

ORDER SHEET
IN THE HIGH COURT OF SINDH
CIRCUIT COURT HYDERABAD
Criminal Acquittal Appeal No.S-89 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For order on office objection
2. For orders on MA 3106/17
3. For katcha peshi.
4. For hearing of MA 3108/2017

15-08-2017

Syed Shahzad Ali Shah advocate for appellant.

Mr. Shahid Ahmed Shaikh, A.P.G.

ORDER

ABDUL MAALIK GADDI, J:- Through instant Criminal Acquittal Appeal, the appellant has challenged the order dated 27.03.2017 passed by learned Civil Judge and Judicial Magistrate-II, Tando Adam in Criminal Case No.105 of 2015, (Re: State vs. Jawaid and others) arising out of Crime No.54 of 2015 registered under Sections 435, 506/2, 147, 148, 149, 504 P.P.C, of police station Tando Adam City, whereby the learned trial court on application under Section 249-A Cr.P.C filed by respondents acquitted them.

2. Succinctly fact of the case as unfolded in the FIR are that on 01.04.2015 at 04:30 pm the accused persons with common object, duly armed with deadly weapons issued threats of dire consequences to the complainant namely Mir Muhammad and put his wheat over 4.5 acres of land on fire at his lands situated in village Ghazi Khan Katiar, Tando Adam and used abusive language with the complainant as well. On arrival of the villagers, the accused persons went away. Thereafter, the complainant called the Fire Brigade Tando Adam and prior to its arrival they themselves

initiated to extinguish the fire by pouring water through buckets. After arrival of fire brigade, they got control over the fire, and found that two acres of wheat were burnt. Then, the complainant informed such incident to his landlord namely Babu Katiar and on his directions, the complainant approached the PS and lodged instant FIR.

3. At trial, the complainant was examined at exh.3 on 28.2.2017, who produced the FIR as Exh.3/A. The witness Mashooque Ali was examined at Exh.4.

4. It appears from record that during hearing of application under Section 249-A Cr.P.C before the learned trial court, the learned counsel for respondents/accused argued that due to enmity over the agricultural land the complainant on instigation of Babu Katiar concocted instant story as such no incident had ever occurred. While referring to the depositions of the complainant and one witness, he submitted that the complainant has contradicted with the FIR while deposing the names of the accused persons who lit the fire as alleged. A part from it, the complainant narrated in the FIR that he called the fire brigade, but in his examination in chief he deposed that he informed the landlord who then sent the fire brigade. He further submitted that the complainant further deposed that accused Jawaid and Habibullah Katiar were arrested by the police and ASI Qalander Bux called him at the PS to identify the accused persons on dated 01. At 5:30 pm or 6 pm, but the memo of arrest is of 02.04.2015 at 0730 hours to 0740 hours, which clearly shows malafide on part of the complainant and of police. Hence, the learned counsel for

respondents/accused persons prayed for acquittal of the accused persons on the point of charge being groundless and keeping in view the depositions of complainant and examined witness, no probability of conviction raised.

5. After hearing the parties' counsel, learned trial court came to the conclusion that prosecution has miserably failed to prove its case, therefore, the respondents/accused were acquitted under section 249-A Cr.P.C, hence this appeal.

6. Learned counsel for appellant/complainant submits that impugned order of acquittal is illegal, void, ab-initio in the eyes of law and equity and is liable be set aside; that the learned trial court failed to consider this material aspect of the case while passing the impugned order that the accused persons duly armed with weapons and hatchets with their common object abused the complainant so also issued threats to him and set fire the wheat crop; that accused persons took active part in the commission of offence, accordingly they were nominated in the FIR with specific role; that all the PWs so examined fully supported the case of the prosecution; that litigation between the parties does not absolve the accused from committing the alleged offence; rather it strengthens the prosecution case as there exists already enmity between the parties; that offence occurred on 01.4.2015 and during such period minor contradictions in the evidence of the Pws was a natural thing and such contradictions should have been ignored by the learned trial court while administering justice as per well reckoned authorities of the apex courts but the learned trial court created mountain out of mole of such contradictions while acquitting the

accused, which is sheer injustice with the prosecution side; that impugned acquittal order is bad in law as well as on facts, which needs rectification by way of invoking the powers under section 417 (2)(a) Cr.P.C.

7. Learned D.P.G. supported the impugned judgment and submitted that it is well reasoned, speaking one and does not warrant interference of this Court. He further submits that in view of the contradictions by the witnesses, more particularly, the contradiction in between the ocular and circumstantial evidence, the credibility of the case is highly shaken.

8. I have heard the learned counsel for the parties and perused the material so available before me.

9. Perusal of record shows that enmity is admitted in between the parties and it is matter of fact that there is multiplication of cases in between them. Such copies are made part of the case file. The depositions of examined witnesses also sustain contradictions as to the version of the FIR. Besides, the arrest of accused Jawaid and Habibullah becomes doubtful while keeping in view the deposition of the complainant and the witness Mashooque Ali also deposed during cross examination that accused Jawaid and Habibullah were arrested on 01.4.2015 at the time of sunset. Hence, false accusation in instant situation cannot be overlooked. Moreover, out of two acres of burnt wheat, police took only two kilograms of wheat as sample, and as per the depositions police took sample in shopper and then put that in cloth parcel at the PS, and further deposed that the same was sealed at the place of

incident. Besides, no value of damage has been ascertained by the investigation officer. It is commonly observed that people dragged themselves towards criminal litigation falsely to strengthen their positions over civil disputes. The instant case appears to be example of such attitude.

10. Indeed, perusal of the impugned order it contemplates that the same is well reasoned and speaking one having clarity in it, so declaimed in the peculiar facts and circumstances of the case. Suffice to say that there is no occasion to interfere in the said impugned order and the question of misreading or non-reading of evidence does not depict.

11. A Division Bench of Lahore High Court in PLJ 2011 Page-104 observed in the following manner:-

12. It has been repeatedly held by the August Supreme Court of Pakistan that interference in appeal against acquittal is a rare phenomenon and even if two views could be adopted after the perusal of the evidence adduced by the parties, the view favourable to the accused / respondents is to be preferred. In the case in hand after perusal of the evidence the view adopted by the learned trial Court is found to be based on the evidence on the record. It needs no reiteration that there is a marked difference between appraisement of evidence in the appeal against conviction and in the appeal against acquittal. In the appeal against conviction appraisal of evidence is done strictly and in the appeal against acquittal, the same rigid method of appraisement is not to be applied as there is already finding of acquittal given by the trial

Court after proper analysis of evidence on record. In the acquittal appeal, interference is made only when it appears that there has been gross misreading of the evidence, which amounted to miscarriage of justice. While considering the scope of section 417, Cr.P.C. it is held that in an appeal against acquittal, this Court would not, in principle, ordinarily interfere and instead would give due weight and consideration to the findings of the Court acquitting the accused. The Court would not interfere with the acquittal order merely because on re-appraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. It is true that the finding of acquittal is not sacrosanct, if the reasons given by the trial Court are speculative or of artificial nature or the findings are based on no evidence or is the result of misreading or misinterpretation of evidence or the conclusion drawn as to the guilt or innocence of the accused persons, are perverse, resulting into miscarriage of justice. Same can be interfered with in appropriate cases in the light of the principles laid down by the apex Court regarding appreciation of evidence. In *Yar Muhammad and 3 others v. The State* (1992 SCMR 96), it was observed:

“The High Court was hearing an acquittal appeal and the principles of setting aside an order of acquittal are now well-settled. Unless the judgment of the trial Court is perverse, completely illegal and on perusal of evidence no other decision can be given except that the accused is guilty or there has been completed misreading of evidence leading to miscarriage of justice, the High Court will not exercise jurisdiction under Section 417, Cr.P.C. In

exercising this jurisdiction the High Court is always slow unless it feels that gross injustice has been done in the administration or criminal justice.”

13. In view of what has been discussed above it follows that the acquittal of respondents does not suffer from any illegality so as to call for any interference with the impugned judgment. According to golden principle of benefit of doubt, one substantial doubt is enough to acquit the accused. The learned trial Judge has advanced valid and cogent reasons for passing a finding of acquittal in favour of respondents and I see no legal justification to disturb the same. Resultantly, the appeal fails which is hereby dismissed alongwith listed applications. These are the reasons of my short order dated 15.8.2017 announced in the open court.

JUDGE

Ahmed/Pa