

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

Cr. Acquittal Appeal No. S — 270 of 2009.

PRESENT

Mr. Justice Naimatullah Phulpoto

Appellant: Sikandar Ali s/o Imam Bux.
Through Mr. Aijaz Shaikh, Advocate.

The State: Through Syed Meeral Shah Bukhari, D.P.G.

Date of Hearing: 20.04.2018.

Date of Judgment: 20.04.2018.

J U D G M E N T

Naimatullah Phulpoto J. Respondents/accused were charged, prosecuted and acquitted by learned Vth Additional Sessions Judge Hyderabad, vide Judgment dated 20.11.2009.

2. Brief facts of the prosecution case are that complainant Sikandar Ali lodged his report on 17.05.2007 at 1940 hours alleging therein that he owns S. No.296 admeasuring 3 acres uncultivated land. On 09.05.2007 complainant along with his brother Khalid Hussain and cousin Ashraf Ali alias Dado were working on the above said land when it was alleged that accused Khuda Dino, Hashim armed with guns, Allahdino having pistol, Allahdad armed with gun and Manthar, Manzoor armed with dandas came there, used abusive language against complainant party and restrained them from irrigating above land. Complainant informed them that said land belongs to him on which Allahdino fired from his gun straightly upon complainant it was missed while Khuda Dino and Hashim made airtel firing whereas Manzoor inflicted danda blows to complainant on his body. Allahdad caused gun butt blows to complainant and his brother Khalid Hussain on different parts of body. Complainant party raised cries on

which so also airt firing villagers attracted and accused went away using filthy language. Complainant then consulted with his relatives and moved an application before Sessions Court, Hyderabad and under the orders of the Court dated 15.05.2007 lodged F.I.R. against the accused persons.

3. F.I.R. was recorded at Police Station Tando Jam vide crime No.67 of 2007 under sections 324, 147, 148, 149, 337-A(i), F(i), H(ii), 504 PPC.

4. After usual investigation challan was submitted against the accused under above referred sections.

5. Trial Court framed the charge against the Respondent/Accused at Ex.03. Accused pleaded not guilty and claimed to be tried.

6. At the trial, prosecution examined 05 prosecution witnesses. Thereafter, prosecution side was closed.

7. Statements of the accused/respondent were recorded under section 342 Cr.P.C. in which accused claimed false implication in this case and denied the prosecution allegations. Accused did not lead any defence and declined to give statement on oath in disproof of prosecution evidence.

8. Trial court after hearing the learned counsel for the parties and assessment of the evidence by Judgment dated 20.11.2009, acquitted the respondents/accused Hence, acquittal appeal was filed.

9. Mr. Aijaz Shaikh, Advocate for Appellant/complainant argued that trial Judge failed to appreciate the evidence in accordance with law and Judgment of acquittal is manifestly perverse on facts.

10. Syed Meeral Shah Bukhari, A.P.G. for the State argued that trial Court has assigned sound reasons while acquitting the accused.

11. After hearing the learned counsel for the parties I have carefully perused the evidence available on the record and the Judgment of acquittal passed by trial Court.

12. It appears that incident had occurred on 09.05.2007 and F.I.R. was lodged on 17.05.2007, as such, there was delay of 08 days in lodging of the F.I.R. for which no plausible explanation has been furnished. There

were two eye witnesses of the incident namely complainant Sikandar Ali and his brother Khalid Hussain. They have deposed that respondent/accused Allahdad directly fired upon them but they saved themselves. Thereafter, respondents/accused Manthar, Manzoor and Allahdino gave beating with sticks to them. After registration of the F.I.R. Investigation Officer visited place of wardat but no empty was collected from place of incident. None received firearm injury in the incident. As regards to the injuries caused with sticks to the complainant party are concerned, there was no medical evidence for corroboration. There was enmity between the parties over land but it was suppressed by the prosecution witnesses at trial. Trial Court rightly extended benefit of doubt to the respondents/accused. At the very outset, I would like to mention that I am deciding an appeal against acquittal. It is well settled law that High Court only interferes in an appeal against acquittal if the view of the learned trial Judge is either manifestly perverse on facts or vitiated in law. If the view taken by trial Judge can reasonable be said to be arrived at, this Court doesn't substitute it with own view as held by Honourable Supreme Court in the case of The State v. Abdul Khaliq & others (PLD 2011 Supreme Court 554).

13. In the result impugned judgment of acquittal requires no interference by this Court and appeal is dismissed.

JUDGE

Arif.