

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

Cr. Acquittal Appeal No.S-101 of 2011

Mr. Farhad Ali Abro, Advocate for appellant.

Date of hearing 21.04.2022

Date of judgment 21.04.2022

J U D G M E N T

SALAHUDDIN PANHWAR, J,- Through the instant appeal, appellant / complainant has assailed the judgment dated 01.04.2021 passed by learned Vth Additional Sessions Judge, Hyderabad in Sessions Case No.589 of 2017 (Re: the State v. Karim Bux & others) emanated from Crime No.30 of 2017 of P.S Rahooki, Hyderabad, whereby respondents / accused have been acquitted of the charge.

2. Precisely, the facts of the prosecution case are that on 13.08.2017 Colonel Zahid Hussain Soomro (Rtd) aforesaid F.I.R alleging therein that he purchased 1-03 acres agricultural land from Survey No.335/A situated in Deh Narejani from Lai Bux Jahejo by way of sale agreement, which he obtained and got measurement but the villagers of Village Muhammad Uris Almani did not allow him to get measurement of said land and thereby extended threats. Thereafter, complainant lodged F.I.R No.15 of 2017 under Sections 506/2, 504, 147, 148, 149 PPC against Khair Muhammad and others. On 12.08.2017 at 07:00 p.m., Chowkidar informed the complainant on cell phone that people of Almani community occupied the plot and are not allowing to raise boundary wall. Thereafter, complainant reached at the plot at 08:30 p.m. and tried to talk with the persons. Meanwhile, Karim Bux Pitafi alongwith his community people as well 40/50 unknown persons armed with pistols, lathies and hatchets robbed his Hawaii Mobile Phone, Samsung Note-5 Mobile Phone and cash of Rs.90,000/-. Besides, they were demanding Bhatta of Rs.200,000/- for starting construction work and he communicated such information to Inspector Fazal Hussain Zardari SHO P.S Rahuki. The police reached there and in the meanwhile accused Karim Bux

Pitafi, Toto Pitafi, Mumtaz alias Gulabi, Muhammad Juman armed with weapons and 40/50 unknown persons armed with weapons, lathies and hatchets attached upon the police party and resultantly Colonel Zahid Hussain, SHO Fazal Hussain Zardari, ASI Ghulam Mustafa, ASI Muhammad Hassan, PC Akbar Ali received injuries. ASI Shahid with staff also reached there and made firing in self defence. The injured were shifted to Civil Hospital, Hyderabad for treatment, hence, F.I.Rs were lodged by the police as well complainant separately.

3. Heard learned Counsel for appellant and perused record. Learned Counsel for appellant admits that injured witnesses have deposed before the trial Court that they are not aware of the fact that who caused the alleged injuries to injured persons. In examination-in-chief, Colonel Zahid Hussain, who is complainant, has deposed that “suddenly villagers started beating him with lathies and hatchets. He did not show that from whose blow he received the injuries”. Similarly, PW ASI Ghulam Mustafa has admitted that he did not see the accused, who inflicted injury to him. Besides, he admitted that accused persons did not make straight firing upon police officials for killing them, whereas PC Akbar Ali has deposed that accused persons were armed with weapons and fired straightly upon police party with intention of killing. Further, complainant Colonel Zahid Hussain Hussain registered two cases against accused persons in which they have been acquitted and this fact has been concealed by him. 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 and such acquittal in absence of evidence cannot be interfered.

4. 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 above, present appeal is dismissed in *limini*.

JUDGE

Shahid

