

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

Cr. Acquittal Appeal No. S- 71 of 2018

28.02.2020

Mr. Kamran Baig, Advocate for appellant.

Respondent No.1 Waqar Hussain is present in person.

Mr. Atif Imran Khuwaja, Advocate for respondents No.2 & 3.

Ms. Ramesha Oad, Assistant Prosecutor General.

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JUDGEMENT

ABDUL MAALIK GADDI, J- The captioned appeal is directed against the judgment dated 31.03.2018 passed by learned Judicial Magistrate-II Tando Adam in Criminal Case No.195 of 2016 arisen out of Crime No.236 of 2016 registered u/s 337-A(i), 337-A(ii), 337-F(ii), 337-L(ii), 337-D, 504, 34 PPC at PS Tando Adam City, whereby the learned trial Court after hearing the learned counsel for the parties, acquitted the respondents / accused u/s 245(1) Cr.P.C of the charge by extending benefit of doubt to them.

2. Brief facts of the prosecution case are that 07.10.2016 at about 1915 hours, the accused / respondents assaulted the complainant party for the reason that brother of the complainant namely Nadeem asked the accused persons to descend from the wall of the Alam Pak which is situated in front of house of the complainant, as there was passage for the ladies. Accused Lal Muhammad slapped Nadeem and then all started beating him and Jalal. Accused Mumtaz hit iron rod blows upon head of Jalal and accused Aijaz hit dragger on left side of Nadeem. On their cries, the wife of complainant namely Mst. Gul Pari came outside of the house and tried to intervene when accused Waqar hit dragger on her waist from backside. Thereafter, the complainant and other persons present at the Alam rescued the injured persons and the accused persons went away to their home while using abusive language to the complainant party. The complainant then took the injured persons and approached the PS and lodged instant F.I.R against the above named accused persons.

3. After framing the charge against accused, the trial court examined as many as evidence of ten (10) witnesses and thereafter, statements of accused as required u/s 342 Cr.P.C. were recorded, wherein they denied the prosecution allegations and pleaded their

innocence. However, neither they examined themselves on Oath nor produced any witness in their defence.

4. Thereafter, as stated above, after hearing the learned counsel for the parties, the learned trial Court acquitted the respondents / accused through impugned judgment dated 31.03.2018, hence this Criminal Acquittal Appeal.

5. Learned counsel representing the appellant / complainant at the very outset, submits that the impugned judgment 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, more particularly, the accused were acquitted of the charge without assigning any valid reason.

6. Conversely, learned A.P.G assisted by learned counsel for the respondents No.2 & 3 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 accused; that before the alleged incident took place, a news was published in Daily Kawish dated 08.10.2016 by complainant party wherein it is stated by him that some dacoits entered in his house and Mst. Gul Pari sustained injuries during resistance. Lastly prayed for dismissal of this appeal.

7. I have heard the learned counsel for the parties and have perused the impugned judgment passed by the trial Court. During the course of arguments, learned counsel for the appellant could not show the specific part of the judgment wherein the learned trial Court has committed any gross illegality or irregularity. It is noted that alleged incident took place on 07.10.2016 whereas F.I.R was lodged on 28.10.2016 after the delay of 21 days and no plausible explanation in this regard has been furnished by the complainant. It has also come on record that when the accused were identified by complainant party at the time of alleged incident then why they remained silent for about 21 days. It is alleged that accused / respondents were armed with iron rods at the time of alleged incident but no recovery of alleged iron rod has been affected from any of the accused/respondents. Per learned counsel, accused were not arrested and they were shown on bail in the challan sheet. However, case of the prosecution is only based upon three narrations, one stated in NC report, second stated in F.I.R and third stated in

publication published by the complainant in daily Kawish dated 08.10.2016, which seems to be of different versions; therefore, false implication of the respondents / accused in this case cannot be ruled out. Learned counsel for the appellant has also failed to produce any convincing evidence before the trial Court for conviction against private respondents.

8. I have also perused the impugned judgment and come to the conclusion that the learned trial Court has dealt with all aspect of the matter quite comprehensively in the light of all relevant laws dealing with the matter and the appellant in his appeal is unable to point out that the impugned judgment by any means suffers from any illegality or miscomprehension or non-appreciation of evidence by way of documents and evidence available on record. I am also not satisfied with any of the grounds agitated by appellant in the memo of appeal for indulgence of this Court in the matter. Therefore, I find that the impugned judgment passed by trial Court is perfect in law and facts and needs no interference by this Court.

9. As observed above, the private respondents have been acquitted by the competent Court of law therefore, under the law once an accused was acquitted by the competent Court of law after facing the agonies of the protracted trial then he would earn the presumption of double innocence which could not be disturbed by the appellate Court lightly. Resultantly, the instant Criminal Acquittal Appeal being devoid of merits is hereby dismissed along with listed application[s], if any.

JUDGE

Hafiz Fahad

28.02.2020