

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

Criminal Acquittal Appeal No.S- 80 of 2023.

Appellant : Irfan Ahmed Korai through Mr.Nadeem Ahmed Qureshi, Advocate who filed vakalatnama for appellant.

Respondents No.1 & 2 : Nemo

Respondent No.3 : The State through Mr. Aitbar Ali Bullo, D.P.G.

Date of Hearing : 14.5.2025.

Date of Order : 14.5.2025.

**J U D G M E N T**

**AMJAD ALI SAHITO-J.**:- This Criminal Acquittal Appeal is directed against the judgment dated 21.10.2023 passed by the learned Civil Judge and Judicial Magistrate-V, Larkana in Criminal Case No.103/2022 Re: The State v. Rizwan Ahmed Korai and another, arisen out of Crime No.103 of 2022 of P.S Hyderi Larkana under Section 337-A(i), 337-F(i), 34 PPC, whereby after full-fledged trial, the accused/respondents No.1 and 2 were acquitted of the charge.

2. Crux of the prosecution case, as unfolded in the FIR, are that on 08.08.2022 complainant alongwith his friend Zulifqar and Altaf Shah were sitting at cloth pressing shop where at about 4:30 pm his Rizwan alongwith Waseem Ahmed and two unknown persons duly armed with lathies came there and asked you are not giving him share of family property, today he will teach him lesson. Saying so, he caused lathi blow on head of complainant and accused Waseem also caused lathi blow on his left hand and the complainant fell down, when unknown accused also caused him fists on the face and other body parts. PWs saved the complainant by giving names of Quran and Allah and then after the accused went away to the southern side. After obtaining letter from police station, he was treated in the Civil Hospital and then lodged the FIR to the above effect.

3. After investigation of the FIR, the investigation followed in which accused/respondents No.1 and 2 were arrested and sent up to stand trial and later on they after grant of bail by trial Court joined the trial.

4. Formal Charge against accused/respondents was framed at Ex.2 to which they pleaded not guilty and claimed for trial vide their plea recorded at Ex-02-A and Ex.02-B respectively.

5. In order to prove charge against the accused prosecution examined PW-1 complainant Irfan Ali at EX.03, PW- 2 Eye witness Zulifqar Ali was examined at Exh: 04, PW-3 Mashir Azhar Hussain at Exh.05, PW-04 Eye witness Altaf Shah at Exh.06, PW-05 Medico Legal Officer Dr. Shahnawaz at Ex.07, PW-06. Author of FIR ASI Ayaz Hussain was examined at Exh.08, PW-07 I.O ASI Abdul Rehman Sheikh at Exh.09. Learned ADPP closed the side of the prosecution via statement at Ex.10.

6. The statements of the accused under Section 342 Cr.P.C were recorded at Ex-11 to 12 respectively in which they denied the allegations of the prosecution and claimed their innocence and categorized this case as false.

8. In their statements recorded under section 342 Cr.PC, accused/respondents No.1 and 2 refuted the allegations of prosecution and claimed to have been falsely implicated. Accused did not opt to examine themselves on oath.

9. On conclusion of trial, after hearing learned counsel for the parties, learned trial Court passed judgment dated 21.10.2023 whereby accused/respondents No.1 and 2 have been acquitted, hence this appeal.

10. Learned counsel for the appellant/complainant has argued that the impugned judgment having been passed without appreciating sufficient evidence brought on record is illegal and liable to be set aside. He submitted that accused/respondents were nominated in the FIR with specific role of causing lathi blows to the complainant when unknown accused also caused him fists blows on different parts of body; the accused/respondent No.1 Rizwan was annoyed with complainant in the background of standing dispute

over distribution of family property, hence he had strong motive for commission of offence; version of the complainant was fully supported by the prosecution witnesses; the ocular version was also supported by the medical evidence; sufficient material was available on record to connect them with the commission of crime, therefore, acquittal of accused/respondents No.1 and 2 has caused serious miscarriage of justice under impugned judgment passed by trial Court, which is liable to be set aside.

11. Conversely, learned D.P.G supported the impugned judgment and contended that appellant and respondent No.1 happen to be real brothers; prosecution evidence suffered from multiple contradictions on material aspects therefore, after recording of evidence, prosecution failed to prove its case against respondents beyond shadow of reasonable doubt

12. I have heard learned counsel for the respective parties and perused the material brought on record.

13. Perusal of record reflects that admittedly appellant and respondent No.1 are real brothers and there was standing dispute between them over distribution of family property; all the eye witnesses being close relatives interse were highly interested and partisan, hence false implication of present accused in the background of previous dispute can not be ruled out; as far as alleged lathi injuries allegedly suffered by complainant are concerned, the MLO in his evidence recorded at the trial stated that it is possible that such injuries might be caused due to road accident or other causes, thus ocular account was not supported by medical evidence and PW Altaf Shah has not supported the version of the complainant.

14. I have also scanned the prosecution evidence recorded at the trial which suffers from material contradictions as well as conflict between ocular account and medical evidence creating serious doubt into the prosecution case against the present accused/ respondents No.1 and 2.

15. Perusal of impugned judgment dated 21.10.2023 also reflects that it is well reasoned and elaborated. It would be imperative to reproduce relevant paras of the impugned judgment hereunder:

“10/- From the perusal of the record and after scanning the evidence of the prosecution it has transpired that there are so many material contradictions which cannot be avoided for fair and just conclusion of the case. First of all there is inordinate delay of two days in lodging of FIR without giving any plausible explanation except one that the complainant remained busy in the treatment and then after he lodged the FIR which is also weak excuse for delaying in lodging of FIR. According to the PW.02 Zulifqar Ali the complainant was admitted in the hospital for two days however the MLO clearly mentioned that the was not admitted in the hospital and after treatment the complainant went away from the hospital. According to the complainant himself that soon after the discharge from the hospital he went to the PS and then after his FIR was lodged. From perusal of evidence brought on the record by the prosecution it shows that complainant and his PWs are not on the same page in respect of their presence at the scene when the accused came there. The complainant has mentioned in the FIR as well as in the examination in chief that he was present along with his PW namely Zulfiqar and Altaf Shah on the shop of Altaf Shah when the accused came there however the PW namely Zulfiqar Ali stated that when the accused came then he was present at his house and after arrival of the accused he arrived at the shop. It means the eyewitness has clearly denied the version of the complainant in respect of his presence at the time of arrival of the accused persons. The complainant has also mentioned that at that time only he himself, Zulfiqar and Altaf Shah were present at the shop when the accused came there but his both PWs denied his version and stated that at that time one laborer boy was also working at the shop. Further there is also difference between the statements of the investigation officer and the PWs regarding their recording of the statement u/s 161 CrPC. According to the PWs their statements were recorded at the PS after the registration of the FIR however the investigation officer has clearly mentioned in the chief that he recorded the statements of both PWs at the place of incident. As for as the section 337Ai, 337Fv are concerned the complainant went failed to state the mode and manner in which the accused caused him injuries. These injuries also become highly doubtful after the statement of the MLO that it is possible that such injuries may be caused due to road accident or other causes. The enmity between the complainant and accused Rizwan is admitted in the FIR that both brothers were annoyed to each other on the dispute of the inherited land property and after appearing above mentioned all contradictions it cannot be ruled out here that due to such enmity, the complainant may have converted civil dispute in the criminal litigation. I/O also did not bother to record statement of any independent witness for authenticating of the incident even though it is fact that the place of incident is busy area of the city and is a shop and there must be many shops around and beside such shop/place of incident. I/O did not record the statements of those shopkeepers and also failed to record

of another important eyewitness, the laborer boy who according to the statements of both PWs was working at the shop at the time of the incident. He also did not collect the case properties i.e. lathies which may support the case of the prosecution and also did not collect the blood stains clothes of the complainant which according to the statement of PW were changed at the hospital. It creates certain doubt in the prosecution story which cannot be ignored here and these also makes the prosecution story as doubtful.

**11/-** For giving them benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right. **In this regard further guidance can be taken from the case law reported in P.Cr.L.Jr 2015 585 [Peshawar] Vol. XLVIII-2015 Sajjad Ahmed Vs: the state.as follows:-**

**© Criminal trial---**

**“...Benefit of doubt---Entitlement---Prosecution, Primarily was bound to establish guilt against accused without shadow of reasonable doubt by producing trustworthy, convincing and coherent evidence, enabling the court to draw conclusion; whether prosecution had succeeded in establishing accusation against accused, or otherwise---if it would come to the conclusion that the charges so imputed against accused had not been proved beyond reasonable doubt, then accused would become entitled for his release on getting benefit to doubt---If any single and slightest doubt was created benefit of the same, would go to accused; and it would be sufficient to discredit the prosecution story and entitled accused for acquittal---Many doubts were not required in the prosecution case, but any reasonable doubt arising out of the prosecution evidence, pricking the judicial mind was sufficient for acquittal of accused---Benefit of doubt must accrue in favour of accused as a matter of right and not of grace---Accused was always considered as the most favourable child of law, and every benefit of doubt would got to him regardless of fact whether he had taken any such plea or not. [p.593] K.**

**12/-** In view of above position as emerged, I am inclined to hold that prosecution has been miserably failed to hook present accused with offence for which they have been charged. I therefore decided under discussion point No.1 as doubtful.”

18. Thus prosecution failed to bring on record sufficient evidence to connect the accused/respondents with the commission of alleged offence. In view of such circumstances, this Court is of the

considered view that prosecution has failed to prove its case beyond shadow of reasonable doubt.

19. It is a well-settled principle of law that a criminal case is to be decided based on the totality of impressions gathered from the circumstances of the case and not on the narrow ground of cross-examination or otherwise of a witness on a particular fact stated by him. A similar view had been expressed by the Honourable Supreme Court of Pakistan in the case **of State v. Rab Nawaz and another (PLD 1974 SC 87) wherein Honourable Supreme Court** has observed that a criminal case is to be decided based on the totality of circumstances and not based on a single element.

20. It is noteworthy that in the impugned judgment the learned trial Judge has pointed out some material contradictions, which are sufficient to declare that the prosecution could not establish the case against the respondents/accused beyond reasonable doubt and where a single circumstance creating reasonable doubt in the prudent mind about the guilt of the accused, then accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right. In this regard, reliance is placed on the cases of **Tariq Pervaiz v. The State [1995 SCMR 1345]** **Muhammad Akram v. The State [2009 SCMR 230]** **and LalBux alias Lal v. the State (2023 YLR 321) (authored by Zulfiqar Ahmed Khan J.)**

21. It is an important to note that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from appeal against acquittal. It is well settled law that once the trial court records an acquittal, the accused earns presumption of double innocence, and the appellate court should not reverse such findings unless find the reasoning in the impugned judgment to be perverse, arbitrary, foolish, artificial, speculative and ridiculous or based on misreading or non-reading of evidence, as was held by the Supreme Court in the case of **State v. Abdul Khaliq and others (PLD 2011 SC 554).**

22. In these circumstances, I am of the considered opinion that the quality and standard of prosecution evidence is lacking, which is required to establish a criminal case for justifying

conviction and sentence. Hence, I am of the view that acquittal of respondents No.1 & 2 recorded by learned trial Court under impugned judgment dated 21.10.2023 does not call for any interference by this Court, therefore, the instant criminal acquittal appeal being devoid of merits is dismissed.

**JUDGE**

Shabir/P.S