

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

Cr. Acquittal Appeal No.S-98 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For hearing of main case.

Mr. Khalil Ahmed Unar, Advocate for appellant.
Mr. Fayaz Hussain Sabki, Assistant P.G.

Date of hearing 16.05.2022
Date of judgment 16.05.2022

J U D G M E N T

SALAHUDDIN PANHWAR, J,- Through captioned criminal acquittal appeal, appellant / complainant has impugned the judgment dated 17.05..2019 passed by learned Vth Civil Judge & Judicial Magistrate, Hyderabad in Criminal Case No.133 of 2017 (Re: The State v. Muhammad Nasir and others) emanated from Crime No.88 of 2016 registered at P.S B-Section, Hyderabad, under Sections 506(ii), 337-F(v) PPC, whereby respondents / accused namely Nasir Chingari, Muhammad Bux, Nasir Mehmood, Farhan Musharaf, Javed Shah @ Naem Shah, Tahir and Idrees have been acquitted of the charge.

2. The facts relevant to the present case are that on 30.07.2016 when complainant Farhan Ahmed was present in his house, he received a telephonic conversation from one Faisal, who informed him that few persons after breaking locks entered the animals in tomb / dargah of his grandfather. Upon such information, complainant reached there and the persons present there restrained him from entering in tomb / dargah and accused Nasir Chingari pointed out pistol to complainant, whereas accused

Atif, Gulzar Javed Shah, Kala Farhan and Nasir Mehmood caught hold him. Accused Nasir Chingari threatened the complainant to kill him and started beating with sticks / clubs. During scuffle, the accused persons snatched Rs.4500/-, glasses and gold ring from complainant. Hence, complainant appeared at P.S and lodged instant F.I.R.

3. After usual investigation, challan was submitted against the accused before the trial Court where charge was framed and after full dressed trial, the trial Court acquitted the respondents / accused, hence, this acquittal appeal.

4. Heard learned Counsel for appellant / complainant as well A.P.G appearing for the State and perused record. Relevant paragraph in Points No.1 & 2 is reproduced hereunder:-

“Record further reflects that the place of incident is populated area. Shops and poultry form are also constructed near dargah/tomb and 40/50 people were gathered at the time of alleged incident but no any independent witness has been cited to act as mashir. The complainant examined the witnesses who are close relatives, therefore, they seem to be interested one. It is claim of the complainant during the alleged incident the accused persons have snatched Rs. 4500/- but complainant has failed to disclose the denomination of notes. It has also come on record that accused Nasir Chingari has lodged FIR vide crime No.93/2016 against the complainant party same is pending before the learned 1st Civil Judge Hyderabad, therefore, it could be safely said that the parties are already in dispute and matters are pending against them in different courts of law. There is also huge delay in lodging the FIR. Inspector Manzoor Hussain who was the I.O of the case recorded his evidence at Ex. 08. During cross examination he admitted that he did not collect any evidence to connect the accused persons namely Atif,

*Gulraiz and Nasir Mehmood in the commission of alleged offence. Investigation officer further admitted that the complainant has lodged FIR after delay of more than 03 months. Complainant has only produced witnesses who belong to his own family. SIP Mubarak Ali was examined at Ex. 09. He also supported the evidence of PW-05 and further admitted that during investigation he did not collect any evidence regarding involvement of accused Atif, Gulraiz and Nasir Mehmood in the commission of alleged offence. There are also other material contradictions between the statement of the prosecution witnesses. PW-2 Wajeeh Ahmed was examined at Ex. 4. During course of cross-examination he admitted that the instant FIR is not pertaining to the incident dated 30.07.2016 as alleged in FIR. He admitted that FIR was registered by the complainant to recover the possession of dargah. The relevant piece of admission of said witness is **“It is correct to suggest that we had lodged present FIR to recover possession of dargah”**. M.L.O Dr. Itefaque Hussain Qureshi was examined at Ex. 10. In evidence doctor admitted that in final MLC there is no mentioning of abrasion or injury. He also admitted that there is no injuries on face and head of complainant/injured Farhan. The complainant stated that the accused persons caused severe injuries to him but doctor does not support the version of complainant as he has stated at the time of examination of injured no blood was oozing from any part of his body or lacerated wound was available at his body and only swelling was available at his arms. He further admitted that he cannot specifically say whether these injuries as mentioned his final MLC are caused due to accident, assault or falling down.*

5. Perusal of above, I am of the view that no case against the respondents / accused is made out. I.O in his evidence has absolved the accused persons and that the parties are already in dispute of dargah / tomb where alleged offence took place which otherwise after perusal of evidence of the trial Court has not been proved by complainant's own witnesses and

besides prosecution did not associate any private mashir to witness the incident though the place of incident is stated to be populated area. Moreover, the criterion of acquittal appeal is entirely different and appellant / complainant has failed to demonstrate that impugned judgment is shocking, perverse and illegal and such ingredients are absolutely lacking in this case. It is well settled principle of criminal administration of justice that if there is single doubt in prosecution case, the benefit of such doubt must be extended in favour of accused as a matter of right. Interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. The Court of appeal should not interfere simply for the reason that on the reappraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably suffering from serious and material factual infirmities. Said accused have acquired now a triple presumption of innocence which could not be dispelled by the prosecution. Reliance is placed on the case of **The State v. Abdul Khaliq (PLD 2011 SC 554)**.

5. In view of foregoing, instant appeal being devoid of merits is hereby dismissed.

JUDGE

