

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

Cr. Acquittal Appeal No. S- 87 of 2020

1. For orders on office objection.
2. For orders on M.A No.1828/20.
3. For hearing of main case.

11.09.2020

M/S. Muhammad Yawar Qureshi & Mr. Muhammad Waqas,
Advocate for appellant/complainant.

Ms. Rameshan Oad, Asst. Prosecutor General, Sindh.

=

JUDGMENT

ABDUL MAALIK GADDI, J- The captioned acquittal appeal is directed against the order dated 29.01.2020 passed by the learned Sessions Judge, Matiari in Sessions Case No.53 of 2019 arisen out of Crime No.58 of 2019 registered U/S 324, 427, 147, 148, 149, 504, 337-F(i) PPC at PS Matiari, whereby the learned trial Court after hearing the parties acquitted the respondents / accused u/s 245-H(i) Cr.P.C of the charge by extending benefit of doubt to them.

2. Brief facts as narrated by the complainant Abdul Wahid in his F.I.R are that on 02.06.2019, he on his motorcycle bearing No.HBD-9899, Muhammad Raheem s/o Majanoon on his motorcycle bearing No.HBS-6921 with Hamzo s/o Muhammad Pannah came at the water Course 1-CL Jam Minor and were available there as there was turn of their water rotation when at about 0700 hours, accused each Rafique duly armed with repeater, Allah Dino with repeater, Ranjhan with pistol, Nasrullah with hatchet, all sons of Muhammad Achar Mangwano, Ashraf with K.K, Sawan with DBBL gun, both sons of Muhammad Hussain Mangwano and two unknown persons were seen clearly and would be identified if seen again, came there and told the complainant party that they had already restrained not to cultivate land of Syed Nadeem Shah upon which complainant party replied that there was water rotation and they had come there for the purpose of irrigating their land. According to complainant, upon hearing this, accused Rafique issued straight fire from his SBBL gun and other accused also issued straight fires upon them in order to commit their murder. The complainant further narrated that in order to commit their murder. The complainant further narrated that in order to save their lives, they jumped into Jam minor and saved their lives but such

fires were hit to their motorcycles, which were badly damaged. The complainant further reported that on their cries and fire arm reports, PWs Abbas Ali s/o Muhammad Azeem and Talip s/o Hyder came running and said to the accused persons not to commit murder and on seeing them, the accused left the place while abusing. The complainant further narrated that due to their jumping in the water, PW Raheem Khoso received injury on his right hand Indus finger and blood started oozing. He further disclosed that they irrigated the land and after consulting with each other, appeared at PS and lodged F.I.R.

3. The Prosecution in order to substantiate the charge against the respondents / accused, examined the following five (05) witnesses:

- PW-1:** Complainant Abdul Wahid examined at Ex.11.
- PW-2:** Injured Muhammad Raheem examined at Ex.12.
- PW-3:** Jan Muhammad examined at Ex.16.
- PW-4:** SIP Shah Nawaz Investigating Officer examined at Ex.22.
- PW-5:** Dr. Danish Hussain examined at Ex.39.

All the above named witnesses have been cross-examined by learned State counsel.

4. Learned trial Court after hearing the respective parties acquitted the respondents /accused under Section 245-H(i) Cr.P.C as stated in the preceding paragraph; hence, this Cr. Acquittal Appeal.

5. Learned counsel for the appellant / complainant at the very outset, submits that the impugned judgment passed by the trial Court is not sustainable under the law as there was sufficient evidence available on record against the accused persons but the trial Court brushed aside the same; that not only two eye witnesses, who were examined on ocular account of statements, PW Jan Muhammad was also examined, who had acted as mashir of different stages of investigation; that even the I.O supported the prosecution case and completed all the codal formalities; that all the witnesses appeared to have not made any major and material contradiction damaging prosecution case rather they brought unchallenged evidence on record, which made the accused persons liable to be punished exemplary as they are hardened criminal and involved in several crimes; that there is no contradiction in between ocular and medical

account of the evidence as evidence of injured and doctor / MLO is on the same line.

6. Conversely, learned A.P.G contended that there is no gross illegality, irregularity or infirmity in the impugned judgment as there are sufficient reasons and grounds which create reasonable doubt in favour of respondents; that evidence of prosecution witnesses is suffering from major and material contradictions and the prosecution case itself is suffering from different lacunas and discrepancies and lots of doubts have been created in this case and benefit of which will be given to respondents, therefore, the impugned judgment requires no interference by this Court.

7. I have heard the learned counsel for the parties at a considerable length and have gone through the documents and evidence so brought on record with their able assistance.

8. It appears from the record that respondents / accused duly armed with sophisticated weapons like Kalashnikov etc. were available at place of incident and fired upon the complainant party, however, it is shocking to note that nobody from complainant side received any fire arm injury and only their motorcycle (available at the place of incident) were damaged. According to the F.I.R, when the accused persons have started firing upon complainant party, they jumped into the Jam Minor water course to save their lives, but it is surprising that only Muhammad Raheem Khoso (injured) has got injury in his Indus / 'Shahadat' finger. When these facts were confronted to the learned counsel for appellant, he has no satisfactory answer with him. Moreover, it is also significant point to note that no recovery has been made from any of the accused.

9. Apart from above, ocular version is totally conflicting with the medial evidence for the reasons that as per F.I.R, injured Muhammad Raheem Khoso has received injury on his Indus (Shahadat) finger while the medical report shows that he has received five injures and one of them falls under Section 337-F(i), which gives jolt to the prosecution case. On query, learned counsel for appellant has failed to explain this aspect of the case. It is also pertinent to mention here that at the time of alleged incident, PWs Hamzo, Talib and Abbas Ali were present however, they have not been examined by the complainant during trial. Non-examination of said star witnesses draws presumption that if they would have been examined, they had not

supported the version of complainant therefore, complainant has chosen not to examine them. In this regard, I am fortified with the case reported as **Messrs Centinel (Pvt) Ltd. through Resident Director v. Mst. Gul Fareen Jana & another** [2008 PLC 304] wherein it has been held as under:

“According to Article 122 of Qanun-e-Shahadat, 1984, the burden of proving a fact specially within the knowledge of any person is upon that person and according to illustration (g) of Article 129 (abid), the Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who with holds it”.

10. It is also noted that alleged incident took place on 02.06.2019 at 07:00 hours whereas F.I.R was lodged on the same day after the delay of about 16 hours and no plausible explanation in this regard has been furnished by the complainant. It has also come on record that after the incident had taken place the complainant party remained at the place of incident to continue / finish their work and did not immediately rush to the police station. It is also noted that dispute between the parties appears to be on landed property therefore, it could be said that for the said reason the complainant party managed the whole story just to pressurize the respondents / accused into uncalled for litigation.

11. It is not out of context to make here necessary clarification that appeal against acquittal has distinctive feature and approach to deal with appeal against conviction is distinguishable from appeal against acquittal, because presumption of double innocence is attached in latter case. Order of acquittal can only be interfered with when it is found on the face of it as capricious, perverse, arbitrary in nature or based on misreading, non-appraisal of evidence or is artificial, arbitrary and led to gross miscarriage of justice. Mere disregard of technicalities in a criminal trial without resulting injustice, is not enough for interference. Suffice is to say that an order / judgment of acquittal gives rise to strong presumption of innocence rather double presumption of innocence is attached to such an order. While examining the facts in the order of acquittal, substantial weight should be given to the findings of the lower Courts whereby accused were exonerated from the commission of crime as held by the Apex Court in the case reported as **Muhammad Ijaz Ahmed v. Raja Fahim Afzal and 2 others** [1998 SCMR 1281]. It is settled law that whenever there is doubt about guilt of accused, its benefit must go to him and Court would never come to the rescue of prosecution to fill the lacunas

appearing in the evidence of prosecution case as it would be against established principles of dispensation of criminal justice.

12. Whatever mentioned above, more particularly in light of case laws referred above, I reached at the irresistible conclusion that the appellant has miserably failed to prove his case against the accused persons beyond shadow of reasonable doubt, therefore, no interference in the impugned judgment dated 29.01.2020 is required by this Court. Resultantly, the instant Criminal Acquittal Appeal being devoid of any merit is hereby ***dismissed*** along with listed application[s].

JUDGE

****Hafiz Fahad ****