

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Acquittal Appeal No.S-172 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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| <i>1. For orders on office objection.</i> | |
| <i>2. For orders on MA-6453/2017</i> | |
| <i>3. For katcha peshi.</i> | |

12.09.2017.

Mr. Khadim Hussain Leghari, Advocate for appellant.

ORDER

ABDUL MALIK GADDI, J:- Through this appeal, filed under Section 417 Cr.P.C, the appellant *Noor Khan Jamali* has sought the indulgence of this Court to set at naught the judgment dated 04.08.2017, passed by the learned VIIth Civil Judge & Judicial Magistrate, Hyderabad, in case Crime No.83 of 2014 registered at P.S Khadar for offences under Sections 380, 458, 34 PPC, whereby the learned Trial Court acquitted the respondents/accused from the charge.

2. Brief facts for deciding the present criminal acquittal appeal are that, complainant namely Noor Khan S/o Daim Khan Jamali lodged the aforesaid FIR alleging therein that on 20.11.2014 in the evening hours, he after feeding his animals in cattle compound located inside his house at Village Sher Khan Jamali, Taluka Sakrand, Shaheed Benazirabad, went to sleep. At about 0230 hours in late night the complainant woke up on hearing of barking of dogs and on the light of bulb he saw three persons namely Zakari Jamali, duly armed with pistol, Muhammad Bux alias Ziaul Haq, duly armed with pistol and Mehrab alias Faouji, duly armed with Repeater and also saw that three other unknown persons taking away one buffalo of the complainant, who raised hue and cries which attracted his brother Javed Jamali and cousin Ghulam Rasool Jamali, who also woke up and saw the thieves. Complainant then immediately called traditional foot tracker of the village, who led the complainant to Mirza Ashique Baig Jalbani of Vilalge Mirza Ashique near the house of Sohrab Jalbani and Mehrab Jalbani, who admitted to

have committed theft of complainant's buffalo but did not return the same, hence the aforesaid FIR filed against the accused.

3. It is stated by the learned Counsel for the appellant/complainant that the impugned judgment passed by the Trial Court is against the law and facts. According to him, the respondents/accused are nominated in the FIR and they were involved in committing theft of buffalo of the appellant/complainant but the Trial Court while acquitting the accused has passed an unspeaking order having no weight in the eyes of law. He further submits that the prosecution witnesses in their evidence have fully supported the prosecution case but despite of this fact the Trial Court acquitted the respondents/accused without assigning any good reason. During the course of the arguments, learned Counsel for the appellant/complainant reiterated the same facts and grounds as stated by him in the memo of appeal.

4. I have heard the learned Counsel for the appellant/complainant and perused the record so available before me.

5. The prosecution, in order to prove its case against the respondents/accused, firstly examined PC Raza Muhammad Khaskheli at Ex-06, who is mashir of recovery of stolen buffalo and produced photocopy of memo of recovery as Ex-06/A. The prosecution secondly examined the complainant namely Noor Khan Jamali at Ex-09, who produced FIR as Ex-09/A. According to the version of the complainant in FIR, the accused persons committed theft by taking away one of his buffalos from the cattle compound but in his evidence before the Trial Court, he deposed something different that there were three buffalos in his cattle compound, which the accused persons took away. It is pertinent to mention here that total number of buffalos is not mentioned in the FIR. The remarkable difference in version of the complainant in the FIR and deposition is making the whole prosecution story highly doubtful and unbelievable. Perusal of record further indicates that there are material contradiction in the statement of the prosecution witnesses, which has been rightly observed by the learned Trial Court in its judgment, which is impugned by the appellant/complainant. Having perused the evidence of the prosecution evidence, I come to the

conclusion that the evidence of the prosecution witnesses is contradictory to each other on material particular of the case.

6. It is well settled law that the principles for deciding appeals against conviction and acquittal are different from each other. Once an accused is acquitted by a competent Court of law after facing the agonies of a protracted trial, then he earns the presumption of double innocence, which cannot be disturbed by the Appellate Court slightly.

7. On a close scrutiny of the material available on record, I am of the view that *prima facie* reasonable grounds do not exist to believe that respondents/accused have committed the offence. The reasons for acquittal in favour of the respondents/accused by the Trial Court appear to be quite sufficient and convincing and the learned Trial Court has passed a speaking order in the circumstances of the case. I do not find any justification in this appeal which is dismissed in *limine*. These are the reasons of my short order dated 12.09.2017 pronounced in open Court, whereby this criminal acquittal appeal was dismissed.

JUDGE

Shahid