

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

Cr.Acq.Appeal No.S- 173 of 2011

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DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For hearing of main case.

22.11.2019.

Syed Babar Ali Kazmi, advocate for appellant.  
Mr. Shahzado Saleem Nahiyoan, D.P.G for the State.  
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By way of instant acquittal appeal the appellant / complainant has impugned judgment dated 28.04.2011 passed by learned 1<sup>st</sup> Civil Judge & Judicial Magistrate, Dadu, whereby the private respondents have been acquitted of the offence for which they were charged.

2. The allegation against the private respondents is that they in furtherance of their common intention caused fists, kicks and lathi blows to the appellant / complainant and his sister Mst. Zulekhan, for that they were booked and reported upon.

3. 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.

4. The private respondents in their statements recorded u/s 342 Cr.P.C denied the prosecution allegation by pleading innocence, they did not examine anyone in their defence or themselves on oath.

5. On evaluation of evidence so produced by the prosecution learned trial Court acquitted the private respondents, such acquittal is impugned by the appellant / complainant before this Court by way of instant Acquittal Appeal as stated above.

6. It is contended by learned counsel for the appellant / complainant that learned trial Court has recorded acquittal of the private respondents on the basis of conjecture and surmises. By contending so, he sought for adequate action against the private respondents.

7. Learned D.P.G by supporting the impugned judgment has sought for dismissal of the instant appeal.

8. I have considered the above arguments and perused the record.

9. The FIR of the incident has been lodged with considerable delay that too after having recourse through Sessions Judge, Dadu, such delay could not be lost sight of. The very case as per appellant / complainant was declared to be false by the police. As per Mst.Zulekhan her statement was recorded by police on 3<sup>rd</sup> day of incident. In these circumstances, learned trial Magistrate was right to record acquittal of the private respondents by extending them benefit of doubt with following observation;

*“There is admitted enmity between the parties and series of cases shown to have lodged by the complainant against the accused persons and in some other cases the same lady is shown to have injured by the accused persons which is neither believable nor*

*convincing because causing the injuries to an infirm and old lady would be of no help to the accused. The circumstances gathered on the record show that the case of prosecution is not free from reasonable shadow of doubt.”*

10. In case of ***State and others vs. Abdul Khaliq and others (PLD 2011 SC-554)***, it has been held by the Hon’ble Apex Court 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”.*

11. Nothing has been brought on record, which may suggest that the private respondents have been acquitted by trial Court in arbitrary or cursory manner, which may justify this Court to make interfere with the acquittal of the private respondents.

12. Consequent upon above discussion, the instant Acquittal Appeal is dismissed.

JUDGE