

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

Criminal Acquittal Appeal No.S-65 of 2024

Date of hearing: 16.10.2024

Date of decision: 16.10.2024

Appellant:- Lakhmir Khan, through Mr. J.K Jarwar, Advocate

JUDGMENT

ZULFIQAR ALI SANGI, J.- Through this Criminal Acquittal Appeal, the appellant/complainant has assailed the judgment dated 16.04.2024, passed by 2nd. Additional Sessions Judge, Khairpur, in Sessions Case No.532/2017, outcome of FIR bearing Crime No.42/2017, under Sections 324, 337-A(i), 337-F(i), 147, 148 and 149 PPC, registered at PS Kumb, District Khairpur, whereby the private respondents/accused have been acquitted by extending them benefit of doubt.

2. The brief facts of the case are that on 14-04-2017, complainant Lakhmir Bughti, registered the above FIR in respect of an offence alleged to have taken place on 13.04.2017 at 9.00 pm. He has alleged that he owns agricultural land in Deh Qaim Gopang, Taluka Kotdiji, whereas, accused Muhammad Essa Bughti also claiming the said land being entered in the name of his grand-father Late Ghulam Nabi Bughti. On 13.04.2017, after harvesting the wheat crop was collected and it was to be to be thrashed, therefore, the complainant along with his brother Hassan and nephew Gul Baig were standing there. It was 9:00 pm, they saw a tractor trolley on which accused Muhammad Essa with pistol, Dil Murad with lathi, Muhammad Moosa with gun, Ihsan with lathi were coming and they asked the complainant that it is their land and you may leave the heap of wheat crop, to whom complainant replied that it is his land, which annoyed accused Muhammad Essa, who with intention of murder fired from his pistol which hit complainant on his left hand went through and through, blood was oozing while accused Rehan and Ihsan caused lathi blows to PW Gul Baig on his left arm, temporal region and other parts of body and they raised cries, which attracted Muhammad Ismail and others who came running there, hence on seeing them coming, all the accused persons went away. Thereafter, the complainant and injured went to police

station obtained letter for treatment and on the next day he appeared at 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 16.04.2024, 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 Para-9 of the impugned judgment which is reproduced as under:-

9. According to prosecution case complainant namely Lakhmir Bugti, PWs Muhammad Saleh and Gul Baig are eye witnesses who have been examined by the prosecution. According to prosecution complainant Lakhmir and PW Gul Baig are injured persons of this case, although they have supported the case of prosecution but there appears material contradictions, infirmities in the evidence of prosecution witnesses which affect the case of prosecution as highly doubtful. It is admitted in the FIR that due to dispute over landed property one Shah Baig relative of complainant had filed Constitution Petition before Hon'ble High Court of Sindh Bench at Sukkur. As per FIR incident shown to have taken place on 13.04.2017 whereas FIR of this case has been lodge by complainant Lakhmir Bugti at PS Kumb with delay of one day on 14.4.2017 and the reason for non-lodging of FIR disclosed that they obtained letter for treatment and thereafter, lodged FIR against accused but it is amazing when the complainant and injured came at PS Kumb on the very day of incident but as to why they did not lodge FIR promptly against accused in order to show the genuineness of the case of prosecution nor any such Roznamcha entry was made by the police/duty officer showing that complainant had disclosed him the names of present accused who said to have committed the offence as alleged in the FIR. Moreover, the complainant in his evidence as well as in the FIR stated that accused Muhammad Essa fired from pistol directly upon complainant which hit him on his left arm and then he was referred to Taluka Hospital Kotdiji where he obtained treatment and certificate. Record shows that accused party had challenged the said MLC of injured complainant namely Lakhmir before Medical Board, who called the complainant Lakhmir in person and examined him before the Board, thereafter, Medical Board vide their report bearing No.MS/GMCH/SUKKUR/(SMB) 2362 dated 22.07.2017 reported that findings of Medical Officer RHC Kotdiji in respect of fire arm injury on the person of complainant Lakhmir are incorrect and further opined that alleged injury on the person of complainant Lakhmir was caused with hard and blunt substances. Thus there appears conflict in the ocular and medical account which also creates serious doubt in relation to the genuineness of the case of

prosecution. Moreover, complainant in his entire evidence has stated he was sleeping at the Derra of Wheat where accused caused him fire arm injuries and on his cries PWs Muhammad Saleh and Mir Hassan came then accused went away. While PW Gul Baig in his evidence has stated that he was sleeping at Derra with complainant. Complainant stated that accused Muhammad Essa, Muhammad Moosa and others came at site, while PW Gul Baig has taken names of Muhammad Essa, Muhammad Moosa, Alam Khan, Rehan, Dilmurad Muhammad Hahsim and Ihsna. Complainant has not stated if accused Ihsan and Rehan caused lathis to Gul Baig while Gul bag Baig disclosed that both accused caused him lathi blows. The complainant nowhere stated if injured Gul Baig was with him and he was caused lathi blows by the accused. Complainant has admitted that the land where he was sleeping at Derra was owned by his ancestral Ghulam Nabi but he does not know if the said land was purchased by Ghulam Nabi or not, it means that there is dispute over landed property between parties. He also admitted that one Mst.Sai mother o accused is daughter of Ghulam Nabi is shareholder in the said land. The complainant further admitted at the time of incident it was night time and no source of light was there to identify the accused and when police came at site he was available in his house. And he cannot tell that how much time police remained at place of incident. Complainant Stated both witness Gul Baig and Shah Baig are his nephews whereas houses of other persons are surrounded by the place of incident but none of them was shown as witness in this case nor any person from the locality was examined by the IO of this case, nor any property/evidence was collected by the lo from the spot in support of the version of complainant and witnesses. Witness Gul Baig in his evidence stated that thresher was being run at the site and driver of the said thresher was there but was not shown as witness in this case by the complainant to support the version of complainant. PW Muhammad Saleh Bugti has been examined by prosecution he is witness who attracted on cries, who stated that his h house is situated at the distance of 1000/1500 feet away from the place of incident but he has not stated that how he heard cries at such long distance from place of incident. This witness also admitted that share of Mst.Sabi is in the lands of complainant. Although this witness stated that as soon as he heard cries and fire report then he rushed there but in examination in chief stated that he saw accused Muhammad Essa causing fire arm injury to complainant Lakhmir on his hand fingers, this piece of evidence of witness Muhammad Saleh shows that he is setup witness and deposed at the behest of complainant being close relative of complainant. Moreover Inspector Nasrullah Lashari IO of this case conducted investigation visited place of incident and stated in cross examination that both mashirs were with complainant at the time of departure from PS for site inspection while complainant stated that he was in his house when police came at site. PW HC nia Hussain examined by the prosecution who in his evidence stated that he was duty officer at PS on 13.4.2017 when complainant appeared before me along with Gul Baig in injured conditions where he prepared memo of noting injuries of injured in presence of mashirs and referred them for examination treatment and certificate but in cross he stated that no blood was oozing from the injuries of Gul Baig but this witness has filed to produce

any such Roznamcha entry of the arrival of complainant and injured at PS. But there is nothing in the evidence of this witness if the complainant party had disclosed before him that present accused had committed the offence of causing fire arm injury to complainant and lathi injuries to injured Gul Baig. The case of prosecution also suffers from several other discrepancies which affect the prosecution story as highly doubtful reason being that this case has been lodged by the complainant over the dispute on landed property.

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. For what has been discussed above 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