

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

Cr.Acq.Appeal No.S- 176 of 2019

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DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on MA-8295/19
2. For orders on office objection
3. For orders on MA-8296/19
4. For hearing of main case.

18.10.2019.

Mr. Zahid Mallah, advocate for appellant

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1. Urgency granted.
2. Overruled.
3. Granted.
4. The appellant / complainant by way of instant acquittal appeal has impugned judgment dated 02.09.2019 passed by learned Civil Judge/Judicial Magistrate-I Sanghar, whereby he has acquitted the private respondents of the offence for which they were charged by him.

It is alleged by the prosecution that the private respondents in furtherance of their common intention have not only caused lathi blow to Mst. Hanifa but fists and kicks blows to complainant Shahbaz and PW Ghulam Hussain, in order to satisfy their matrimonial dispute with them for that they were booked and challaned by the police to face trial for the above said offence.

At trial, the private respondents did not plead guilty to the charge and prosecution to prove it examined appellant / complainant and his witnesses and then closed the side.

The private respondents in their statements recorded U/S 342 Cr.P.C denied the prosecution allegation by pleading innocence by stating that they have been involved in this case falsely by the complainant party, they did not examine anyone in their defence or themselves on oath to disprove the charge against them.

On evaluation of the evidence, so produced by the prosecution, the private respondents were acquitted of the offence by learned trial Magistrate for which they were charged by way of judgment which is impugned by the appellant / complainant before this Court by way of instant Acquittal Appeal, as stated above.

It is contended by learned counsel for the appellant / complainant that the prosecution was able to prove its case against the private respondents by producing cogent evidence, yet they have been acquitted by learned trial Magistrate on the basis of improper assessment of the evidence. By contending so, he sought for issuance of notice against the private respondents for regular hearing of the instant acquittal appeal.

I have considered the above arguments and perused the record.

The FIR of the incident has been lodged with delay of about two months, such delay could not be lost sight of. It is reflecting deliberation and consultation. As per medical officer there was possibility that the injury sustained by Mst.Hanifa could be self-suffered or result of her fall on the ground. If it is believed to be so, then no innocent person could be subjected to trial for his no fault. The matrimonial dispute between the parties reflect adversely over the case of appellant / complainant. In these circumstances, learned trial Magistrate was right to record acquittal of the private respondents by extending them benefit of doubt.

Acquittals could only be examined when those have been found to be perverse or arbitrary as has been held to be in case of ***State and others vs. Abdul Khaliq and others (PLD 2011 SC-554)***, by Hon'ble apex Court by making observation that;

*“The scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. Interference in a judgment of acquittal is rare and the prosecution must show that there are glaring*

*errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Judgment of acquittal should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous. The Court of appeal should not interfere simply for the reason that on the reappraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities”.*

Nothing has been brought on record, which may suggest that the acquittal of the private respondents have been recorded by learned trial Magistrate was perverse or arbitrary which may justify this Court to make interference with their acquittal by way of instant Acquittal Appeal, it is dismissed in limini.

JUDGE