IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Acquittal Appeal No.D-34 of 2022

Before:

Mr. Justice Shamsuddin Abbasi,
Mr. Justice Ali Haider 'Ada'

Appellant	:	Rawat son of Muhammad Sulleman Shabrani *through* Mr. Habibullah G.Ghouri, Advocate.
Respondents	:	Ali Jan and another, Nemo for Respondent The State, *through* Mr. Ali Anwar Kandhro, Additional Prosecutor General Sindh assisted by Mr. Zain-ul-Abideen Abbasi, Assistant Prosecutor General, Sindh.
Date of Hearing	:	19.08.2025.
Date of Short order	:	19.08.2025.
Date of Reasons	:	26.08.2025.

J U D G M E N T

Ali Haider 'Ada':J . – Through this appeal, the appellant, being aggrieved, has assailed the judgment dated 30.09.2022 passed by the learned Additional Sessions Judge-I, Larkana, whereby respondent Nos.1 and 2 were acquitted in Sessions Case No.306 of 2021, arising out of Crime No.32 of 2020, registered at Police Station Kanga, for offences punishable under Sections 302, 364, 201, 147, 148, and 149, PPC.

2. As per the prosecution case, the FIR was lodged by the Suhrab, on 06.11.2020 at about 1700 hours, whereas the incident allegedly occurred on 02.11.2020 at about 06:30 p.m. It was alleged that the complainant, along with his brothers Rawat, Hidayatullah, and Jinsar Ali, was proceeding towards the hospital for treatment of Rawat when, at about 06:00 pm., a white-coloured car and a black-coloured 125 motorcycle intercepted them. They were identified as Lal Bux alias Lal and Ali Jan; Ali Jan was armed with a *danda*, while Dhani Bux and one unknown accused were armed with pistols, and they alighted from the car. Simultaneously, Abdul Razak and another unknown accused, also armed with pistols, alighted from the motorcycle. They allegedly abducted Jinsar Ali by force. Subsequently, on 05.11.2020, the complainant party came to know that a dead body was lying in the land of one Sikandar Ali Brohi. Upon reaching the spot, they identified the body as that of Jinsar Ali. Thereafter, the FIR was lodged.

After registration of the FIR, investigation was carried out and the case was submitted before the trial Court. Upon completion of necessary codal formalities, charge was framed against the accused, to which they pleaded not guilty and claimed trial.

3. During the course of trial, the prosecution examined several witnesses. PW Fakir Muhammad was examined, who produced road certificates, while the complainant himself deposed and exhibited the FIR, receipt, and his further statement. Hidayatullah was also examined, followed by ASI Ali Muhammad, who produced relevant entries, memo of inspection, *Danistnama*, *Lash Chakas*, and other related documents. PW Mashir Gulshan was examined and produced the memo of site inspection, whereas PW Sikandar Ali exhibited the memo of arrest. The medical officer was examined and produced the postmortem report, while police official Ramzan exhibited the memo of clothes. Inspector Abdul Ghafoor and ASI Abdul Khalique were also examined and produced relevant entries along with the chemical examiner's report. Thereafter, the learned State Counsel closed the prosecution side. Statements of the accused were then recorded under Section 342, Cr.P.C, wherein they professed innocence and prayed for acquittal. After hearing the parties, the learned trial Court delivered the impugned judgment, which has been assailed through the present criminal acquittal appeal.

4. Learned counsel for the appellant contended that the impugned judgment is the result of misreading and non-reading of the evidence, as the learned trial Court failed to properly evaluate the material brought on record. It is argued that the benefit of doubt was wrongly extended to the accused on the basis of minor discrepancies, which did not amount to material contradictions. Hence, according to him, the judgment of the trial Court is not sustainable in the eye of law.

5. Conversely, the learned State Counsel has supported the impugned judgment, submitting that the trial Court thoroughly assessed the entire evidence and rightly concluded that the occurrence of murder was not witnessed by any person, rendering it an unseen incident. He further argued that even with regard to the allegation of kidnapping, the testimony of the complainant party remained shaky and doubtful. Thus, the learned State Counsel maintains that the trial Court's findings are well-reasoned and call for no interference.

6. Heard the respective submissions advanced by learned counsel for the parties and have carefully perused the material available on record with utmost judicial scrutiny.

7. The record reflects that no one reported the incident, as narrated in the FIR, at the very first instance. On the contrary, as per the deposition of Court Witness, Sub-Inspector Muhammad Ameen, who was summoned by the trial Court and produced the relevant *roznamcha* entry, it transpired that in the first entry it was recorded that Jinsar Ali had gone to a hotel for charging his mobile phone but had not returned for a considerable time. This version is in direct contradiction to the story advanced in the FIR and clearly demonstrates deliberation and consultation before lodging the case. It is an admitted position on record that there is a delay of almost four days in registration of the FIR, without any plausible explanation from the complainant. It is a settled principle of law that unexplained delay in lodging of the FIR is always fatal to the prosecution case, as it casts serious doubt on the veracity of the allegations and creates a presumption of afterthought and fabrication. In this context, reliance is placed upon the case of ***Mazhar Ali v. The State*** **(2025 SCMR 318).**

8. It further emerges from the record that PW Ranwat, who claimed to be an eyewitness of the incident, candidly admitted during cross-examination that after the alleged kidnapping of deceased Jinsar, they initially named one person from the Jamali community and three persons from the Shabrani community as the culprits. Which is totally contradictory in nature to the case set up by the prosecution and the material placed on record.

9. In the present matter, however, the complainant has failed to discharge this burden. The record reflects that the prosecution case suffers from material deficiencies and lacks corroboration at every stage. The complainant party has been unable to establish its case against the respondents, either with respect to the alleged kidnapping or with regard to the subsequent charge of murder. It is a well-settled principle of law that when material contradictions and doubts arise in the prosecution case, the benefit thereof must always be extended to the accused. In this context, reliance is placed upon the case of ***Qurban Ali v. The State*** **(2025 SCMR 1344).**

10. The scope of Section 417, Cr.P.C. is indeed limited as compared to an appeal against conviction. Once an accused has been acquitted, he enjoys the protection of a double presumption of innocence: firstly, as every accused is presumed to be innocent until proven guilty, and secondly, such presumption stands fortified by an acquittal recorded by a competent Court of law. In such a situation, a heavy burden lies upon the complainant to establish that the impugned judgment is the result of misreading or non-reading of evidence, or that material evidence has been ignored. It is a settled principle of criminal jurisprudence that if, upon appraisal of the evidence, two views are possible one pointing towards guilt and the other towards innocence, the view favourable to the accused must prevail. In the instant case, the doubtful circumstances arising from contradictions, delay, and lack of corroboration demand that the benefit of doubt be extended to the accused, which the trial Court has rightly done. Reliance is placed upon the case of ***Fida Hussain alias Saboo vs the State*** reported as **2025 SCMR 993,** wherein Honourable Court held that:

> ***It is settled law that the scope of interference with acquittal is narrow. There is a heavy burden on the prosecution because there is a presumption of double innocence***

11. Further in case of ***Abdul Sattar vs Ishaque and 3 others***, reported as **2025 PCr.L.J 280,** this Court held that:

> ***It is axiomatic that the presumption of innocence applies doubly upon acquittal, and that such a finding is not to be disturbed unless there is some discernible perversity in the determination of the trial Court that can be said to have caused a miscarriage of justice. If any authority is required in that regard, one need turn no further than the judgment of the Supreme Court in the case reported as the State v. Abdul Khaliq PLD 2011 SC 554, where after examining a host of case law on the subject, it was held as follows:-***
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> > ***"From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced 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. 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 fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the, findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the reappraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities."***

12. In view of the above discussion, this Criminal Acquittal Appeal was dismissed vide short order dated 19.08.2025, as no ground was made out for interference with the judgment passed by the learned trial Court. These are the detailed reasons in support of the aforesaid short order of even date.

JUDGE

JUDGE