

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Acquittal Appeal No.D-157 of 2019

Before:

Mr. Justice Salahuddin Panhwar

Mr. Justice Zulfiqar Ahmad Khan.

None present for appellant / complainant.
Mr. Mir Shakir Ali Talpur, Advocate for respondents.
Mr. Shahzado Saleem Nahiyoan, Additional P.G.

Date of hearing 07.04.2022

Date of judgment 07.04.2022

J U D G M E N T

SALAHUDDIN PANHWAR, J,- Through the instant appeal, appellant / complainant has called in question the judgment dated 29.10.2019 passed by learned Additional Sessions Judge-I / MCTC Tando Adam in Sessions Case No.202 of 2017 (Re: the State v. Nabi Bux & others) emanated from Crime No.13 of 2017 of P.S Nauabad, whereby respondents / accused have been acquitted of the charge.

2. Precisely, the facts of the prosecution case are that complainant lodged FIR alleging therein that on 18.04.2017 on the eve of bye election for seat of provincial assembly, accused Nazeer khan and Naeem Khan insisted him to vote for candidate of his choice but he refused. On 20.04.2017 when complainant's nephew Muhammad Saleh and relative Ali Hassan proceeded towards polling station to cast vote, accused Nazeer and others restricted them from casting vote and on their refusal accused Nazeer Khan instigated others to kill them. On such instigation, Naeem Ahmed took iron rod from his vehicle while co-accused took lathis and proceeded towards Muhammad

Saleh. Accused Naeem Ahmed caused iron rod blow to Muhammad Saleh on his head who fell down, whereas accused Nabi Bux caused lathi blow to Ali Hassan over his left arm. On arrival of Shahnawaz and Allah Rakhio, accused persons ran away from the place of incident, hence, FIR was lodged.

3. None present for appellant / complainant. This appeal was dismissed in non-prosecution, however, same was restored on 15.12.2020. Again Counsel for appellant failed to cause his appearance and matter was adjourned with intimation notice. However, we have perused the impugned judgment in juxtaposition of grounds raised in appeal. Perusal of grounds agitated in appeal reflects that mainly appellant has relied upon medical evidence, though we have examined the ocular evidence brought on record. Admittedly, the star witness was Ali Hassan Khaskheli, who himself was injured in this case, resiled from his evidence, hence, was declared as hostile. In similar condition, witness Shahnawaz in his examination-in-chief has stated that *“I had not seen the incident. I cannot say that the present accused are the persons who had participated the alleged incident because I was inside the room of polling station and did not see the incident.”* When admittedly eye witnesses failed to support the prosecution case and learned trial Judge after full-dressed trial recorded acquittal of accused persons on the benefit of doubt. Needless to mention that evidence of hostile witness can be examined minutely with circumstantial evidence. In the present case, learned trial Judge particularly in Paragraph No.15 of the impugned judgment has answered that *“The prosecution examined Imam Bux (father of the deceased) as PW-1 (Exh.13) and Anwer Ali (brother of the deceased) as PW-2 (Exh.14). Both the witnesses in their evidence have testified that on 20.4.2017 bye-election in the area was held, therefore they came at the polling station to obtain vote tickets,*

whereas the deceased who was far ahead of them succeeded to get the vote ticket and was entering in the polling station.”

4. Further, it is contended that brother of deceased exonerated Nazeer Khan and Naeem Khan and they were acquitted under Section 265-K Cr.P.C. In similar way, eye-witnesses as well injured witnesses have failed to identify the accused persons. PW Shahnawaz also failed to identify the accused persons. It is settled principle of criminal administration of justice that if there is single doubt in prosecution case, the benefit of such doubt must be extended in favour of accused as a matter of right. 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. 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 suffering from serious and material factual infirmities. Said accused have acquired now a triple presumption of innocence which could not be dispelled by the prosecution. Reliance is placed on the case of **The State v. Abdul Khaliq (PLD 2011 SC 554)**.

5. In view of given circumstances, present appeal being meritless is dismissed.

JUDGE

JUDGE

