

Form No.HCJD/C-121

ORDER SHEET

**IN THE LAHORE HIGH COURT LAHORE.
JUDICIAL DEPARTMENT**

Case No. CRIMINAL APPEAL NO.857/2010.
MUHAMMAD ZAFAR ULLAH VS. MATLOOB HUSSIN, ETC.

10.12.2010 Ch. Jamil Ahmad Sindhu, Advocate.

At the very outset, it may be noted that office has numbered and listed out this matter as a criminal appeal, whereas, the complainant has assailed the judgment of acquittal passed in a private complaint under section 506 PPC and Section 417(2) Cr.P.C. provides a specific procedure that in such an eventuality a Petition seeking Special Leave to Appeal had to be filed by the complainant. I have gone through the file and observed that on the Index as well as on the memo of parties the learned counsel had rightly mentioned it as PSLA but for unknown reasons the office cut the words PSLA and wrote it as Criminal Appeal, which does not appear to be correct approach. Therefore, the office is directed to remain careful in future and this court would proceed to decide this matter as PSLA.

2. Briefly the facts are that complainant filed a private complaint against the private respondents before the Judicial Magistrate

Section 30, Model town, Lahore, precisely with the allegation that he (the complainant) along with Abdul Qadus and Ghulam Mustafa witnesses was present on his workshop when private respondents extended him threats, slapped him and attempted to get him lodged in the car by dragging, but he was rescued by the witnesses. The motive is said to be that complainant was pursuing his applications against the private respondents with regard to Awaisia Colony. After recording of cursory evidence the accused/respondents were summoned and during trial Muhammad Zafar Ullah complainant himself appeared as PW-1, produced Hafiz Abdul Qadus PW-2 and Ghulam Mustafa PW-3. On conclusion of the trial, the accused/ respondents have been acquitted of the charges against them vide impugned judgment dated 23.02.2010 handed down by learned Judicial Magistrate Seciton-30, Model Town, Lahore.

3. It is argued by learned counsel that the complainant had fully proved its case by producing Hafiz Abdul Qadus PW-2 and Ghulam Mustafa PW-3, apart from appearing himself as PW-1, but the learned trial court acquitted the accused persons on flimsy grounds and discarded statements of the witnesses, despite the fact that mere relationship of witnesses is no ground to disbelieve their statements and contradiction with regard to day of happening of occurrence was a minor discrepancy as statements of the

witnesses were recorded after two years of occurrence. Further, contends complainant's case also could not be brushed aside merely on the ground that witnesses of the locality did not appear in the witness box. As such, the learned counsel prayed that by allowing this petition, it may be converted in to appeal and respondents be summoned.

4. I have heard the arguments and perused the impugned judgment.

5. It is an admitted fact that parties are already at daggers drawn, as the matter agitated by the complainant was under consideration before the Registrar Co-operative Housing Society. The place of occurrence, according to the complainant's own version, is a market where also the workshop of the complainant is situated, but not a single witness from the locality was produced to support the complainant's version.

6. PW-2 and 3 were produced by the complainant who admittedly are chance witnesses and they have not given any reasonable justification which would appeal to a prudent mind, about their presence at the place of occurrence at the relevant time, which fact by itself is sufficient to create doubt. Furthermore, PW-2 and PW. 3 while attempting to justify their presence at the place and time of occurrence stated that it was "SUNDAY" and they being in good terms with the complainant had come to him to

spend time, but the learned trial court took notice of the fact that on the date of occurrence i.e. 01.07.2007 it was not "SUNDAY", rather it was "SATURDAY", so there was no other justifiable reason for the witnesses to have accompanied the complainant on a working day. Perhaps they told the occurrence day as "SUNDAY" because it is holiday; otherwise, they had to explain whether they were on leave or on duty on their respective jobs. This is not a minor contradiction, rather by showing the day as "SUNDAY" i.e. holiday, the witnesses had tried to establish and justify their presence at the place of occurrence, even otherwise, naturally the witnesses always or at least for years remember the day when some untoward incident occurs in their sight. But, here in this case it is not believable that witnesses would forget the day of occurrence just after two years.

7. Further according to the complainant himself the accused were armed with sophisticated weapons and Matloob Hussain also directed his sons Tahir Matloob and Umar Matloob to teach a lesson to the complainant, but neither any aerial firing was made by either of the respondent, nor any injury was caused to the complainant and these circumstances were more than sufficient to create doubt about veracity of the complainant's case and benefit was bound to have been extended to the accused, and

conviction could not be recorded on mere hypothesis. The superior courts have been found to be reluctant in interfering with the orders of acquittal primarily for the reason that after acquittal an accused earns a double presumption of innocence which only can be rebutted if the order of the fact on it appears to be perverse, arbitrary and illegal. It is settled principle of law that there is a marked difference between appraisal of evidence in an appeal against conviction and in an appeal against acquittal. In the appeal against conviction appraisal of evidence is done strictly and in appeal against acquittal the same rigid method of appraisal is not to be adopted as there is already finding of acquittal given by the learned trial court after proper analysis of the evidence. In appeal against acquittal interference is made only when it appears that there has been some grave misreading of evidence which amounts to miscarriage of justice and until and unless it is demonstrated with certainty that none of the ground of acquittal is supportable, superior court will not interfere only because a different view was possible. The fact that there can be a contrary view on reappraisal of evidence by the court hearing the appeal, simpliciter is not sufficient to justify interference in the acquittal order. Having gone through the impugned judgment, I find no illegality, irregularity, perversity, misreading or non-reading of evidence

therein. This appeal, therefore, is dismissed in
limine.

(MUHAMMAD QASIM KHAN)
JUDGE.

APPROVED FOR REPORTING.

JUDGE.

Javed*