ORDER SHEET

IN THE HIGH COURT OF SINDH,

CIRCUIT COURT, HYDERABAD.

Cr. Acq: Appeal No.S-61 of 2015.

DATE	ORDER WITH SIGNATURE OF JUDGE
	For order on MA-7879/15. For katcha peshi.
16.10.2015.	

Mr. Nasrullah Khaskheli, Advocate for appellant.

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Urgency granted.

ABDUL MAALIK GAADI,J- Through this criminal acquittal appeal, the appellant has assailed the legality and propriety of the judgment dated 28.09.2015, passed by the learned VIth. Judicial Magistrate, Hyderabad in Cr. case No.240 of 2014 re: State v. Dost Muhammad and others in crime No.37 of 2014 registered under sections 435,427 and 34, PPC at P.S. Hatri, whereby the learned trial Court after full dressed trial has acquitted the respondents No.1 to 6 by extending them to benefit of doubt, hence this appeal.

Brief facts of the prosecution case are that on 10.3.2014 in between 2300 hours to 0400 hours, the Respondents committed mischief by setting fire the sugarcane crop of the complainant grown on 7 acres of his agricultural lands situated at deh Nandhi Dali Hyderabad knowing to cause damage to the crop of complainant. According to complainant, he approached to the place of incident along with Noor Muhammad, Khan Muhammad and Abdullah, thereafter he approached to the concerned police station for registration of F.I.R. Accordingly, the same was registered against the accused. After usual investigation, I.O. of the case submitted the charge sheet against respondents for judicial verdict.

Since the matter is fixed for katcha peshi stage. The learned counsel for appellant has been heard and perused the record.

It is contended by the learned counsel for the appellant that the learned trial Court while passing the impugned judgment has not properly considered the evidence of the prosecution witnesses and passed the

impugned order in haste manner without also considering that the Respondents with common objection committed mischief brutally put on fire the crops of the complainant in taint of collusion in order to harm the complainant. During the course of arguments, he invited attention of this Court towards evidence of prosecution witnesses available on record and was of the view that there was sufficient material before the trial Court to convict the accused/Respondents, but instead of convicting the Respondents, acquitted them.

Perusal of the record shows that in this matter the complainant in order to prove his case has examined three witnesses namely Abdullah, Noor Muhammad and Muhammad Haroon and two official witnesses namely ASI Shoukat Ali and SIP Allah Bux. Their evidence has been perused with the assistance of learned counsel for the appellant and finds that there are no eyewitnesses of the incident and same is un-seen. It is the case of the appellant that respondents sat fire of sugarcane crop of the complainant in the night at about 4.00 a.m, but interestingly no any incriminating material is recovered from the possession of any respondents that the respondents have committed mischief of fire on crop of the complainant. I have enquired from the learned counsel for the appellant whether anybody had seen the respondents at the place of incident, he replied in negative. I have again enquired from the counsel whether burnt crop or its photographs were produced before the trial Court, he again replied in negative. The evidence produced by complainant before the trial Court was also found contradictory on material particulars, therefore, the learned trial Court after perusing the record has rightly acquitted the respondents on the basis of cogent reasons.

It is settled law that onus to prove its case rest on the shoulder of the prosecution and the prosecution in order to discharge that burden has to adduce credible and confidence inspiring evidence in support of charge. Failure on the part of prosecution to adduce credible and confidence inspiring evidence always results in failure of prosecution case. A single circumstance creating reasonable doubt in prudent mind always entitles accused to such benefit of not as a matter of grace or concession, but as a right. In the present case, the prosecution has examined witnesses namely complainant Haji Muhammad Umar, Abdullah, Noor Muhammad and

Muhammad Haroon as well as two official witnesses namely ASI Shoukat Ali and SIP Allah Bux. Their evidence are found contradictory on material particulars, therefore, the same cannot be safely relied upon under the circumstances of the case. The judgment delivered by the trial Court by acquitting the Respondents appears to be on cogent reason, as the learned trial Court has addressed all the points involved in the case, therefore, the same do not require any interference.

In view of the above facts and circumstances, no perversity, illegality and incorrectness have been found in the judgment of learned trial Court. Accordingly, I find no merit in this criminal acquittal appeal, which stands dismissed in limine along with listed application.

JUDGE.

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It may be observed that it is a legal parlance that every accused is blue-eyed child of law and is presumed to be innocent unless and until he is held guilty by due course of law. Maxim exists that the error in acquittal is better than the error in conviction and more so, after wheeling acquittal dual presumption of innocence is attached with an accused. Furthermore, once accused is acquitted by the competent Court of law after facing the trial, then he earns presumption of double innocence which cannot be disturbed slightly unless grave illegality and in justice is established in the impugned order of acquittal. On this aspect of the case, I am supported with the case of *the State through Advocate General Peshawar NWF v. Gulla reported in 2011 P.Cr.L.J. 696.*