

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

Criminal Acquittal Appeal No. **S-192** of **2017**

Mr. Habibullah, Advocate for appellant.

Mr. Kamran Baig, Advocate holds brief for Mrs. Razia Ali Zaman Khan, Advocate for respondents No.1 and 2.

Ms. Sana Memon, A.P.G for State.

Date of hearing & judgment: **09.09.2024.**

JUDGMENT

ZAFAR AHMED RAJPUT, J: This Acquittal Appeal is directed against the judgment dated 30th August, 2017 passed in Sessions Case No.179/2010, arisen out of Crime No.109 of 2009 registered at Police Station Daur District Shaheed Benazirabad under sections 324, 504, 148, 149, P.P.C., whereby the learned 1st Additional Sessions Judge, Shaheed Benazirabad acquitted the respondents No.1 & 2/accused of the charge.

2. Learned counsel for the appellant has contended that the impugned judgment is based on presumptions and assumptions; hence, the same is not sustainable in law; that the learned trial Court has not considered the examination-in-chief of the witnesses, namely, complainant Saindad, PWs Ghulam Mustafa, Mushtaque, Allah Ditta, SIP Sabir Hussain, MLO Dr. Mashooq Ali and mashir Shoukat Ali, who have fully implicated the respondents / accused for the commission of alleged offence; that it is settled principle of law that the cross-examination is to be read with examination-in-chief and same cannot be read in isolation; that the learned trial Court has

acquitted the respondents No.1 & 2 by extending them benefit of doubt; that the impugned judgment is liable to be set aside by this Court under its appellate jurisdiction by recording conviction and awarding sentence to the said respondents.

3. Conversely, learned A.P.G fully supports the impugned judgment.

4. Heard learned counsel for appellant as well as learned A.P.G and perused the material available on record.

5. As per prosecution case, on 27.11.2009 at about 08:45 a.m., at the lands of Muhammad Rasheed Kamboh, situated in Deh 75 Nasrat, Taluka Daur, the accused persons, duly armed with deadly weapons, formed an unlawful assembly and in prosecution of their common object to commit murders, co-accused Muhammad Rasheed (*since died*) caused iron bar blow to Mushtaque Ahmed on his head; co-accused Muhammad Siddique @ Babu at the instigation of co-accused Muhammad Sharif (*since died*) caused firearm injuries with his gun to complainant Saindad, which fire hit his own brother Muhammad Rasheed, who died; co-accused Muhammad Sharif (*since died*) caused firearm injuries with his rifle to Allah Ditta on his right arm. As per F.I.R, the parties were in dispute over the payment of wages.

6. It reflects from the perusal of record that the instant case is a counter version of Crime No.107/2009 registered at P.S. Daur, under sections 302, 114, 34,504, 337-L(ii), P.P.C., wherein PWs Ghulam Mustafa and Mushtaque along with others were nominated for committing the murder of one Abdul Rasheed and after investigation, the said crime was sent up for trial, which culminating in Sessions Case No.473 of 2009, while the present case / crime was recommended for disposal in 'C' class by the Investigating Officer. It

further appears that in the instant case, the role of instigation and making gun fire at PW Allah Ditta has been attributed to accused Shareef (*now deceased*) and accused Siddique has been shown causing firearm injury to complainant Saindad and deceased Abdul Rasheed. No specific role has been attributed to respondent No.2, Muhammad Waseem, except his presence with empty hands at the place of incident. The complainant allegedly grappled with deceased Rasheed who had earlier in time caused iron rod blow to Mushtaque and he was saving Mushtaque from further assault. According to complainant, at that point of time he saw accused Siddique, Shareef and Waseem emerged from the nearby sugarcane cultivation with lethal weapons which fact does not appeal to a prudent mind as to how the said accused persons were sitting in the nearby cultivated field with weapons. It is also a matter of record that alleged incident had occurred at the land of respondents / accused which fact leads to inference that in fact the complainant party was the aggressor party. It is also an admitted position that there is delay of 22 days in lodging of FIR for that no plausible explanation has been furnished by complainant which further leads to inference that the same has been lodged after due consultation and deliberation to create a counter version of the incident recorded vide Crime No.107/2009.

7. For the foregoing facts and reasons the order of acquittal recorded by the learned trial Court vide impugned judgment, dated 30.08.2017, does not suffer from any illegality or irregularity requiring any interference by this Court under its appellate jurisdiction; hence, this Criminal Acquittal Appeal being devoid of any merit is hereby dismissed, accordingly.

JUDGE