

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

Criminal Acquittal Appeal No.S- 72 of 2020

Appellant/Complainant : Ali Bux Shar through Mr. Abdul Wahab Shaikh, Advocate

: The State, through Mr. Khalil Ahmed Maitlo, Deputy Prosecutor General for the State.

Date of hearing : 09.11.2020

Date of decision : 09.11.2020

### **JUDGMENT**

**AFTAB AHMED GORAR J.-** The appellant/complainant by way of instant Criminal Acquittal Appeal has impugned judgment dated 30.09.2020, passed by learned Civil Judge and Judicial Magistrate ,Nara, whereby the private respondents have been acquitted of the offence outcome of FIR Crime No.39/2020 of Police Station Soorah, District Sukkur.

2. The facts of the prosecution case, in brief are that on 23.05.2020 at 1000 hours, the appellant/complainant Ali Bux Shar lodged the FIR regarding the incident which had taken place on 20.04.2020 at 0900 hours, alleging therein that he owns agricultural land in Deh Kathorr, whereas, Suleman and others used to demand the said land, on his refusal they were annoyed. On the day of incident, he along with his brother Haseeb Ali was available at his lands, when all of a sudden there came Suleman, Aslam, Mir Hassan

and Hameedullah with pistols, Muhammad Ramzan, Malook, Ghulam Nabi, Ghulam Sarwar, Hameer, Habibullah and Ali Muhammad with lathies. Out of them, accused Mir Hassan gave hakal and asked them as to why you have come on the land, on saying so, all the accused persons caused lathi and Pistol butt blows to him and his brother Haseeb Ali so also damaged their Tractor. Thereafter his brother Muhammad Ayoub and Liaquat Ali were coming, hence the accused having pistols aimed their weapons and threatened that if you again came on the land, you would not be spared, hence escaped away. Then on refusal of the police for registration of the FIR, he approached the Ex-Officio Justice and got orders, hence such FIR was registered.

3. At trial, the private respondents did not plead guilty to charge and the prosecution to prove it, examined appellant/complainant and his witnesses and then closed the side.

4. The private respondents during the course of their examination u/s 342 Cr.PC denied the prosecutions' allegation by pleading innocence by stating that they have been involved in this case falsely by the appellant/complainant. They neither examined themselves on oath nor led any evidence in their defence.

5. The learned trial Court on evaluation of evidence so produced by the prosecution, acquitted the private respondents of the offence for

which they were charged by way of impugned judgment, as stated above.

6. It is contended by the appellant/complainant that the learned trial Court has recorded the acquittal of the private respondents without lawful justification; that the learned trial Judge has not properly assessed the evidence adduced by the prosecution; that the ocular account furnished by the complainant and injured Haseeb Ali is in line with the medical evidence, whereas, the learned trial Judge has not considered the evidence of the prosecution, thus has recorded the acquittal of the private respondents; that from the evidence available on record, the charge has been established, therefore, the private respondents are liable to be convicted. He lastly contended that adequate action against the private respondents may be taken by awarding conviction and sentences to them.

7. Learned D.P.G for the State by supporting the impugned judgment has sought for dismissal of the instant criminal acquittal appeal by contending that the motive of the incident is admitted in the FIR that there was dispute between the appellant/complainant and the private respondents over the landed property; that there is inordinate and unexplained delay of one month and three days in lodgment of the FIR, hence the false implication of the private

respondents cannot be ruled out; that there is no recovery affected from the private respondents.

8. I have considered the learned counsel or the appellant/complainant and learned DPG for the State and perused the material available on record.

9. Admittedly, the FIR of the incident has been lodged with delay of about one month and three days, such delay has not been explained plausibly, same as such could not be overlooked. In this respect, reliance is placed upon the case of **Mehmood Ahmed & others vs. the State & another (1995 SCMR-127)**, wherein it has been observed by the Hon'ble Apex Court that;

*“Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.*

10. The ocular account hinges upon the evidence of appellant/complainant Ali Bux, his two brothers namely eye-witnesses Haseeb Ali and Muhammad Ayoub. The appellant/complainant Ali Bux Shar in his examination-in-chief has deposed that private respondents namely Suleman, Hameedullah, Aslam, Ghulam Nabi, Sarwar, Malook, Ali Muhammad, Ramzan, Hameed, Habibullah and Mir Hassan came at

his lands and started quarrelling and beating him and his brother Haseeb Ali by kicks and fists, which is contrary to his version as set-out in the first information report that private respondents caused him and his brother Haseeb Ali lathi and Pistol butt blows. He has further contradicted his version of first information report that that his brother Muhammad Ayoub and his son Liaquat Ali also came there. He has deposed that accused Mir Hassan was armed with 12 bore Gun, whereas, in the first information report he has stated that he was armed with Pistol. The appellant/complainant has deposed that after receiving lathi blows from the private respondents, he went unconscious, whereas, he has deposed nothing as to whether the private respondents caused any injury to his brother Haseeb Ali or not. Furthermore, the eye-witnesses Muhammad Ayoub and Haseeb Ali have also given contradictory evidence and they have not corroborated each other on material aspects of the prosecution case, they have failed to disclose the complete seat of their injuries, particularly the head injuries are not appearing in the evidence of appellant/complainant so also in the memo of injuries prepared by the Investigating Officer. The injuries shown by the appellant/complainant and his brother Haseeb Ali in their evidence and the Investigating Officer in his memo of inspection of injuries are not tallying with the injuries observed and declared by the Medico-Legal Officer in his reports. In such a situation, the ocular account furnished by the

appellant/complainant and eye-witnesses is not in line with the medical evidence coupled with circumstantial evidence, as no recovery of crime weapon i.e. lathies or pistols, allegedly used in the commission of the offence, has been affected from the private respondents / accused, which is fatal to the prosecution case creating a reasonable doubt. In these circumstances, learned trial Court was right to record acquittal of the private respondents by extending them benefit of doubt.

11. It is also settled law that ordinary scope of acquittal appeal is considered to be narrow and limited and obvious approach for dealing with the appeal against the conviction would be different and should be distinguished from the appeal against acquittal because presumption of double innocence of accused is attached to the order of acquittal. In case of **State and others vs. Abdul Khaliq and others (PLD 2011 SC-554)**, it has been held by the Hon'ble Apex Court that;

*“The scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the*

*accused has earned and attained on account of his acquittal. Interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Judgment of acquittal should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous. The Court of appeal should not interfere simply for the reason that on the reappraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities”.*

12. Learned counsel for the appellant/complainant has not been able to point out any serious flaw or infirmity in the impugned judgment. The view taken by learned trial Court is a possible view, structured in evidence available on record and such not open to any legitimate exception. It is by now well settled law 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 what has been discussed herein above, the instant Criminal Acquittal appeal being devoid of any merit stands dismissed accordingly.

Judge