

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

Cr. Acq. Appeal. No.S- 77 of 2009

Date of hearing: 20.01.2020.

Date of judgment: 20.01.2020.

Mr. Imtiaz Ahmed Chanio, Advocate alongwith Ms. Saima Agha, Advocates for appellant.

Ms. Rameshan Oad, A.P.G. for the State.

Mr. Ghulam Shabeer, Advocate holds brief on behalf of Mr. Hameedullah Dahri, Advocate for private respondents.

**J U D G M E N T**

**ABDUL MAALIK GADDI, I.**-By this judgment, I intend to dispose of the above Criminal Acquittal Appeal filed by appellant / complainant Muhammad Zahid, whereby he has challenged the legality and propriety of impugned judgment dated 08.04.2009 passed by learned Ist Additional Sessions Judge, Mirpurkhas in Criminal Appeal No.36 of 2007, whereby after full-dressed hearing, by allowing the appeal he acquitted the private respondents and set aside the judgment dated 22.09.2007 passed by learned Civil Judge & Judicial Magistrate-II, Mirpurkhas in Criminal Case No.54/2005, whereby the private respondents were convicted u/s 337-A(ii) PPC and sentenced to suffer RI for two years and u/s 337-A(i) PPC to suffer RI for one year and also to pay the compensatory amount of Rs.5000/- each to be paid to injured.

2. The allegation against the private respondents as disclosed in FIR is that on account of turn of water, they duly armed with hatchets and lathies came at the agricultural land of the complainant, abused the complainant and

asked that who has given him permission for running the lift machine as they have obtained stay order from the court and they will not allow them to run lift machine. Thereafter, they caused injuries to the complainant as well P.Ws and then ran away.

3. Mr. Imtiaz Ahmed Chanio, Assisted by Ms. Saima Agha, learned counsel for appellant contended that the judgment passed by the learned appellate court is perverse and the reasons are artificial viz-a-viz the evidence on record; that the grounds on which the appellate court proceeded to acquit the accused persons are not supported from the documents and evidence on record. He further submitted that accused have directly been charged and the discrepancies in the statements of witnesses are not so material on the basis of which accused could be acquitted. He further contended that learned appellate court has based the findings of acquittal mainly on the basis of minor contradictions on non-vital points of the statements of prosecution witnesses and that the prosecution evidence has not been properly appreciated therefore, under these circumstances, he was of the view that instant appeal may be allowed and the accused involved in this case may be given exemplary punishment.

4. On the other hand, Ms. Rameshan Oad, learned A.P.G. has supported the impugned judgment of acquittal on the ground that learned appellate court has discussed each and every aspect of the case in its judgment whereby he has rightly acquitted the accused persons due to deficient evidence which was even not corroborated by medical as well as documentary evidence.

5. I have heard the learned counsel for parties at considerable length and have gone through the evidence and documents on record with their able assistance.

6. After going through the record, I have come to the conclusion that prosecution has failed to prove its case against the accused / private respondents for the reasons as stated in concluding para of the impugned judgment which reads as under:-

*"That in the FIR it is mentioned that after leaving the injured to hospital the complainant came to police station for lodgment of FIR, however in the evidence the complainant and witnesses deposed that first they went to police station and after obtaining police letter for treatment they came at hospital for treatment. I have perused the police letter which only shows the date of issuance but the time is not mentioned on that letter. However the medical certificates of injured reveals that they reached at the hospital at 3-30 p.m. The Medical Officer has deposed that at the time when the injured came at hospital police was also with them however the perusal of FIR reveals that the FIR was lodged on 20.12.2002 at 1700 hours.*

*If the version of complainant is true that first he went to police station and after obtaining letter for treatment he went to hospital then police should prepared the memo of injury at the same time when the injured reached at police station or to record the N.C report of complainant and then the injured to be referred to hospital for treatment. But in the present matter the police first come into motion and then lodged the FIR which creates doubts in the story of prosecution.*

*The evidence of Medical Officer also creates doubt that the injury on the body of injured Saleem was of short cutting edge weapon and may be received through a razor, however according to complainant and injured were beaten through hatchet and lathis. The Medical Officer further stated that injured Zahid sustained injuries may through stone or road accident. Further the complainant party allegedly received severe injuries at the hands of accused persons but according to evidence of medical officer at the time of examination of injured some spots of blood wee available at the clothes of injured.*

*Upshot of the above discussion I am of the view that the case of accused persons is not free from doubt however, it is settled principle that the case should be proved beyond reasonable shadow of doubt. Therefore, there being no satisfactory basis for upholding the conviction and sentence of the appellants, therefore, the appeal is allowed, the conviction and sentence of the appellants is set aside and they are acquitted of the charge."*

7. Considering all the above aspects of the case, I have come to the conclusion that the trial court has rightly extended benefit of doubt in favour of accused and the impugned judgment contain valid reasons for extending benefit of doubt to the accused. Hence the said judgment does not require any

interference by this court. I may further observe that there is clear distinction in between appeal against conviction and appeal against acquittal. It is settled law that accused who have been acquitted in a crime can claim double innocence, one at the pre-trial stage and the other they may earn on the basis of judgment of acquittal in their favour from the court of competent jurisdiction. The competent court in the instant matter has extended benefit of doubt to the accused after examining / discussing the entire evidence. Therefore, I see no reason to interfere with impugned judgment. Consequently, instant appeal against acquittal being devoid of merits is hereby dismissed alongwith pending application(s), if any.

JUDGE

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