

IN THE HIGH COURT OF SINDH CIRCUIT COURT AT HYDERABAD

Criminal Acquittal Appeal No.D-32 of 2021

Present:
Mr. Justice Khadim Hussain Tunio
Mr. Justice Jan Ali Junejo

Appellant : Muhammad Ramzan son of Imam Bux
Chandio, through Muzammil Khan
Bhugio, Advocate holds brief for
Mr. Imtiaz Ali Channa, Advocate

The State : Through Mr. Shahwak RAthore,
Deputy Prosecutor General, Sindh

Date of Hearing : 03.09.2025

Date of Judgment : 03.09.2025

J U D G M E N T

Jan Ali Junejo, J.- This Criminal Acquittal Appeal, filed under Section 417(2)(a) of the Code of Criminal Procedure, 1898 (“Cr.P.C”), is directed against the judgment dated 26.04.2021 (hereinafter referred to as the “***Impugned Judgment***”) passed by the learned Judge, Anti-Terrorism Court, Naushahro Feroze (“**the Trial Court**”) in Special Case No. 51/2020, whereby Respondent No. 2, Abdul Ghaffar (“**the Accused**”), was acquitted of the charges under Sections 324, 337-H(2), 34 of the Pakistan Penal Code, 1860 (“PPC”) read with Section 7 of the Anti-Terrorism Act, 1997 (“ATA”) by giving him the benefit of doubt under Section 265-H(1) Cr.P.C.

2. The case of the prosecution, as emanating from FIR No. 15/2016 registered at Police Station Rukkan, is that on 07.02.2016, at about 7:00 a.m., the complainant/appellant, Muhammad Ramzan, along with his father Imam Bux (the injured), his brother Rustam, and his uncle Ali Nawaz, were going to a hotel in Shahi Bazar, Paat Sharif. Thereupon, the Accused, Abdul Ghaffar, armed with a .222 rifle, along with other co-accused persons (Manzoor, Asghar, Yameen, and two unidentified individuals), allegedly confronted them. The Accused admonished the injured, Imam Bux—who was a private foot tracker—for tracking their footprints and stated they would not spare him. It is alleged that the Accused Abdul Ghaffar fired from his rifle and co-accused Manzoor fired from his Kalashnikov (KK) at Imam Bux, resulting in multiple firearm injuries to his right leg. The accused party then fled after firing in the air.

The injured was taken to a police post and subsequently to Civil Hospital, Dadu, from where he was referred to Hyderabad. The FIR was formally lodged the next day, on 08.02.2016. The Accused was shown as an absconder in the initial charge-sheet and was arrested later on 07.12.2020, following which a supplementary charge-sheet was submitted.

3. Before the commencement of trial, copies of the relevant documents and statements were duly supplied to the accused persons. A formal charge was then framed against them, to which they did not plead guilty and instead claimed trial through their respective pleas. To substantiate its case, the prosecution examined the following witnesses_

1. PW-1: SIP Mazhar Ali (Exhibit 23): SIP Mazhar Ali was posted as ASI at Police Station Rukkan at the time of the incident. His testimony, recorded as Exhibit 23, was foundational to the prosecution's case. He stated that the complainant, Muhammad Ramzan, appeared before him at the police station and narrated the facts of a cognizable offence. Based on this narration, SIP Mazhar Ali formally registered the First Information Report (FIR) verbatim as Crime No. 15/2016. His role was crucial as the author of the FIR, setting the official narrative of the prosecution's case into motion.

2. PW-2: Inspector Bashir Ahmed Ujjan (Exhibit 24): Inspector Bashir Ahmed Ujjan was the Investigating Officer (I.O.) of the case. His testimony is recorded in Exhibit 24. He deposed that after taking over the investigation, he undertook several key steps: he visited and inspected the place of occurrence, verified the *mashinama* (recovery memo) of the place of incident which had been prepared by ASI Mazhar Pitafi, and recorded the statements of the prosecution witnesses. A significant part of his investigation involved collecting the criminal record of the present accused, Abdul Ghaffar. Upon completing his investigation, he submitted the final charge-sheet (challan) before the trial court.

3. PW-3: Muhammad Ramzan Chandio (Exhibit 23): Muhammad Ramzan Chandio, the complainant a key eyewitness. His statement provided the ocular account of the incident. He deposed the facts as per the FIR, stating that on the day of the incident, he was with his father Imam Bux (the injured), his brother Rustam, and his uncle Ali Nawaz. He specifically testified that when they reached the hotel, the accused party, led by Abdul Ghaffar armed with a .222 rifle, confronted them. He alleged that Abdul Ghaffar openly threatened his father about tracking footprints and then, along with co-accused Manzoor, opened fire, resulting in injuries to his father.

4. PW-4: ASI Abdul Majeed (Exhibit 26): ASI Abdul Majeed was the arresting officer. His testimony is Exhibit 26. He stated that on December 7, 2020, he formally arrested the accused, Abdul Ghaffar Chandio. Importantly, the arrest was made at the District Jail in Badin, as the accused was already incarcerated there in connection with another case. To corroborate his testimony, he produced the **Memorandum of Arrest of accused Abdul Ghaffar Chandio, which was exhibited as Exhibit 26/A.**

5. PW-5: HC Muhammad Chuttal (Exhibit 27): HC Muhammad Chuttal testified as Exhibit 27. His role was that of a *mashir*, or witness, to the formal arrest of the accused. His testimony was brief, serving to confirm that the arrest of Abdul Ghaffar by PW-4 was conducted in accordance with procedural requirements.

6. PW-6: Imam Bux (Exhibit 28): Imam Bux was the injured victim and a crucial eyewitness. His testimony is recorded as Exhibit 28. He fully corroborated the

account given by his son, the complainant (PW-3). He confirmed the sequence of events, the exchange of words, and the fact that he sustained multiple firearm injuries on his right leg as a result of the firing by Abdul Ghaffar and his accomplices. As the victim, his testimony was central to establishing the assault.

7. PW-7: Rustam Ali (Exhibit 29): Rustam Ali, another son of the injured Imam Bux and brother of the complainant, was the third eyewitness from the family. His statement, Exhibit 29, was consistent with the accounts of PW-3 and PW-6. He deposed the same facts regarding the presence of the accused party, the threat made, and the firing incident that injured his father, thereby providing further corroboration to the prosecution's story.

8. PW-8: PC Sikander Ali (Exhibit 32): PC Sikander Ali's testimony, Exhibit 32, was related to documentary evidence. He stated that he was familiar with the handwriting and signature of HC Kaleemullah, who was posted at the Police Post Paat. He verified that the handwriting and signature on the *mashirnama* of injuries (prepared by HC Kaleemullah) were genuine. He produced an attested photo state copy of **Entry No. 11**, which was exhibited as **Exhibit 32/A**.

9. PW-9: Dr. Vijay Parkash (Exhibit 33): Dr. Vijay Parkash, the Medical Officer, provided the most objective and critical evidence. His testimony is Exhibit 33. He stated that on February 7, 2016, at 7:45 a.m., he examined Imam Bux at Civil Hospital, Dadu. He found four specific firearm injuries on the anterior and lateral aspects of the victim's right lower leg. He provided first aid and referred the patient to Hyderabad. He issued a provisional medical certificate and later a final certificate after receiving reports, declaring the injuries as grievous but not dangerous. He produced three key documents: the **attested photo state copy of the provisional MLC (Exhibit 33/A)**, the **police letter requesting the examination (Exhibit 33/B)**, and the **final MLC (Exhibit 33/C)**. During cross-examination, he noted that the history given was "robbery," which was a point of contention for the defense.

10. PW-10: Karim Dad (Exhibit 34) and Exhibits 34/A, 34/B: Karim Dad was introduced as a *mashir* (witness) to the recovery memos. His testimony is Exhibit 34. He was supposed to attest to the *mashirnama of injuries (Exhibit 34/A)* and the *mashirnama of the place of occurrence (Exhibit 34/B)*. However, during his testimony, he failed to support the prosecution's case regarding these documents. As a result, the learned Assistant Prosecutor General (APG) for the state declared him **hostile**, significantly weakening the prosecution's documentary evidence chain.

4. Following the closure of the prosecution's evidence, the learned trial court proceeded to record the statement of the accused, Abdul Ghaffar, under the mandatory provision of Section 342 of the Code of Criminal Procedure, 1898. This statement was recorded and exhibited as Exhibit 36. The purpose of a Section 342 statement is to bring all the incriminating evidence and circumstances presented by the prosecution to the notice of the accused and to provide him with an opportunity to explain them. In his statement, the accused categorically denied all allegations leveled against him. He maintained his innocence, offered no explanation for the evidence, and simply prayed for justice. Subsequent to this recording, the accused was faced with a critical strategic choice as outlined in Section 340(2), Cr.P.C. In the present case, the accused opted not to examine himself on oath under Section 340(2), Cr.P.C. Furthermore, he also chose not to produce any witness in his defense. The Trial Court,

after recording evidence and hearing arguments, framed two primary points for determination. On Point No. 1, “Whether Imam Bux Chandio received firearm injuries?”, the court answered in the affirmative, relying on the unimpeached testimony of the Medical Officer (PW-9) and the medical evidence (Ex. 33/A to 33/C). On the crucial Point No. 2, “Whether the Accused, along with others, committed the offence...?”, the Trial Court found the prosecution’s story to be “doubtful”. Consequently, on Point No. 3, the Accused was acquitted vide Impugned Judgment.

5. The learned counsel for the appellant contended that the impugned judgment was a result of misreading and non-reading of the evidence, arguing that the testimonies of the complainant (PW-3), the injured victim (PW-6), and another eyewitness (PW-7) were consistent, credible, and remained unshaken during lengthy cross-examination, thereby conclusively proving the prosecution's case. He emphasized that the medical evidence (PW-9) unequivocally supported the ocular account of the incident, and since the accused chose not to rebut this strong evidence by neither entering the witness box under Section 340(2), Cr.P.C. nor producing any defense evidence, the prosecution's version stood unchallenged and ought to have been believed. He further argued that the acquittal of the co-accused by the High Court was irrelevant to the present case, as the trial court was obligated to conduct an independent assessment of the evidence against this particular accused, and its failure to do so, coupled with not providing cogent reasons for discarding reliable eyewitness testimony, resulted in a gross miscarriage of justice that required the appeal to be allowed and the acquittal set aside.

6. The learned Deputy Prosecutor General, while supporting the appeal, was constrained by the record and the principle of stare decisis, and thus advanced arguments that ultimately fortified the trial court's decision. He conceded, either explicitly or implicitly, that the findings of the trial court were legally sound, highlighting that the prior judgment of the High Court acquitting the co-accused on the identical set of evidence and witnesses was binding on the trial court, creating an insurmountable legal barrier to a conviction in this case. He underscored the fatal infirmities in the prosecution’s case—such as the unexplained one-day delay in lodging the FIR, the failure to examine any independent witness from a busy bazaar, and the testimony of a hostile *mashir* (PW-10), which collectively created a reasonable doubt that rightly entitled the accused to the benefit of doubt. He concluded that the view taken by the trial court was a plausible and legal one based on the evidence, and that the appellate court should not interfere with an acquittal unless the findings were

perverse, which they were not, thereby necessitating the dismissal of the appeal.

7. We have carefully considered the arguments advanced by the learned counsel for the Appellant as well as those of the learned Deputy Prosecutor General Sindh, and have minutely examined the material available on record with utmost circumspection. The perusal of the record reveals that the learned Trial Judge placed considerable reliance upon the judgment dated 09.12.2020, rendered by a Division Bench of this Court (Circuit Court, Hyderabad), whereby the co-accused, namely Manzoor Ali and Yameen, were acquitted in the very same case. The Trial Court observed that the role attributed to the present Appellant was identical in nature to that of the acquitted co-accused and that the prosecution had rested its case upon the same set of witnesses against all the accused persons. Consequently, it was held that the earlier judgment of this Court was binding upon the Trial Court, and once the prosecution evidence had been disbelieved in respect of the co-accused, the same could not be relied upon for the purpose of convicting the present Appellant. The Trial Court, while recording its findings, implicitly endorsed the reasoning of the Division Bench of this Court while acquitting the co-accused. It was noted that the First Information Report had been lodged with a delay of nearly one day, for which no plausible or satisfactory explanation was forthcoming from the complainant or the prosecution witnesses. This unexplained delay created serious doubt about the truthfulness of the prosecution version and left room for deliberation and consultation before setting the criminal law into motion. The Trial Court further observed that the occurrence was alleged to have taken place at 7:00 a.m. in Shahi Bazar, which by its very nature is a busy commercial area. However, no attempt was made by the investigating agency to associate any independent or neutral person of the locality as a witness. Instead, the prosecution relied solely upon the statements of the complainant and his close family members, who were admittedly interested witnesses. In the absence of independent corroboration, their testimony did not carry sufficient weight to establish the charge with the degree of certainty required in a criminal case. The evidentiary weaknesses did not end there. PW-10, Karim Dad, who was shown as a mashir of the recovery memos as well as the site inspection, was declared hostile during trial and categorically refused to support the prosecution. His testimony, therefore, failed to lend the necessary corroboration to the version advanced by the complainant and other witnesses. Furthermore, the record clearly demonstrated that no incriminating article or weapon of offence was ever recovered from the possession of the Appellant or at his instance. The

absence of such recovery deprived the prosecution of an important link in the chain of circumstantial evidence, which could otherwise have lent support to its case. In view of these deficiencies, the Trial Court concluded that the prosecution case suffered from the same fundamental flaws which had earlier persuaded the Division Bench of this Court to acquit the co-accused. It rightly applied the settled principle of law that when evidence is disbelieved against one set of accused on account of inherent contradictions and weaknesses, the same evidence cannot be relied upon to convict another accused, particularly where the roles attributed are identical. In such circumstances, consistency in judicial findings is not only desirable but necessary to prevent miscarriage of justice. Accordingly, the Trial Court found no justification to depart from the earlier view of this Court and extended the benefit of doubt to the Appellant, holding that his conviction could not be sustained on the same shaky foundation of evidence which had already been discarded in respect of the co-accused. The principle of consistency in judicial findings mandates that when the same evidence is found unreliable against one accused, it should not be selectively accepted against another accused charged with identical allegations, unless supported by strong and independent corroboration. Reliance is placed on the dictum of the Honourable Supreme Court of Pakistan in **Muhammad Shafi alias Kuddoo v. The State and others (2019 SCMR 1045)**, wherein it was categorically observed that: *“Ocular account is in conflict with medical evidence inasmuch as according to the crime report both the appellant, as well as, Abdul Razzaq, co-accused, are assigned one blow each to the deceased, whereas according to the initial medical examination, Medical Officer noted solitary injury on the head, its impact on the eye has been utilized by the witnesses to array the latter in the crime. Deputation of Sakina Bibi to monitor deceased’s arrival so as to inform her son about deceased’s arrival is also an aspect of the case that requires a pinch of salt. Certainly there was no occasion for the learned High Court to convert appellant’s acquittal into conviction after it had itself disbelieved prosecution evidence qua two out of three accused, one with an identical role”*.

8. The scope of interference by an appellate court in an appeal against acquittal is well-defined and narrow. The golden principle, consistently upheld by the Superior Courts, is that an acquittal should not be disturbed merely because another view is possible. The presumption of innocence enjoyed by an accused is further strengthened once he has been acquitted by the trial court, and such a finding cannot be lightly interfered with. Interference is justified only where the findings of the trial court are shown to be perverse, based on gross misreading of evidence,

or resulting in a clear miscarriage of justice. It is, therefore, incumbent upon the appellate court to demonstrate that the view taken by the trial court was not a reasonably possible or plausible view on the basis of the evidence available on record. In the present case, the learned trial court rightly acquitted the accused on account of material contradictions in the prosecution evidence, absence of corroboration, and failure to establish the charge beyond reasonable doubt. These deficiencies fully justified the acquittal, and since the appellant has failed to point out any illegality, perversity, or misreading of evidence in the impugned judgment, this Court finds no ground to interfere. Reference is made to the authoritative ruling of the Honourable Supreme Court of Pakistan in the case of **Muhammad Riaz v. Khurram Shehzad and another (2024 SCMR 51)**, wherein the Apex Court unequivocally upheld the principle that: *“It is a well-settled exposition of law that in an appeal against acquittal, the Court would not ordinarily interfere and would instead give due weight and consideration to the findings of the Court acquitting the accused which carries a double presumption of innocence, i.e. the initial presumption that an accused is innocent until found guilty, which is then fortified by a second presumption once the Court below confirms the assumption of innocence, which cannot be displaced lightly”*.

9. After a meticulous examination of the record and the impugned judgment, we are not persuaded to interfere with the order of acquittal. The most compelling factor in the present case is the principle of parity, as the co-accused, Manzoor Ali and Yameen, who were attributed an identical role in the same occurrence, had already been acquitted by this Court, and the prosecution's case against the present Accused rests upon the very same set of witnesses, namely the complainant, the injured, and his son, whose testimonies had earlier been disbelieved. The Trial Court was therefore legally correct in holding that it could not rely upon the same discredited evidence to convict one accused while acquitting the others, for such an approach would offend the settled principles of consistency, fairness, and equality before law. Moreover, the prosecution case itself suffers from serious infirmities which go to the root of the matter. The incident was alleged to have occurred at 7:00 a.m. on 07.02.2016, yet the FIR was lodged on 08.02.2016, with no plausible explanation for this inordinate delay, which created ample room for deliberation, consultation, and embellishment. The alleged occurrence took place in Shahi Bazar, admittedly a busy commercial locality, yet no independent or neutral witness was produced to corroborate the testimony of the complainant and his close family members, who were highly interested witnesses. Further, PW-10 Karim Dad, cited as a mashir of the recovery memos and site

inspection, turned hostile and refused to support the prosecution, thereby further weakening its case. Equally significant is the fact that no incriminating article or weapon of offence was recovered from the Accused or at his instance. In these circumstances, the cumulative effect of the unexplained delay, absence of independent corroboration, hostile testimony of the mashir, and lack of recovery creates serious doubts regarding the prosecution's version, and it is a settled principle of criminal jurisprudence that even a single circumstance creating reasonable doubt must operate in favour of the accused as a matter of right, not as a concession. The Trial Court was thus fully justified in extending the benefit of doubt to the Accused, and upon scrutiny of the impugned judgment, we find it to be a well-reasoned and speaking order, passed after proper evaluation of the evidence in its correct legal context, particularly in light of the binding precedent of the co-accused's acquittal. The contention of the appellant that the Trial Court misread the evidence is without substance, as its findings cannot be described as perverse, arbitrary, or illegal. The Trial Court was also correct in holding that the charge under Section 7 of the Anti-Terrorism Act, 1997 was not attracted, as for an act to fall within its ambit, it must be committed with the intention to create terror, fear, or insecurity in society, whereas the alleged incident, even as narrated in the FIR, appears to have stemmed from a personal dispute over foot-tracking. The mere allegation of "firing in the air to create terror," without any corroborative evidence of its impact on the public at large, was wholly insufficient to attract the stringent provisions of the ATA.

10. For the foregoing reasons, we are of the considered view that the learned Trial Court has taken a legal, rational, and plausible view of the matter while appreciating the evidence. The impugned judgment reflects a proper evaluation of the facts and circumstances of the case in the light of the applicable law and the binding precedent of this Court. The acquittal of the Respondent is founded upon material contradictions in the prosecution evidence, lack of corroboration from independent sources, the hostility of a key mashir, the absence of any recovery, and the unexplained delay in lodging the FIR, all of which cumulatively created reasonable doubt. Once such doubt arises, the accused is entitled to its benefit as a matter of right under the settled principles of criminal jurisprudence. The findings of the learned Trial Court are neither perverse nor arbitrary, nor do they reflect any misreading or non-reading of evidence. On the contrary, they are consistent with the settled principles governing criminal trials, particularly in appeals against acquittal, where interference is not warranted unless the conclusions drawn by the Trial Court are shown to be wholly unreasonable or resulting in a manifest miscarriage of justice. No such

ground has been made out in the present case. The Hon'ble Supreme Court of Pakistan has, in a catena of judgments including case of **Muhammad Riaz and others v. The State (2024 SCMR 1839)**, reiterated the principle that if a single circumstance creates reasonable doubt in the prosecution case, the benefit must go to the accused, for the presumption of innocence is a fundamental right. It was observed that: *"To extend the benefit of doubt it is not necessary that there should be so many circumstances... if one circumstance is sufficient to discharge and bring suspicion in the mind of the court that the prosecution has faded up the evidence to procure conviction then the court can come forward for the rescue of the accused person. Denial Boyd (Muslim name Saifullah) and another versus the State 1992 SCMR 196. Mst. Asia Bibi versus the State and others (PLD 2019 SC 64) and Muhammad Imran versus the State (2020 SCMR 857)"*.

11. In view of the above discussion, the instant Criminal Acquittal Appeal is dismissed as being devoid of merit. Consequently, the impugned judgment dated 26.04.2021 passed by the learned Anti-Terrorism Court, Naushahro Feroze, is hereby upheld. The above decision also disposes of the listed applications, if any. These are the detailed reasons for our short order announced on 03.09.2025.

JUDGE

JUDGE