

**JUDGMENT SHEET**

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

Cr. Acquittal Appeal No.S-82 of 2022

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE(S)</b>
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1. For orders on MA-3294/2022
2. For orders on office objections.
3. For orders on MA-3295/2022
4. For hearing of main case.

**12.12.2022.**

None present for appellant.

Mr. Muhammad Ali Noonari, Deputy Prosecutor General.

**JUDGMENT**

Through this Criminal Acquittal Appeal, the appellant / complainant has assailed the judgment dated 11.03.2022 passed by learned Civil Judge & Judicial Magistrate-III / MTMC, Tando Allahyar (Trial Court) in Criminal Case No.70 of 2021 (Re: The State v. Abdul Majeed and another) arising out of Crime No.64 of 2016 registered at P.S Chambar District Tando Allahyar for offences under Sections 504, 337-L(ii), 337-F(i), 34 PPC, whereby respondents / accused namely Abdul Majeed and Fida Hussain have been acquitted of the charges.

2. Perusal of record it reflects that this appeal against acquittal was presented in the office on 28.03.2022 and since its inception neither appellant nor his Counsel have been taking interest to pursue this appeal nor have bothered themselves to get it listed before the Court for hearing. Mr. Muhammad Ali Noonari, learned Deputy Prosecutor General, present in Court in connection with other matters, waives notice of appeal and after going through the impugned judgment as well opposing instant appeal has drawn attention of the Court to Paragraphs Nos.14 to 16 of the impugned judgment, which reads as under:-

*“14. Moreover, in the FIR the complainant mentioned accused persons carrying lathies in their hands, however in his statement he did not mention this fact that accused were carrying lathies and he also stated that accused persons caused him punch blows. It is strange to note that accused persons carrying lathies did not use it, rather used their hands instead. It is not clarified by the complainant that on which part of body he received the punch blow or lathi blow. The complainant*

*admitted that he did not mention who accused caused which blow to him. Thus, the general allegations of lathi and punch had no substance to prove any charge against the accused persons.*

15. *The complainant also admitted that his witnesses came after the incident. it shows that there is no eye witness in this case, as nobody saw accused persons causing lathies blows to complainant. Further the complainant admitted that people of neighborhood also gathered at the place of incident during the incident but there is no independent witness in this case from neighborhood. His PW Gulsher contradicted him in this regard and he admitted in his cross examination that no person other than him, Soomar and Allah Bachayo gathered at the place of incident. He did not name neighbors gathering there. It shows either the complainant is lying to the Court or his PWs. PW Gulsher also admitted that he was private servant of complainant and was also Mureed (devotee) of him and he also admitted that he did not see any accused causing lathi blows to complainant. Thus, in the light of such facts, it is proved that there is no support from any independent source to the prosecution case.*

16 *Apart from above contradictions and anomalies in the evidence, the oral evidence of prosecution also did not support the medical evidence. As per PMLC of complainant issued by medical officer, the complainant had only bruises on neck and chest region and also had swelling and complain of pain at ankle joint of left foot. It is very strange that two accused persons causing multiple lathi blows upon complainant but he only received bruises and his body did not receive any injury from lathi blows other than swelling on ankle of foot, therefore the medical evidence did not invigorate the oral evidence. Not only this, mashir also contradicted the I.O when he admitted that police remained at the place of incident for one and half an hour which as per I.O is not true as I.O deposed he visited the place of incident within 40 minutes and returned to PS. I.O admitted that he did not collect any case property in this case and he admitted that on inquiry at the place of incident the villagers told him that they heard the firing shots from the place of incident, which totally negated the version of prosecution.”*

3. Keeping in view the evidence as referred to above, I am of the considered opinion that evidence as brought on record was not proved by the prosecution; therefore, does not inspire confidence; hence, no illegality and infirmity has been committed by the trial Court in the impugned judgment while acquitting the respondents, which may warrant interference by this Court. It is also settled principal of law that after getting acquittal, the accused always earns double presumption of his innocence and Superior Courts have avoided to interfere with such acquittal findings. There is no cavil with the

legal proposition that an acquittal appeal stands on a different footing than an appeal against conviction. In acquittal appeal, the Superior Courts generally do not interfere with unless they find that miscarriage of justice has taken place. The factum that there can be a contrary view on re-appraisal of the evidence by the Court hearing acquittal appeal simpliciter would not be sufficient to interfere with acquittal judgment. Reliance can be placed upon case of **MUHAMMAD ASGHAR and another v. The STATE (PLD 1994 Supreme Court 301)**.

4. In view of above legal position, it appears that instant appeal has wrongly been filed, even the basic ingredients for initiating appeal against acquittal, as laid down by the Honourable Supreme Court of Pakistan in the case of **GHULAM SIKANDAR and another v. MUMARAZ KHAN and others (PLD 1985 Supreme Court 11)**, are also lacking in this case. Accordingly, instant appeal against acquittal is dismissed alongwith pending applications.

JUDGE

Shahid