

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Acquittal Appeal No.S-87 of 2021

The appellant	Akhtiar Ali son of Manthar Ali bycaste Marnas through Mr. Alam Sher Khan Bozdar advocate.
The Respondents	Through Mr. Asadullah Soomro, advocate.
The State.	Through Mr. Aftab Ahmed Shar, Additional P.G.
Date of hearing	: 04-03-2024.
Date of decision	: 04-03-2024.

JUDGMENT

IRSHAD ALI SHAH, J.-. It is alleged that the private respondents after having formed an unlawful assembly in prosecution of its common object caused hatchet and lathi injuries to PWs Piyaro and Mukhtiar Ahmed. On the basis of such allegation, the appellant lodged an FIR with PS Belo Mirpur, on investigation a report u/s 173 Cr.P.C was submitted by the police before the Magistrate having jurisdiction. The private respondents joined the trial and on conclusion whereof were acquitted by learned IInd Judicial Magistrate/(MTMC) Ghotki vide dated 30-06-2021, which the appellant has impugned before this Court by preferring the instant Crl. Acquittal Appeal.

2. It is contended by learned counsel for the appellant that learned trial Magistrate has acquitted the private respondents on the basis of improper assessment of the evidence by taking into consideration minor inconsistencies between the evidence of the complainant and his witnesses; therefore, their acquittal is to be examined by this Court by way of instant Crl. Acquittal Appeal, which is opposed by learned Additional P.G for the State and learned counsel for the private respondents by supporting the impugned judgment.

3. Heard arguments and perused the record.

4. FIR of the incident has been lodged with delay of about one day; such delay having not been explained plausibly could not be over looked. No hatchet injury on examination was found sustained by PW Piyaro. The evidence of the complainant and his witnesses is inconsistent with regard to

the injuries sustained by the PWs and place of the incident; such inconsistency could not be ignored. The parties are already disputed over landed property. In these circumstances, learned trial Magistrate was right to record acquittal of the private respondent by extending them benefit of doubt, which is not found arbitrary or cursory to be interfered with by this Court by way of instant CrI. Acquittal Appeal.

6. In case of *State & others vs. Abdul Khaliq & others* (PLD 2011 SC-554), it has been held by the 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 actual infirmities”.

7. In view of above, instant criminal acquittal appeal fails and it is dismissed.

JUDGE