

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

Criminal Acquittal Appeal No.S-120 of 2021

Appellant: Nawab Son of Aleem through Mr. Ghulamullah Chang, Advocate.

Respondent: The State through Mr. Fayaz Hussain Sabki, Assistant Prosecutor General Sindh.

Date of hearing: 04.10.2021

Date of decision: 04.10.2021

J U D G M E N T

KHADIM HUSSAIN TUNIO, J.- Through captioned Criminal Acquittal Appeal, the appellant has impugned the judgment dated 26.04.2021 passed by the learned Civil Judge & Judicial Magistrate-Chachro, in Criminal Case No.87 of 2020 (Re: The State v. Arbab & others) emanating from Crime No.18 of 2020, registered at P.S Kheensar, under Sections 147, 148, 149, 337-A(i), 337-F(vi), 114, 506(2), 504, P.P.C whereby respondents / accused were acquitted of the charges while extending them benefit of doubt.

2. It is alleged that on 16.08.2020 at 07:00 a.m. respondents/ accused, duly armed with hatchet, iron rod and lathies, came at place of incident where on the instigation of respondent/accused Arbab caused injuries to complainant on various parts of his body, for which, present F.I.R was registered.

3. After completion of the required formalities, a formal charge was framed against the respondents / accused, wherein they denied prosecution allegations made against them and claimed to be tried.

4. The prosecution, in order to prove the charge against the respondents / accused, examined in all six witnesses, namely Mir Muhammad, mashir Habib, ASI Allah Jurio, complainant Nawab, Dr. Azizullah and ASI Hameer and produced documents in their evidence.

5. Statements of accused were recorded under Section 342 Cr.P.C, in which they denied the allegations made against them by the prosecution. The accused persons neither examined themselves on oath in terms of Section 340(2) Cr.P.C, nor examined any witness in their defence.

6. After hearing the learned for the respective parties, learned trial Court acquitted the respondents/ accused by extending them benefit of doubt; hence, this acquittal appeal.

7. Learned counsel for the appellant vehemently argued that the impugned judgment passed by the learned trial Court is not sustainable in the eyes of law as it suffers from illegalities and irregularities; that the learned trial Court while passing the impugned judgment has failed to appreciate the evidence adduced by the prosecution; that version of complainant is proved by the prosecution witnesses through their evidence and that prosecution witnesses have supported his case; that there is no major contradiction in their evidence; however, the learned trial Court while committing misreading and non-reading of the evidence has passed the impugned judgment; that the learned trial Court has given undue weight to the minor discrepancies in the evidence of the prosecution witnesses. He, therefore, prays that the impugned judgment may be set aside and the respondents may be convicted in accordance with law.

8. Conversely, learned Assistant Prosecutor General, Sindh has supported the impugned judgment.

9. I have heard learned counsel for appellant as well as Assistant Prosecutor General, Sindh and examined the material available on the record.

10. From the perusal of impugned judgment, it transpires that the learned trial Court has recorded the acquittal in favour of the respondents with significant and sound reasoning. It is noted that F.I.R of the incident has been lodged after delay of fifteen days while the P.S is situated at the distance of 22/23 kilometers away from alleged place of incident. ASI Allah Juiro stated that he registered NC report as per

verbatim of injured Nawab but failed to produce the same in his evidence. ASI Hameer admitted that during investigation he did not verify from the concerned revenue department as to who owns the agriculture land bearing B. No. 12 but in column No. 4 of F.I.R it is stated that same land belongs to one Ishaque Samejo which creates doubt in prosecution story. The acquittal of the respondents is as per law and their acquittal cannot be interfered-with by this Court until and unless some cogent, reliable and trustworthy evidence is furnished by the prosecution but unfortunately the prosecution could not come with the same. When an accused is acquitted from the charge by a Court of competent jurisdiction, then it is well established principle of law that double presumption of innocence is attached with the judgment of acquittal, therefore, such judgment cannot be interfered with unless it is proved that same is arbitrary, shockingly capricious, fanciful and against the settled principles of criminal administration of justice. In this respect, reliance is placed on the cases of *Yar Muhammad and 3 others v. The State* (1992 SCMR 96), *State/Government of Sindh through Advocate General, Sindh Karachi v. Sobharo* (1993 SCMR 585), *The State & others v. Abdul Khaliq & others* (PLD 2011 SC 554), *Muhammad Zafar and another v. Rustam Ali and others* (2017 SCMR 1639), and *Zulfiqar Ali v. Imtiaz and others* (2019 SCMR 1315).

11. Moreover, the scope of appeal against acquittal is considerably narrow and limited and criterion laid down for appeal against acquittal is entirely different than the criterion of hearing of appeal against conviction. Different parameters are applied for interference in an appeal against the acquittal and appeal against the conviction. On the examination of the judgment of acquittal as whole, credence should be accorded to the findings of the subordinate Court whereby the accused had been exonerated from the charge of commission of the crime.

12. It is also settled principle of law that whenever there raises some reasonable doubt about the guilt of an accused, the benefit of it is to be extended to the accused as a matter of right and not as a matter of grace or concession as held by the Hon'ble Supreme Court in numerous cases, one being *MUHAMMAD MANSHA v. THE STATE* (2018 SCMR 772), wherein it has been stipulated as under:-

“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted”.

Reference in this respect can also be made upon the cases of *Tarique Parvez v. The State* (1995 SCMR 1345), *Ghulam Qadir and 2 others v. The State* (2008 SCMR 1221), *Mohammad Akram v, The State* 2009 SCMR 230) and *Mohammad Zaman v. The State* (2014 SCMR 749).

13. The sequel of the above discussion is that the prosecution has miserably failed to substantiate the charge against the respondents; hence; this Court by way of short order dated 04.10.2021 dismissed the instant acquittal appeal and these are the reasons for the same.

JUDGE

Muhammad Danish