

THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No.322 of 2020

Appellant: Sindh Building Control Authority through Ms. Afsheen Aman, Advocate

Respondents: Muhammad Ramzan, Muhammad Shaukat and Abid Aziz Ashrafi (Respondents 1 to 3), through Mr. Abdul Haleem Jamali, Advocate
Ms. Rubina Qadir, D.P.G. for the State/Respondent

Date of hearing: 19.09.2025

Date of Judgment: 03.10.2025

J U D G M E N T

MUHAMMAD HASAN (AKBER), J.-- This Criminal Acquittal Appeal is filed by appellant Sindh Building Control Authority against the Judgment dated 17.02.2020, passed by learned XII Judicial Magistrate/Special Judge, SBCA, Karachi East in Private Complaint No.1768/2018 (SBCA versus Muhammad Ramzan and Others), whereby aforesaid Private Complaint was dismissed and respondents 1 to 3 were acquitted of the charge, punishable under Section 19 of the Sindh Building Control, 1979 (SBCO), hence the instant appeal against acquittal.

2. Briefly, the facts stated in the impugned judgment are that respondents 1 to 3 raised construction on Plot No.A-140, Dream City, Deh Drigh, Survey No.92 and 93, Malir, Karachi, without any approved building plan from SBCA; notices were issued to them but they did not abstain from such activities; that complainant issued letters to K-E, SSGC and KW&SB, not to provide utility services to the subject plot and to Sub-Registrar concerned not to execute any sub-lease in respect of aforesaid plot, later on aforesaid private complaint was filed by SBCA.

3. After filing of the private complaint, cognizance was taken by the learned Magistrate under Section 19 of the Sindh Building Control Ordinance 1979 [**SBCO, 1979**]; copies of statement/documents were provided to the accused; Charge was framed against the accused at Ex.2, to which the accused pleaded “Not Guilty” and claimed trial.

4. It was argued by learned counsel for Appellant that the learned trial Court did not appreciate the evidence nor applied its judicial mind, hence the impugned judgment is liable to be set aside. Conversely, learned D.P.G. and Respondent side

fully supported the impugned order, on the premise that all factors were taken into consideration and respondents were rightly acquitted of the charge.

6. I have carefully heard learned counsel for the parties, the APG and examined entire evidence, with their able assistance.

7. It appears that from the prosecution side, only complainant's deposition was recorded and no other witness was examined. The sole witness deposed that Building Inspector Waqar Ali informed him about unauthorized construction on the subject plot. However the said Building Inspector Waqar Ali was not associated as a witness in the case. During cross-examination, complainant also admitted that NOC was issued to Dream City Housing Scheme to advertise and to sell plots in the year 2018. He also admitted that no record of the plots was called by him to verify as to how many plots were sold by the accused persons and to whom. He also admitted that he did not know the owner of the plot over which unauthorized construction was allegedly raised. The purported notice was also not exhibited. He also did not produce the report of the Building Inspector before the trial Court to substantiate the charge against respondents 1 to 3. The purported pictures, on which the entire case was being based, were not taken by the fitness himself and the concerned person who took the pictures was not produced. The entire statement of the complainant appeared to be based upon hearsay. Lastly, it was also an admitted position that the accused persons were only responsible for sale of the plots and not for construction, since construction was to be carried out by individuals/subsequent owners themselves, who were not impleaded as accused. By considering all such aspects of the case, the learned trial Court came to the conclusion that the prosecution has miserably failed to prove the Charge against accused persons and recorded their acquittal.

8. The parameters and principles in an appeal against acquittal are well settled by the honourable Supreme Court long ago, declaring that Courts would not ordinarily interfere in such cases but 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 that once the Court below confirms the assumption of innocence, which cannot be displaced lightly. In the cases of 'The State v. Abdul Khaliq and others' (PLD 2011 SC 554); 'Ghulam Sikandar v. Mamrez Khan' PLD 1985 SC 11; 'Tariq Pervez v. The State' (1995 SCMR 1345) the Apex Court, while considering numerous pronouncements held that that the scope of interference in appeal against acquittal is much 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, or suffering from the errors of grave misreading or non-reading of evidence. Such judgments should not be lightly interfered and a 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 facts committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; that the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Moreover, it has also been categorically held that a Judgment should not be interjected until the findings are found as perverse, arbitrary, foolish, artificial, speculative, and ridiculous. 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, and the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities.

9. For the above stated reasons, no illegality, infirmity, perversity or jurisdictional error could be pointed from the appellant side against the Judgment impugned, in terms of principles settled by Supreme Court in the cases of **Abdul Khaliq, Ghulam Sikandar** or **Tariq Pervez** *supra* could be pointed out. Hence, no case is made out calling for interference in the impugned Judgment, or even for the grant of Leave to Admit the instant Appeal. The instant Appeal is, therefore, dismissed. Before parting with this Judgment, the assistance provided by learned counsel for SBCA, Ms. Afsheen Aman, Advocate, is appreciated.

JUDGE