

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Acquittal Appeal No.S-60 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objections.
2. For orders on MA-2185/2022.
3. For hearing of main case.

21.10.2022.

J U D G M E N T.

Muhammad Saleem Jessar, J.- None present for appellant. It appears that instant appeal against acquittal was filed in the office on 07.03.2022. Right from 07.03.2022 to date no one has appeared for getting instant appeal listed before the Court for hearing by filing any application. Such lethargic attitude on the part of appellant and his Counsel shows either the purpose for which instant appeal was filed has been served or the appellant has lost his interest in proceedings; therefore, appellant and his Counsel have chosen to remain absent instead of pursuing it vigilantly.

I have gone through the impugned judgment and find that FIR was registered with delay of about 25 days and the parties are entangled with each other over a landed dispute. The medical evidence as discussed by the trial Court was doubtful. Before parting with the judgment, it will be appropriate to reproduce the relevant portion / paragraphs from the impugned judgment, which reads as under:-

“This is the all material produced by the prosecution to support its version. Evaluating the evidence to the touch stone of the criterion, the evidence of the complainant and his witnesses, both the private witnesses are cousins of complainant. There is no independent eye witness of the case except cousins of complainant. Apart from that the FIR is delayed for about 13 days without any plausible explanation after the issuance of final MLC.

Apart from the above assumptions of this Court, there is no recovery of incriminating material, seizure and non-seizure of the blood stained clothes etc. As per the testimony of the Medical Officer the injured came at hospital on 30.07.2021 but he was not present at hospital. The first aid was provided by his staff on 30.07.2021 as he was absent and had went to Karachi on directions of DHO. This is huge void on the part of examination of injuries at hospital. Moreover, the Medical Officer has mentioned the blood oozing but surprisingly the injuries were examined with lapse of one day and it does not appeal to the prudent mind that how the blood continued to ooze even after one

day which is humanely difficult. Apart from that the word assault or accident is not mentioned in provisional and MLC. Such huge lacuna on the ocular account of Medical Officer has put huge doubt to connect the accused persons with alleged offence.

Moreover, from the evidence of witnesses the dispute over the leased land is apparent. The complainant has categorically admitted in cross examination that the accused persons are in possession of Maqada land and earlier to this Maqada for about 03 years this land was in the possession of the complainant but however he denied that they wanted to retake the land from the accused persons. It is pertinent to mention that the place of occurrence is also the same land where the occurrence had taken place and it is unclear who among the parties were aggressor. However dispute over the land is admitted and falsehood of the story cannot be denied in such circumstances.”

In view of above legal position, it appears that instant appeal against acquittal has wrongly been filed, even the basic ingredients for maintaining appeal against acquittal, as laid down by the Hon’ble Supreme Court of Pakistan in the case of GHULAM SIKANDAR and another v. MUMARAZ KHAN and others (PLD 1985 Supreme Court 11), are also lacking in this case. It is also settled principal of law that after getting acquittal, the accused always earns double presumption of his innocence and Superior Courts have avoided interfering with such acquittal findings. Reliance can be placed upon the case of MUHAMMAD ASGHAR and another v. The STATE (PLD 1994 Supreme Court 301). In the circumstances and in view of above, instant appeal against acquittal merits no consideration and consequently is hereby dismissed alongwith pending application.

JUDGE

Shahid