

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Acquittal Appeal No. 24 of 2022

Appellant : Muhammad Hassan through Mr. Abdul
Rehman A. Bhutto, Advocate.

Respondents No.1 to 5 : Abdul Karim and others present in person.

Respondent No.6 : The State through Mr. Muhammad Noonari,
D.P.G.

Date of Hearing : 16.4.2025.

Date of Order : 16.4.2025.

J U D G M E N T

AMJAD ALI SAHITO-J.:- This Criminal Acquittal Appeal has been preferred by the State against the judgment dated 31.01.2022 passed by the learned Judicial Magistrate-I/MCTC, Jacobabad, whereby the accused/respondents were acquitted of the charges in Criminal Case No.191 of 2021 Re: The State v. Abdul Karim and others arisen out of Crime No.42 of 2021 of P.S B-Section Thul registered under Sections 392, 215 PPC.

2. Crux of the prosecution case, as unfolded in the FIR, on 14.06.2021, complainant along with his brothers Meer Hazar and Gul Hassan had left their seven buffaloes, including a calf, to graze in their lands and were themselves engaged in harvesting. At around 1600 hours, six accused, armed with KKs, gun, hatchets and lathi, including the present respondents No.1 to 4, came and allegedly stole the cattle in the presence of the complainant and his brothers, while silencing them under the threat of weapons. It is further alleged that on 18.06.2021, one Yar Muhammad/respondent No.5 visited the complainant's otaq and demanded ransom of Rs.300,000 for the return of the stolen cattle. The complainant allegedly paid him Rs.100,000 in the presence of his brothers on his promise that the cattle would be returned within two days which remained unfulfilled, hence the complainant lodged the FIR.

3. Investigation followed and finally accused/respondents No.1 to 5 were sent up to stand trial.

4. Formal charge was framed against the accused/respondents to which they pleaded no guilty and claimed trial. Trial commenced and

prosecution recorded examination in chief of complainant and then charge was amended on the request of the State counsel.

5. In order to prove its case, prosecution examined as many as 4 prosecution witnesses and produced relevant documents, thereafter the learned A.D.P.P closed the prosecution side vide statement at Ex.12.

6. Statement of accused was recorded under section 342 Cr.P.C. at Ex.13 to 17, wherein the accused/respondents denied the allegations leveled against them by the prosecution and claimed their innocence. However, they did not produce any defense witness nor examined themselves on oath.

7. Learned trial court after hearing the learned counsel for the parties and appreciation of the evidence acquitted the respondents/accused vide impugned judgment dated 31.01.2024.

8. Learned counsel for the appellant/complainant has argued that the judgment passed by learned trial Court is perverse and the reasons recorded by the learned trial Court are artificial and without appreciating the evidence; sufficient evidence existed on record which warranted conviction, yet learned Trial Court erred in assessing the credibility of prosecution witnesses; accused were named in the FIR with specific role of stealing cattle of complainant on show of weapons and the prosecution witnesses fully supported case of complainant, therefore, acquittal of accused has caused serious miscarriage of justice under impugned judgment by trial Court, hence same is liable to be set aside.

9. Conversely, the respondents present as well as D.P.G supported the impugned judgment and contended that the prosecution story was found doubtful and both the P.Ws are admittedly real brothers of complainant whose testimony required independent corroboration which is lacking in this case.

10. The case of the prosecution hinges mainly upon interested witnesses which required corroboration by independent evidence which is lacking in this case as no recovery of the cattle or any incriminating article was made from the accused. The ransom transaction also lacked corroboration by any objective proof or recovery. The delay in lodging FIR and the unsubstantiated ransom demand further cast doubt on the prosecution's version. Thus prosecution failed to bring on record sufficient evidence to connect the accused/respondents with the commission of alleged offence. In

view of such circumstances, this Court is of the considered view that prosecution has failed to prove its case beyond shadow of reasonable doubt.

11. It is a well-settled principle of law that a criminal case is to be decided based on the totality of impressions gathered from the circumstances of the case and not on the narrow ground of cross-examination or otherwise of a witness on a particular fact stated by him. A similar view had been expressed by the Honourable Supreme Court of Pakistan in the case **of State v. Rab Nawaz and another (PLD 1974 SC 87) wherein Honourable Supreme Court** has observed that a criminal case is to be decided based on the totality of circumstances and not based on a single element.

12. It is noteworthy that in the impugned judgment the learned trial Judge has pointed out some other material contradictions, which are sufficient to declare that the prosecution could not establish the case against the respondent/accused beyond reasonable doubt and where a single circumstance creating reasonable doubt in the prudent mind about the guilt of the accused, then accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right. In this regard, reliance is placed on the cases of **Tariq Pervaiz v. The State [1995 SCMR 1345]** **Muhammad Akram v. The State [2009 SCMR 230]** and **LalBux alias Lal v. the State (2023 YLR 321) (authored by Zulfiqar Ahmed Khan J.)**

13. It is an important to note that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from appeal against acquittal, as presumption of double innocence is attached in the latter case. Reliance is placed on the case of **'Inayatullah Butt v. Muhammad Javed and 2 others' [PLD 2003 SC 562]**. Until and unless the judgment of the trial Court is perverse, completely illegal and on perusal of evidence no other decision can be given except that the accused is guilty or there has been complete misreading of evidence leading to miscarriage of justice, the Court will not exercise jurisdiction under section 417, Cr.P.C.

14. It is well settled law that once the trial court records an acquittal, the accused earns presumption of double innocence, and the appellate court should not reverse such findings unless find the reasoning in the impugned judgment to be perverse, arbitrary, foolish, artificial, speculative and ridiculous or based on misreading or non-reading of evidence, as was held by the

Supreme Court in the case of **State v. Abdul Khaliq and others (PLD 2011 SC 554)**.

15. In these circumstances, I am of the opinion that the quality and standard of prosecution evidence is lacking, which is required to establish a criminal case for justifying conviction and sentence. Hence, I am of the view that impugned judgment of acquitted recorded by learned trial does not call for any interference by this Court, therefore, the instant criminal acquittal appeal being devoid of merits is dismissed.

JUDGE

Shabir/P.S