

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS**

**(1) Criminal Acquittal Appeal No.S-23/2023**

(Nabi Bux V. Lal Muhammad @ Lalu and another)

**(2) Criminal Acquittal Appeal No.S-24/2023**

(Nabi Bux V. Muharram Ali and others)

**(3) Criminal Acquittal Appeal No.S-25/2023**

(Nabi Bux V. Malook and others)

Appellant:

Nabi Bux: Through Mr. Afzal Karim Virk, Advocate

Respondents:

Lal Muhammad @ Lalu, Muharram Ali, Malook, Dhaloo @ Abdul Rehman and

Madad Ali **called absent without intimation**

The State: Through Mr. Shahzado Saleem, Additional P.G.

**Date of Hearing & Judgment:** 20.10.2026

**JUDGEMENT**

*Nisar Ahmed Bhanbhro, J:* I propose to decide the fate of captioned appeals against acquittal through this common judgment, as common question of law and facts is involved.

2. The captioned appeals against acquittal are directed against the separate judgments dated 15.11.2023 (impugned judgments), passed by the Court of learned Additional Sessions Judge-I, Umerkot (**Appellate Court**) in Criminal Appeal Nos.09/2023 (Re - Lal Muhammad @ Lalu V. The State), Criminal Appeal 10/2023

(Re - Muharram Ali and another V. The State) and Criminal Appeal No 11/2023 (Re - Malook and another V. The State), whereby the appeals were allowed and separate judgments of convictions dated 21.09.2023 passed in criminal case No 76 of 2023 (Re- The State V. Lal Muhammad @ Lalu and others), and criminal case No 146 of 2023 (Re- The State V. Muharram and another) by the Court of Learned Civil Judge & Judicial Magistrate - I Umerkot (**Trial Court**) were set aside and Respondents / accused were acquitted of the charge.

3. The respondents despite service of notices were called absent, hence these appeals are being decided with the assistance of learned Additional Prosecutor General.

4. Briefly the facts of the prosecution case as per F.I.R lodged on 23-08-2022 by informant Nabi Bux at P.S Khokhrapar are that there is dispute between him and accused Lal Muhammad Samejo and others over the boundary of land. On 21-08-2022, complainant along with his father Gul Muhammad were working on their lands, when at about 1100 hours, accused persons namely (1) Lal Muhammad son of Hothi, (2) Malook son of Hothi, (3) Madad Ali son of Lal Muhammad, (4) Muharram Ali son of Lal Muhammad and (5) Dhaloo son of Lal Muhammad, all by caste Samejo, having lathies and hatchets reached there while abusing and asked why the complainant party were altering the boundaries of lands belonging to them. Father of complainant replied that the land belonged to him and that he did not alter the boundary of land. On such altercations, accused Lal Muhammad caused hatchet blow at the head of complainant's father, while remaining accused persons caused lathi blows to the complainant and his father. Complainant raised hue and cry, upon which, Raza Muhammad S/o Muhammad Soomar and Rehmatullah son of Muhammad Qasim Samejo standing in the nearby lands rushed there and rescued the complainant party. Thereafter, all the accused persons went away while abusing and issuing life threats. Thereafter, the

complainant took his injured father to P.S, got letter for medical treatment and after medical treatment, lodged the instant F.I.R.

5. Since accused Muharram Ali and Dhaloo @ Abdul Rehman were declared juvenile, therefore separate trial under the provisions of Juvenile Justice System Act, 2018 was held.

6. Learned counsel for the appellant contended that the prosecution proved its case against the respondents/ accused beyond shadow of doubt and there was no material contradictions in the evidence as all the witnesses remained consistent on material points. He contended that the injuries sustained by the injured including appellant are in line with the medical evidence, therefore, Trial Court rightly convicted the accused. He contended that on their conviction, the accused deposited the Arsh and Daman amount as required under Section 337(Y) P.P.C. Besides, depositing the amount of Arsh and Daman, the accused maintained an appeal against conviction under section 408 Cr.P.C before Appellate Court. He contended that Appellate Court erred in law while deciding the fate of Appeal. He contended that appeal filed by the accused/Respondents was not maintainable in terms of Section 382 - A Cr.P.C. as on deposit of amount of Arsh and Daman, the judgment stood implemented and appeal could not have been entertained once the conviction awarded by trial court was accepted by the accused. He contended that Appellate Court extended the benefit of doubt to Respondents/accused on the points not borne out from the evidence on record. Learned counsel for the appellant relied upon case law reported in 2022 Cr. LJ 1793 (*Riaz Hussain versus the state and others*). He therefore prayed that by allowing this appeal, judgment of Trial Court may be maintained and that of appellate court may be set aside.

7. Learned Additional P.G supported the contention, so advanced by the learned counsel for the appellant and argued that prosecution proved its case beyond any shadow of doubt. He contended that conviction was implemented by

way of depositing Arsh and Daman amount, therefore, on legal issue appeal was liable to be dismissed in the said score alone but Appellate Court did not render any deliberations on the said legal issue. He contended that learned appellate Court has not discussed this legal issue and matter is fit for remand to the appellate Court for decision afresh.

8. Heard learned counsel for the appellant, learned A.P.G for state and perused the record.

9. From the meticulous perusal of the record it revealed that FIR No 09 of 2022 was recorded by Complainant Nabi Bux against accused Lal Muhammad @ Lalu, Malook and Madad Ali, Muharram Ali and Dhalo @ Abdul Rehman. Since the accused Muharram Ali and Dhalo @ Abdul Rehman were declared juvenile, therefore they were tried separately. On conclusion of trial, respondents/accused Lal Muhammad @ Lalu, Malook and Madad Ali were convicted by Trial Court in criminal case No 76 of 2023 as follows:

*“In view of the above made discussion on the Point No.1 (supra), I am of the considered view that the prosecution has succeeded to prove the charge under sections 337-A(ii),337-L(ii), R/w section 149 P.P.C against the accused persons, beyond any reasonable doubt. I therefore, convict the accused Laloo alias Lal Muhammad son of Hothi Samejo, under section 245-(2) Cr.P.C for an offence U/S 337-A(ii) read with section 149 P.P.C and sentence him to pay Arsh (05% of the diyat) amounting to Rs.215,927/= to the injured Gul Muhammad. In default of payment of Arsh, the accused shall be dealt in accordance with 337-X P.P.C. I also convict the accused Malook son of Hothi Samejo and Madad Ali son of Lalo alias Lal Muhammad Samejo, under section 245(2) Cr.P.C for an offence under section 337-L(ii) P.P.C and sentence them to pay Daman amounting to Rs.5000/- each, to the injured/victim Gul Muhammad. In default of payment of Daman, they shall be dealt in accordance with section 337-Y*

*P.P.C. However, I am not inclined to award the punishment of Ta'zir to the accused persons for the reason that the normal punishment to be awarded to an offender in hurt cases, in view of section 337-N(2) P.P.C, is the payment of Arsh or Daman and the punishment of imprisonment as Ta'zir provided for the relevant offence can be awarded to an offender only where the offender "is previous convict, habitual or hardened desperate or dangerous criminal or the offence has been committed by him in the name or in the pretext of honour". My views are fortified from the case of Ali Muhammad V. The State (P L D 2009 Lahore 312). However, nothing is available in the evidence of the prosecution to show that the case of the accused fell within the category of such offenders. All the aforesaid sentences awarded to the accused will run concurrently. Benefit of section 382-B Cr.P.C is extended to accused persons".*

10. Accused Muharram Ali and Dhalo @ Abdul Rehman, the accused in criminal case No 146 of 2023 were convicted by Trial Court in the following manner:-

*"In view of the above discussion on point No.1 (supra), which decided as PROVED, I am of the considered view that the prosecution has succeeded to prove the charge under section 337-L(ii), r/w section 149 PPC against the accused persons beyond any reasonable doubt. However perusal of record reveals that the prosecution has not produced any previous criminal record of the accused persons which apparently shows that the accused are not habitual offenders or previous convict. It is also apparent from the record that the accused are juvenile .These circumstances are mitigating, which convinced me to take lenient view while awarding quantum of sentence, I therefore, convict the accused Moharam Ali son of Lal Muhammad alias Laloo and Dhalo alias Abdul Rehman son of Lal*

*Muhammad, under section 245-(ii) Cr.P.C for an offence under section 337-L(ii) P.P.C and sentence them to pay Daman amounting to Rs.5000/- each to the injured/victim Gul Muhammad. In default of payment of Daman, they shall be dealt in accordance with section 337-Y PPC. However, I am not inclined to award the punishment of Ta'zir to the accused persons for the reason that the normal punishment to be awarded to an offender in hurt cases, in view of section 337-N(2) PPC, is the payment of Arsh or Daman and the punishment of imprisonment as Ta'zir provided for the relevant offence can be awarded to an offender only where the offender "is previous convict, habitual or hardened desperate or dangerous criminal or the offence has been committed by him in the name or in the pretext of honour". My views are fortified from the case of Ali Muhammad Vs. the State (P L D 2009 Lahore 312). However, nothing is available in the evidence of the prosecution to show that the case of the accused fell within the category of such offenders. All the aforesaid sentences awarded to the accused will run concurrently. Benefit of section 382-B Cr.P.C is extended to accused persons".*

11. On their convictions, accused/convicts deposited the amount of Arsh and Daman in terms of section 337-Y P.P.C, before Trial Court, therefore, they were not put under incarceration. Besides payment of Arsh & Daman the accused/convicts maintained separate appeals under Section 408 Cr.P.C before Appellate Court, questioning the sustainability of the convictions. Learned Appellate Court after hearing the parties observed that there were major contradictions in the statement of PWs, which shattered the credibility of prosecution witnesses, therefore, acquitted the respondents of the charge by allowing appeal (s).

12. Learned Counsel for the Appellant and Additional P.G opposed judgment of Appellate Court on the ground that once judgment of the conviction passed by Trial Court was implemented, appeal could not be maintained, as provided under

section 382 - A Cr.P.C. They, therefore asserted that appeals were not maintainable. Since reliance has been placed on Section 382-A Cr.P.C, it will be conducive to go through the same which reads as under:-

**382 - A. Postponement of execution of sentence of imprisonment under section 476 or for a period of less than one year:** Notwithstanding anything contained in section 383 or 391, where the accused:

(a) is awarded any sentence of imprisonment under Section 476, or

(b) is sentenced in cases other than those provided for in Section 381, to imprisonment whether with or without fine or whipping, for a period of less than one year. the sentence shall not, if the accused furnishes bail to the satisfaction of the Court for his appearance at such time and place as the Court may direct, be executed, until the expiry of the period prescribed for making an appeal against such sentence, or if an appeal is made within that time, until the sentence of imprisonment is confirmed by the Appellate Court, but the sentence shall be executed as soon as practicable after the expiry of the period prescribed for making an appeal.or in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

13. From the perusal of the above provision of law, it is clear that excepting the sentences provided under Section 476 Cr.P.C. and sentence of death requiring confirmation under Section 381 Cr.P.C., where the sentence of imprisonment is for less than one year, the sentence shall not be executed by the Court, until the expiry of the period for filing an appeal against such sentence, or, if an appeal is filed

within that period, unless the same is confirmed by the Appellate Court, if the accused furnishes bail to the satisfaction of the Court .

14. It is matter of record that respondents/accused deposited Arsh and Daman amount and also filed an appeal before Appellate Court under Section 408 Cr.P.C., there was no request for suspension of sentence in terms of section 382 - A Cr.P.C. as the accused were not sent to jail under imprisonment. The accused/Respondents deposited the amount of Arsh and Daman with Trial Court as provisions of Section 337-Y P.P.C provided that in case of failure to deposit Arsh and Daman amount, convictee shall be sent to prison until payment of the said amount. It is also a settled law that appeal is continuity of trial and any conviction or sentence passed by Trial Court is always subject to confirmation in the Appeal. It is admitted position that learned Appellate Court set aside the judgment of conviction passed by Learned Trial Court and acquitted the accused of the charge in the case. Therefore, they were not under conviction to deposit the arsh and daman. The case of the Respondents/ accused did not fall within the remit of section 382 - A Cr.P.C. and was rightly entertained by the Appellate Court, as case of *Riaz Hussain* (supra) was not attracted in the facts and circumstances of present case. In the case of *Riaz Hussain* (supra) the accused on conviction had deposited the amount of Arsh and Daman, which was released in favour of the injured and thereafter one of the convicts /accused preferred an appeal, whereas, co-accused did not file appeal as such conviction to the extent of said accused stood executed. Once no appeal is preferred, the Trial Court is within its competence to execute the judgment having attained finality. However, in the present case, the appeal was pending before the appellate forum and its execution was subject to confirmation thereof.

15. Adverting to the merits of the case, it is settled proposition of law that the findings of the Appellate Court over-weigh the findings recorded by the Trial Court, as the Appellate Court reappraises the evidence and records its findings.

Appellate Court allowed the appeal and acquitted the accused by extending them the benefit of doubt. From perusal of the judgment of Appellate Court, available at Page 17 of the Court File it transpired that benefit of doubt was extended to the accused as the evidence of witnesses was found deficient on material point. Appellate Court observed that incident allegedly had taken place on 21.08.2022, whereas, FIR was registered on 23.08.2022 and such delay remained unexplained, though as per narration in the evidence, it is stated that complainant appeared at police station promptly and obtained letter for treatment though injured did not receive serious injuries and more particularly when injured himself did not record FIR but the same was lodged by the complainant Nabi Bux. The injured, per prosecution case got treatment in Umerkot Hospital, whereas, medical opinions were not obtained from the said hospital. The witnesses have contradicted each other on material points as to the occurrence. Complainant Nabi Bux, appellant in present cases deposed that witnesses came during the scuffle and rescued him while accused were causing him kicks and fists blows and as per FIR the injured had only received hatchet and stick injuries. There is contradiction as to time and manner incident took place. To believe the evidence of injured for the reason that he sustained injuries in the incident is not hard and fast rule, until the case is proved through confidence inspiring evidence.

16. It is the prosecution, burdened to prove the charge beyond any shadow of doubt. This burden is transferred to the other side when the prosecution discharged its duty in accordance with the parameters fixed for that purpose. From perusal of the evidence, it appears that the prosecution had not discharged its burden and benefit earned by the accused on account of this failure was the right of the accused. It is a well settled principle in the criminal justice system that if two sensible and judicious conclusions can be drawn keeping in mind the substance of the evidence, then the view which espouses and provides backing towards acquittal must be subscribed and assented to. The doctrine of

presumption of innocence is structured on the fundamental principle that every person is presumed to be innocent unless proven guilty and, in the event of an acquittal, the presumption of innocence is reinvigorated, fortified and strengthened.

17. 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, the same cannot be displaced lightly.

18. The criteria of interference in the judgment against acquittal are not the same, as against the cases involving a conviction. In this regard, the settled principles of law have been developed progressively. In an appeal against acquittal the Court must examine the findings of Trial Court as to the credibility of the prosecution witnesses; the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; the right of the accused to the benefit of any doubt; and the slowness of an Appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. The view is fortified from the judgment of Honorable Supreme Court of Pakistan in the case of **The State v. Abdul Khaliq (PLD 2011 SC 554)** wherein it was held 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.

19. For the foregoing reasons, no case for indulgence of this Court is made out. Consequently, the appeal against acquittal fails and accordingly dismissed.

JUDGE

Approved for reporting

“Chander Kumar”