

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Acq. A. No.S-130 of 2014

Date of hearing:	26.12.2014.
Date of decision:	26.12.2014.
Appellant:	Muhammad Sultan, Through Mr. Faisal Nadeem Abro. Advocate.
Respondents:	Nek Muhammad, The State and others Through Mr. Mushtaq Ahmed Abbasi, D.D.P.P.

JUDGEMENT

MUHAMMAD IQBAL KALHORO, J.- By this judgment, the acquittal appeal filed against the judgment dated 05.04.2014, by learned Civil Judge & Judicial Magistrate, Digri in Crime No.65/2013 of Police Station Jhudo, under sections 506(2), 147, 148, 149, 504, 427 and 379 PPC, is disposed of.

2. Facts of the prosecution case, in brief, are that the complainant was zamindar and owner of 08 acres agricultural land, situated at Deh 370, whereas near to his residence one Qadeer Rajput and others resided. On 26.07.2013 accused/respondents No.1 to 8 alongwith 10 unknown culprits, duly armed with pistols, hatchets and lathis, respectively, came at the place of incident and with the help of tractor forcibly were removing the earth from the agricultural land of the complainant and were throwing the same in their Poultry Farm. The complainant party tried to stop them, upon which they became annoyed and ready to fight. On commotion, P.Ws. Mudassir and Muhammad Ashfaque reached at spot and saved the complainant party; thereafter, while abusing and issuing threats of dire consequences to complainant party, all the accused went away.

3. During the trial, prosecution examined 07 prosecution witnesses, whereafter, the Respondents/accused were examined under section 342 Cr.P.C. At the conclusion of trial, after hearing the parties, the learned trial Court acquitted all the accused in terms of the judgment as stated above. Being aggrieved and dissatisfied with the said judgment, the appellant has preferred instant acquittal appeal.

4. Mr. Faisal Nadeem Abro, learned counsel for appellant has argued that the learned trial Court has not properly appreciated the evidence adduced by the prosecution witnesses during the trial; the impugned judgment is liable to be set aside due to non-reading and misreading of evidence; there are no contradictions in the evidence of prosecution witnesses; all the P.Ws. have supported the complainant in respect of the allegations set up by him in the F.I.R; the learned trial Court has failed to appreciate that in presence of overwhelming evidence against the accused/Respondents, the minor contradictions cannot be considered as fatal to the prosecution case; all the accused/respondents committed the offence duly armed with weapons and took away earth from the land of the complainant on the show of force. He lastly prayed for setting aside the impugned judgment and convicting the accused/respondents under the offences stated in the F.I.R.

5. Learned D.D.P.P. for the State supported the impugned judgment and has stated that there are number of contradictions in the evidence of prosecution witnesses, which cannot be ignored particularly so, when there is enmity between the parties admitted by the complainant in the F.I.R. He has further argued that instant appeal is time barred, as under section 417 Cr.P.C, the complainant could file the acquittal appeal within a period of one month, however, in the present case the impugned judgment was announced on 05.04.2014, whereas the present

appeal against the finding of acquittal was preferred by the appellant on 29.09.2014.

6. Heard the arguments and perused the record. The examination of depositions adduced by the prosecution witnesses would show that there are number of contradictions which have gone to the roots of the case. The story set up by the complainant in his F.I.R. is not fully supported by the witnesses examined by him during the trial. The star witnesses, namely, Mudassir and Shahbaz, who are alleged to be the eye-witness of the incident as well as mashir of the arrest of the accused, were given up by the prosecution for the reasons best known to them, but it land to an adverse inference against the prosecution case. In the F.I.R, the allegation leveled by the complainant against the accused/respondents was that they had formed an unlawful assembly and in furtherance of common objection, had committed rioting by extending threats of murder to the complainant, however, these facts were not deposed by the witnesses in their evidence, which has made the prosecution case qua allegations made against the accused/respondents as doubtful. I have perused the impugned judgment minutely. Learned Civil Judge & Judicial Magistrate has taken into count all the aspects of the prosecution case and has minutely examined the evidence adduced by the prosecution witnesses before him and after identifying the contradictions made by the prosecution witnesses in their depositions, reached to a conclusion that the prosecution has failed to prove the case against the accused/respondents beyond shadow of reasonable doubt and upon reaching such conclusion the learned trial Judge has rightly acquitted the accused/respondents.

7. As regards to the contention of learned DDPP that the acquittal appeal filed by the appellant is time barred, it may be observed that the learned counsel for the

appellant, when confronted with this question was not able to offer any explanation for filing the acquittal appeal with such delay. Admittedly, under section 417 Cr.P.C. the appellant was required to file the acquittal appeal within thirty (30) days of the pronouncement of judgment, whereby the Respondents were acquitted. The impugned judgment shows that the same was announced on 05.04.2014, where the present appeal was preferred by the appellant on 29.09.2014. Though, learned counsel for the appellant tried to argue that the certified true copy of the judgment was not provided to him within the stipulated time, however, his such contention stands belied by the endorsement of Record Keeper on the certified true copy of the judgment, which denotes that the application for obtaining the certified true copy was moved on 24.09.2014 and on the same day the stamps as well as cost were paid by the appellant; He received the certified true copy on 25.09.2014. The endorsement stated above shows that the appellant applied for the certified true copy of the judgment belatedly after about 05 months and 19 days. In the instant appeal, the appellant has not shown any convincing reason for filing the instant appeal after the stipulated time provided under the law. The instant appeal is admittedly time barred and no any attempt has been made by learned counsel for the appellant to explain the delay in filing the acquittal appeal. I, therefore, agree with the contention of learned DDPP that this appeal being miserably time barred is liable to be dismissed on that sole ground.

8. In view of above, instant acquittal appeal is dismissed.

JUDGE