

**JUDGMENT SHEET**

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

Cr. Acquittal Appeal No.S-257 of 2020

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE(S)</b>
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1. For orders on MA-9629/2020
2. For orders on office objections.
3. For orders on MA-9630/2020
4. For hearing of main case.

03.11.2022.

Mr. Ghulamullah Chang, Advocate for appellant.

**JUDGMENT**

**Muhammad Saleem Jessar, J.-** Learned Counsel for appellant submits that sufficient evidence was adduced before the trial Court; besides the ocular version was also corroborated with the medical evidence; hence, the trial Court did not consider it and has wrongly acquitted the respondents which requires interference by this Court.

2. Mr. Abdul Waheed Bijarani, Assistant P.G is present before the Court in connection with other matters, waives notice of the appeal and after going through the file submits that no case for interference is made out. As far as injuries are concerned, the injured had allegedly sustained no grievous injury or even scratch on his body. Learned A.P.G further referred to Para-14 of the impugned judgment and submits that there were general allegations against all the respondents; hence, no case for interference is made out.

3. I have heard learned Counsel for the appellant as well learned A.P.G and have gone through the impugned judgment. Admittedly, there are many contradictions in the evidence adduced by the prosecution witnesses before the trial Court and the allegations so put forth under the FIR were not proved by the prosecution. Before parting with the judgment, it would be appropriate to reproduce Sub-Paras-V & VI of Para No.11 as well Para No.13 of the impugned judgment available at Pages-39 and 41.

*“11(v) Contents of FIR reveals that allegations for setting SUMBAL Trees on fire thereby causing mischief to complainant has also been leveled against accused persons. As mentioned afore, PW-2 and PW-6 during evidence too claimed that accused persons prior to leaving, set said trees on fire, however, no such*

*fact regarding setting such trees on fire was stated by complainant in his statement before court. Besides that complainant during cross examination deposed that after departure of accused persons they too left for PS within 2 to 3 minutes, which leaves question as to why no efforts were made by complainant or his relatives to extinguish the fire that accused persons allegedly set on crops and Sumbul trees. Memo of site inspection (Exh-6/E) reveals that said trees lies adjacent to the banana fields of accused Feroz Abro and also that besides said trees some banana plants too were found in scalded condition, which raise question as to why accused persons would jeopardize their own property during incident. Furthermore, as discussed afore ownership of said land was never assessed by I.O or prosecution, likewise memo of site inspection too remains silent in elaborating as to whom said trees belonged to, which were allegedly burned on the day of incident.*

*(v) Duration of incident as stated by Pw's also remains contradictory, because complainant during cross examination disclosed that they only stayed at the place of incident for 20 to 30 minutes and after departure of accused they too left within 2 to 3 minutes for PS, which in turn reveals duration of incident in between 22 to 33 minutes, however, Pw-2 in this regard claims duration of incident as 30 to 45 minutes whereas Pw-6 deposed such duration to be 45 to 60 minutes.*

*13 As mentioned afore Dr. Zuhabi Hassan Memonn being Medical Officer who examined complainant, PW-2 and PW-6 on the day of incident had only deposed regarding alleged injured complaining about pain but according to him no any visible sign of injury was seen by him on any part of the alleged injured persons's body. Furthermore, report of Additional Medical Superintendent LUH Hyderabad as produced by M.O at Exh 9/E also reveals that alleged injured including complainant only attended causality ward but neither got admitted in ward nor attended Radiology Department, consequent to which learned M.O could not issue Final MLC's as injuries as alleged could not be substantiated. Such in turn when compared with the testimony of injured also reveals severe contradiction, which cast doubt in respect of alleged injuries. Hence, making it apparent that prosecution could not prove guilt of accused persons in respect of causing injuries on the day of incident."*

4. Having assessed the evidence whatever was brought before the Court was not improved by the prosecution; therefore, does not inspire confidence; hence, no illegality and infirmity has been made by learned trial Court in the impugned judgment while acquitting the respondents, which may warrant interference by this Court. 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 to interfere with such acquittal judgments.

There is no cavil with the legal proposition that an acquittal appeal stands on a different footing than an appeal against conviction. In acquittal appeal, the Superior Courts generally do not interfere with unless they find that miscarriage of justice has taken place. The factum that there can be a contrary view on re-appraisal of the evidence by the Court hearing acquittal appeal simpliciter would not be sufficient to interfere with acquittal judgment. Reliance can be placed upon case of **MUHAMMAD ASGHAR and another v. The STATE (PLD 1994 Supreme Court 301)**.

5. In view of above legal position, it appears that instant appeal has wrongly been filed, even the basic ingredients for initiating appeal against acquittal, as laid down by the Honourable 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. The impugned judgment does not suffer from any illegality or infirmity which may warrant interference by this Court. Accordingly, instant appeal against acquittal is dismissed in *limini* alongwith pending applications.

JUDGE

Shahid