

# IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No. 307 of 2025

Appellant : Mir Kalam Khan son of Haji Abdul Hakeem,  
Through M/s. Ghulam Muhammad Khan &  
Ms. Kulsoom Jadoon, Advocates

Date of hearing : 05.05.2025

Date of order : 05.05.2025

## ORDER

**Khalid Hussain Shahani, J:-** This is a Criminal Acquittal Appeal filed under Section 417(2A) read with Section 561-A Cr.P.C., challenging the judgment dated 08.04.2025 passed by the learned VIth Additional Sessions Judge, Karachi (West), whereby the respondent/accused Muhammad Barat was acquitted in Sessions Case No.1461/2017, emanating of FIR No.271/2015, offence under Sections 324/109/34 PPC of Police Station Orangi Town, Karachi.

2. Brief facts, as narrated by the complainant Mir Kalam (appellant), are that on 14.08.2015 at about 7:30 p.m., while he was sitting in his showroom after Maghrib prayers, three unknown individuals arrived on a motorcycle, speaking in Pashto, and opened fire upon him, resulting in firearm injuries to his arm and abdomen. The complainant had previously reported extortion threats and a prior firing incident allegedly linked to one accused Nawaz. The present FIR was lodged on 04.09.2015 when the complainant regained consciousness after hospitalization.

3. Learned counsel for the appellant has assailed the impugned acquittal judgment primarily on the grounds:

- i. the acquittal was rendered without due appreciation of ocular, medical, and documentary evidence;
- ii. the complainant himself sustained injuries and remained admitted in Aga Khan Hospital, corroborating the occurrence;
- iii. the trial court failed to consider the video evidence and USB produced at Ex.23/A; that the charge was twice amended, suggesting manipulation and irregularities;
- iv. the testimony of PW Nasir was not considered in the impugned judgment;

- v. the acquittal is based on misreading and non-reading of material evidence.
- vi. the Chippa Ambulance service driver not examined.

4. I have carefully examined the record and considered the arguments advanced by learned counsel for the appellant. At the outset, it may be stated that a presumption of innocence is strengthened rather than weakened by an acquittal, and interference in acquittal judgments is rare, warranted only when gross illegality or perversity is demonstrated.

5. Insofar as the argument that the accused was not named in the FIR is concerned, it is an admitted position that the FIR was lodged against unknown persons. The subsequent implication of the respondent/accused came later during investigation. No identification parade was conducted before a Magistrate, nor any identification before police was recorded with legal sanctity. The complainant had earlier described the assailants as unknown, Pathan-looking persons, conversing in Pashto; this general description, without an identification parade, holds less rather no evidentiary value.

6. As regards the argument that the complainant was an injured witness and his testimony should be given weight, it is a settled principle that even injured witnesses are not immune from scrutiny. In the present case, the complainant did not name the accused initially; no direct motive was assigned to accused Muhammad Barat; and the absence of any test identification parade, in circumstances where identification was clearly required, created serious doubts.

7. Learned counsel argued that the video footage and USB were not considered. However, the USB at Ex.23/A was not properly articulated, and no report was tendered from any forensic expert to establish its authenticity or relevance. No officer from the Cyber Crime Wing or any technical expert was examined to connect the USB with the alleged incident. The chain of custody of the USB also remained unexplained.

8. As to the absence of discussion regarding PW Nasir, a review of the impugned judgment reveals that the learned trial court has taken into account all material witnesses whose evidence was germane to the core issue of identification and culpability. PW Nasir's deposition did not materially

advance the prosecution case, especially in the absence of his witnessing the incident.

9. The argument that the charge was twice framed suggests, at best, an administrative or procedural clarification. It does not automatically imply that material improvements were made, unless prejudice is demonstrated. No such prejudice has been shown. Framing or re-framing of charge is within the domain of the trial court and may be done for clarity or to avoid miscarriage of justice. It is not in itself an irregularity rendering trial illegal.

10. The non-examination of the Chhipa driver has also been cited as a flaw. However, unless the defense or prosecution was prejudiced by this omission, it cannot be a ground for setting aside the acquittal. The complainant and other witnesses narrated the circumstances of his shifting to hospital, and the non-examination of a formal witness like the ambulance driver does not vitiate the prosecution case per se.

11. The learned trial court, in a well-reasoned judgment, appreciated the contradictions and lack of legally admissible identification evidence. The chain of circumstances remained inconclusive, and the prosecution evidence fell short of the standard required to convict. The benefit of doubt was rightly extended.

12. In acquittal matters, it is not enough for the appellate court to take a different view; rather, there must be compelling reasons showing that the view taken by the trial court was perverse, arbitrary, or wholly against the weight of evidence. No such error is apparent in the present case. Resultantly, the appeal is found to be without merit and is accordingly dismissed in *limine* along with all pending application(s).

**J U D G E**