

**IN THE HIGH COURT OF SINDH,
BENCH AT SUKKUR.**

Criminal Acquittal Appeal No.S-66 of 2024

Date of hearing: 16.10.2024

Date of decision: 16.10.2024

Appellant:- Imam Dino Buriro, through Mr. Rukhsar Ahmed M. Junejo, Advocate

JUDGMENT

ZULFIQAR ALI SANGI, J.- Through this Criminal Acquittal Appeal, the appellant/complainant has assailed the judgment dated 24.04.2024, passed by Assistant Sessions Judge, Rohri, in Sessions Case No.601/2022, outcome of FIR bearing Crime No.28/2022, under Sections 324, 506/2, 114, 337-H(ii), 337-F(iii), 147, 148 and 149 PPC, registered at PS Duber, District Sukkur, whereby the private respondents/accused have been acquitted by extending them benefit of doubt.

2. The brief facts of the case are that on 06-07-2022, complainant Imam Dino Buriro, registered the above FIR in respect of an offence alleged to have taken place on 21.05.2022 at 11.30 am. He has alleged that there was dispute going on over water of lands with accused Muhammad Yakoob and such civil suit was filed and pending between the parties before the Court of 2nd. Senior Civil Judge, Sukkur. On 21.04.2021, the complainant along with his brother Shah Muhammad, nephews Muhammad Aslam, Muhammad Hassan and Ali Hassan was standing at the watercourse after blocking water, it was 11:30 am, there came accused Muhammad Yakoob, Muhammad Rajab and Gul Muhammad having guns, Yaseen with hatchet, Dabo alias Hussain Bux, Sadam, Muhammad Yakoob, Shoukat and Zameer with sticks. On the instigation of accused Muhammad Yakoob, all the accused having sticks caused stick blows to PW Muhammad Aslam and Muhammad Hassan, while accused Yaseen also caused backside hatchet blows and accused Muhammad Rajab and Gul Muhammad made straight gunshots upon complainant with intention to kill, which hit on his whole body, he fell down and started raising cries. Thereafter, PWs Shah Muhammad and Ali Hassan entreated the accused in the name of Almighty Allah and Holy Prophet, hence the accused persons escaped away while making aerial

firing. Thereafter, the injured were shifted to hospital and after getting treatment and obtaining medical certificates the complainant went to police station and lodged the FIR.

3. After full-fledged trial and hearing the parties, learned trial Court acquitted the private respondents vide impugned judgment dated 24.04.2024, hence, this criminal acquittal appeal.

4. Heard learned counsel for the appellant and perused the impugned judgment as well as the depositions available on record.

5. Perusal of the impugned judgment reflects that the learned trial court has mainly acquitted the private respondents on the reasoning mentioned in Point No.1 of the impugned judgment which is reproduced as under:-

12. Perusal of record reveals that complainant stated in FIR and deposed in his examination-in-chief that accused Zameer, Shoukat, Saddam and Dabo caused sticks blow to Muhammad Hassan and Muhammad Aslam and accused Yaseen caused back side hatchet blows to Muhammad Hassan and Muhammad Aslam, however, PW Muhammad Aslam did not support the version of complainant that accused Zameer, Shoukat Saddam and Dabo caused sticks blow to him; rather he did not depose that accused persons caused sticks blow to him but deposed that accused persons started to beat him. Admittedly, he did not support the version of complainant that accused persons caused sticks (lathies) blow to him however he supported the version of complainant to the extent that accused Yaseen caused back side hatchet blows to him; while M.O/Dr. Muhammad Waseem examined him but he did not declare any injury of hard and blunt substance; rather he declared the injuries of PW Muhammad Aslam as a firearm injury. Per FIR PW-Muhammad Aslam did not sustain firearm injury by the hands of any accused person. Moreover, PW-Muhammad Hassan has deposed the same facts as described by the complainant that accused armed with sticks (lathies) caused sticks (lathies) blow to him and his cousin Muhammad Aslam and accused Yaseen caused back side of hatchet blows to him and his cousin Aslam. However, M.O/Dr. Muhammad Waseem thoroughly examined him but he did not declare even single injury which was caused to him by hard and blunt substance; rather he declared that PW Muhammad Hassan sustained firearm injuries. Per FIR PW-Muhammad Aslam did not sustain firearm injuries by the hands of any accused person. Moreover, complainant deposed that accused Gul Muhammad and Rajib made straight fires with their guns upon him with intention to commit his murder. However, PW Muhammad Aslam did not support the allegation of firing with gun by accused Gul Muhammad upon complainant. Furthermore, complainant and PWs did not disclose in FIR and statements u/s 161 Cr.P.C the seat and number of injuries on the body complainant but memo of injuries revealed that complainant sustained eight injuries and M.O/Dr. Muhammad Waseem has also deposed and disclosed in his provisional and final medical certificates that complainant sustained eight injuries. It is a matter of record that complainant sustained firearm injuries but there is no foreign body injury as per provisional medical certificate and all were wounds of entries and

there is no wound of exit even no X-ray report as well as Radiologist opinion has been brought on record that complainant Imam Dino had any foreign injury and even no pellets were taken out from his body, even otherwise M.O/Dr. Waseem produced the police letter at Exh.9-G dated 21.04.2022, which reveals that complainant sustained only two injuries, one on his right side of neck in swelling condition and other one on his right hand of little finger in swelling condition and even these both injuries were not mentioned as firearm injuries. Perusal of said police letter further reveals that Muhammad Hassan sustained one injury on his left shoulder in swelling condition and one injury on his right thigh in swelling condition, however, memo of injuries reveals that PW Muhammad Hassan sustained one injury on left shoulder in swelling condition and another injury on right thumb and bleeding occurs. Furthermore, all the injured persons were examined by M.O on 21.04.2022 while the memo of injuries was prepared by I.O on 21.04.2023 after delay of about one year from the date of their medical examination. ASI Barkat Ali the author of FIR admitted in cross-examination that the writing of FIR, memo of place of incident and statements recorded u/s 161 Cr.P.C of PWs is same. PW-Shad Muhammad is one of the mashir of place of incident and memo of injuries. It is a matter of record that he has not supported the memo of injuries regarding its preparation in his presence as well as inspection of the injuries by I.O in his presence; therefore, it appears that his signature was managed on the memo of injuries. It is a matter of record that no empty shell was collected by I.O from the place of incident at the time of its visit. It is a matter of record that nothing was recovered from the possession of accused persons. Albeit; the above discussion, enmity in between the parties is admitted on the issue of water rotation as well as matrimonial, therefore, possibility of false implication of accused cannot be ruled out. Incident has shown taken place on 21.04.2022 but the instant FIR was lodged on 06.07.2022, even final medical certificate per FIR was issued on 12.05.2022 despite of that instant FIR was lodged with delay of about two months from the date of issuance of final medical certificate and about 2 ½ months from the date of incident but prosecution failed to offer any explanation in this regard. Not only this complainant has falsely disclosed in FIR that final medical certificate No.254 was issued on 12.05.2022 but perusal of final medical certificate produced by the M.O at Exh.9-B, which reveals that it was issued on 22.04.2022. Since, there is inordinate delay in lodgment of FIR without proper explanation.

6. It is well settled by now that the scope of appeal against acquittal is very narrow and there is a double presumption of innocence and that the Courts generally do not interfere with the same unless they find the reasoning in the impugned judgment to be perverse, arbitrary, foolish, artificial, speculative and ridiculous as was held by the Honourable Supreme Court in the case of State Versus Abdul Khaliq and others (PLD 2011 SC 554), wherein the Hon'ble Supreme Court has held as under:-

“From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced that the scope of interference in appeal against acquittal is most narrow and limited because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in

*other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. It has been categorically held in a plethora of judgments that 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. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the re-appraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities. It is averred in *The State v. Muhammad Sharif* (1995 SCMR 635) and *Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others* (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals.”*

7. The sequel of above discussion is that the learned trial Court has committed no illegality or irregularity while recording acquittal of the private respondents/accused by way of impugned judgment, which even otherwise does not call for any interference by this Court by way of instant Criminal Acquittal Appeal, the same fails and is dismissed accordingly together with listed application.

J U D G E

ARBROHI