the medical evidence. Even otherwise, the Medical Officer also could not describe the nature of injuries or kind of weapons. This was extremely fatal to the prosecution case.

9. Furthermore, there are also glaring contradictions in the evidence of PWs so also material discrepancies / infirmities in the prosecution case, which have rightly been highlighted, discussed and considered by learned trial Court, which were also fatal to the prosecution case. It is also settled principle of law that one circumstance, which created reasonable dent in the veracity of the prosecution version could be taken into consideration for giving benefit not as a matter of grace rather as a matter of right. As such, from a cumulative assessment of the evidence the learned trial Court determined that the prosecution had failed to prove

the charge, hence benefit of doubt was extended to the accused, which resulted in their acquittal.

10. 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.

11. 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.”

12. 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.

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

**J U D G E**

Ahmad