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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.
Crl. Acqtl. Appeal No.S-79 of 2016

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
04.11.2016.	

Mr. Jameel Ahmed Korai, advocate for the appellant.

This Criminal Acquittal Appeal under Section 417(2-A), Cr.P.C is directed against the judgment dated 29.9.2016 passed in Criminal Case No.173/2015, arising out of Crime No.52/2014, registered at Police Station Jaagan at Hamayoon, District Shikarpur, under Sections 337-A(ii), 504, 34, PPC, whereby the learned 5th Civil Judge & Judicial Magistrate, Shikarpur acquitted the respondents No.1 and 2/accused under Section 245(1), Cr.P.C.

Briefly stated, facts of the case are that on 05.12.2014, appellant/complainant Abdul Haleem Channo lodged the aforementioned F.I.R, alleging therein that on 25.11.2014 the respondents/accused alongwith one unidentified person inflicted lathi blows to his son Jameel Ahmed, so also co-accused Irshad forcibly put thin iron rod into the left ear of his son with intention to make him deaf and in result thereof his son lost hearing capacity of left ear.

After recording evidence of prosecution witnesses and statement of accused, the learned trial Court acquitted the respondents/accused holding that the prosecution has not been able to prove the guilt of the accused beyond shadow of reasonable doubt, while mainly observing that the Medicolegal Certificate, issued by the MLO, was found by the Special Medical Board as incorrect.

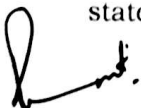
Learned Counsel for the appellant/complainant submits that the learned trial Court has misread the evidence on record, especially the report of Special Medical Board, as it has declared the Medicolegal

Certificate as "incorrect", though the same was not declared as "false" and, while recording acquittal order, the learned trial Court did not consider the ocular testimony of the appellant/ complainant so also injured Jameel Ahmed and other eyewitnesses and since sufficient evidence is available on record to connect the respondents/accused with the offence charged with, they should have been convicted by the learned trial Court.

Heard learned Counsel for the appellant and perused the material available on record.

It appears that entire case of prosecution rests upon the medical evidence. As per MLO Dr. Agha Fareed, on 25.11.2014 injured Jameel Ahmed was examined by him, he diagnosed a traumatic/puncture wound, injury of 0.01 x 0.01 cm at the internal part of left ear inside. Voice test of the injured was also conducted but he was not responding properly. Upon the Medicolegal Certificate of MLO, the Special Medical Board of eight Specialist Doctors, including Dr. Atta Mohammad Siddiqui, ENT Specialist, was constituted by Director General, Health Services, Sindh and they recommended that the deafness of the injured was not caused due to any injury. As such, the certificate issued by Dr. Agha Fareed was declared by the said Special Medical Board as "incorrect".

The contention of learned Counsel for the appellant was that since the Board has not declared the Medicolegal Certificate issued by Dr. Agha Fareed as "false" but "incorrect", it should have been taken into consideration by the learned trial Court. I am afraid, the contention of learned Counsel for the appellant is devoid of any force. The term "incorrect" literally means "not correct or true". In other words, the statement which is incorrect is false. Apart from declaring the



Medicolegal Certificate as "incorrect", the Medical Board has categorically observed that no scar was present on left external ear; no any scar was seen in external auditory canal of left ear; the tympanic membrane was intact with all its cardinal signs in left ear; as such, the findings present on the left ear were suggesting that moderate deafness detected by bera test is not due to trauma. Such finding of the Special Medical Board is sufficient to hold the Medicolegal Certificate as "incorrect". Besides, the learned trial Court has recorded certain discrepancies in the evidence of prosecution witnesses, which also make the prosecution case against the respondents/accused doubtful.

It goes without saying that the standards to appraise evidence in appeal against acquittal are quite different from those laid down for an appeal against conviction. An accused in an appeal against acquittal has double presumption in his favour and he must be presumed to be innocent until prosecution proves its case beyond all reasonable doubts. When rights of liberty have once been granted to an accused by the trial Court on sound judicial principles of appreciation of evidence and after observing and delivering cogent explanations in accordance with judicial conscience, especially with regard to his acquittal, the judgment cannot be set aside, merely to satisfy itching passion of the appellant/complainant.

For the foregoing facts and detailed reasons, instant Criminal Acquittal Appeal being without merit was dismissed by me in *limine* by short order passed on even date.


JUDGE