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

Cr. Acq. Appeal No.D-17 of 2004

**Present:**

**Mr. Justice Zafar Ahmed Rajput**

**Mr. Justice Mohammad Saleem Jessar**

Appellant : Abdul Wahid, through  
Mr. Ghayoor Abbas M. Shahani, Advocate

Respondents : (i) Mithal alias Bashir (ii) Khursheed  
No.1 to 7 (iii) Riaz Ahmed Riaz (iv) Muhammad Hasan  
(v) Abdul Khaliq (vi) Abdul Rahim and  
(vii) Abdul Qadir, Nemo

Respondent No.8. : The State, through  
Mr. Syed Sardar Ali Shah, D.P.G.

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Dates of hearing : 19.10.2017  
Date of Order : 19.10.2017  
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**ORDER**

**Muhammad Saleem Jessar, J.-** By means of instant Criminal Acquittal Appeal, the appellant Abdul Wahid has assailed Judgment dated 02.04.2004 passed by the learned Additional Sessions Judge, Kashmore whereby he acquitted the accused/respondents No.1 to 7 in Sessions Case No. 125 of 1989 (Old) / 04 of 2001 (New) arising out of F.I.R. No.09/1988 registered at P.S. Geehalpur under sections 302, 307, 452, 147, 148, 149, 114, 403, 404 PPC.

2. The crux of prosecution case are that complainant/appellant Abdul Wahid lodged aforesaid F.I.R. stating therein that on 20.09.1988 he, his cousins Tahir, Ghulam Nabi and Mohammad Khan, nephew Dur Mohammad, sister's son Taj Mohammad, younger brother Mohammad Hashim, nieces Mst. Rashidan and Sughran and Mst. Zuheran wife of Muhammad Khan were sleeping in the courtyard of their house, when at about 2.00 a.m. they woke-up on the noise and saw accused persons, namely, (i) Mithal alias Bashir (ii), Abdul Qadir (iii) Abdul

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Rahim (iv) Khurshid (v) Riaz Ahmed (vi) Muhammad Hassan (vii) Abdul Khaliq, duly armed with 'KAATS' (daggers). Accused Abdul Qadir instigated all others accused, who attacked on them. They raised cries, which attracted to Khan Muhammad and Muhammad Amin who reached the spot, and thereafter, all the accused fled away. Muhammad Khan and Ghulam Nabi lost their lives, whereas complainant Abdul Wahid, Tahir Khan, Dur Muhammad, Ghulam Nabi, Taj Muhammad, Muhammad Hashim, Mst. Rashidan, Mst. Sugheran and Mst. Zuheran sustained injuries.

3. After usual investigation police submitted challan against the accused/ respondents. Formal charge was framed against them, to which they pleaded not guilty and claimed to be tried.

4. In order to prove the charge against the accused/respondents, prosecution examined P.W.1 complainant Abdul Wahid at Ex.15, who produced F.I.R. as Ex.15/A. P.W.2 Tahir Khan was examined at Ex.16, while P.W.3 Dr. Amanullah Channa was examined at Ex.17, who produced medical certificates, final medical reports of injured, postmortem report of deceased Mohammad Khan and Ghulam Nabi from Ex. 17/A to Ex. 17/T. P.W-4 Khan Muhammad examined at Ex. 19. P.W-5 Muhammad Hashim examined at Ex.20 and P.W-6 Taj Muhammad examined at Ex. 21. Statements of accused/ respondents were recorded under section 342 Cr.P.C. wherein they denied the prosecution's allegations and claimed to be innocent. They, however, neither examined themselves on oath nor produced any witness in their defence. The learned trial Court upon the assessment of evidence on record acquitted the accused/respondents vide judgment, dated 02.04.2004, which has been impugned by the complainant in this Cr. Acquittal Appeal.

5. We have heard the learned counsel for the appellant and learned D.P.G. and have gone through the material available on the record with their assistance.

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6. Learned counsel for the appellant has contended that the trial Court has passed the impugned judgment without properly appreciating and evaluating the evidence brought on record; that the trial Court has ignored the ocular testimony of the eye-witnesses though they have fully implicated the accused in the commission of the alleged offence; that the impugned judgment is based on assumptions and presumptions, so also surmises and conjectures and has been passed without assigning sound and cogent reasons for acquitting the accused/respondents; that there is also strong motive which goes in favour of the appellant but the trial Court disbelieved the same; that the trial court has passed the impugned judgment in a hasty and mechanical manner without appreciating the relevant law as well as the submissions made on behalf of the appellant.

7. Conversely, learned D.P.G. appearing for the State, while supporting the impugned judgment, maintained that the impugned judgment has been passed by the trial Court after discussing each and every point involved in the case and cogent and sound reasons have been assigned by trial Judge for its findings; that the eye-witnesses are related to the complainant party and they did not appear for their cross-examination, as such, their evidence cannot be relied for recording conviction of accused/respondents.

8. Perusal of record shows that the examination-in-chief of P.Ws Khan Muhammad, Muhammad Hashim and Taj Muhammad, who were cited as eye-witnesses by the prosecution, were recorded by the trial Court on 25.02.2004, and thereafter, they failed to appear for their cross-examination. Record also reveals that the examination-in-chief of Dr. Amanullah was recorded on 06.01.2004 and his cross-examination was reserved but he also did not appear for his cross-examination. Record further reveals that although coercive measures were adopted by the trial Court to procure the attendance of said eye-witnesses but they avoided to appear before the trial Court, as such, their depositions in

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examination-in-chief do not carry any evidential value and, thus, cannot be relied upon for the purpose of recording conviction of the accused/respondents. Not only this, the Investigating Officer namely, S.H.O. Karam Hussain Abro also did not turn up for evidence; therefore, no credibility can be attached to investigation. It is also noteworthy that no recovery of crime weapons has been made from accused/respondents; hence, in absence of substantive and corroborative evidence, the guilt of the appellant in the instance case could not be proved. Hence, the prosecution has failed to prove its case against the accused / respondents beyond shadow of reasonable doubt, as such the trial Court has rightly acquitted the respondents / accused by extending them benefit of doubt. It is now well-settled principle of law that the consideration for deciding a criminal appeal against acquittal are quite difference from that of a criminal appeal against conviction as in the former case presumption of double innocence of the accused is available in the case, and the superior Courts act slowly in interfering with an order of acquittal, unless grounds for acquittal are perverse, wholly illogical or unreasonable.

9. For the foregoing facts and reasons, this Criminal Acquittal Appeal is dismissed being devoid of merit.