

# IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

**Criminal Acquittal Appeal No.D-41 of 2024**

**Present: -**

**Mr. Justice Amjad Ali Sahito**

**Mr. Justice Jan Ali Junejo.**

**Appellant:** The State, through P.G Sindh, Karachi,  
Through Mr. Shahzado Saleem, Additional P.G.

**Respondents:** Sahib Dino and another.

**Date of hearing:** 01.09.2025.

**Date of judgment:** 01.09.2025.

## **J U D G M E N T**

**AMJAD ALI SAHITO, J.-** Being aggrieved and dissatisfied with the judgment dated 01.09.2022, passed by the learned Additional Sessions Judge-I/MCTC, Umerkot in Session Case No.261/2020 (The State Vs. Sahib Dino and another) bearing Cr. No.32/2020 for offences under sections 302, 114 and 34 P.P.C, registered at PS Taluka Umerkot, whereby the respondents were acquitted from the charge.

**2.** The brief facts of the FIR are that the complainant party had previously been residing in village Qasim Mari, Shenh Potho, where accused Sahib Dino Shar and others also lived. The complainant's brother namely Heman used to graze the cattle of Sahib Dino and his associates. However, quarrel arose between Heman and the accused Sahib Dino as well as his brother Juman Shar and as a result, the complainant's family shifted to village Allah Warayo Mahar, Taluka Umerkot. Even after relocation whenever Sahib Dino and Juman Shar encountered the complainant in Umerkot they threatened to kill Heman. On the night of 03-07-2020, after dinner the complainant, his brother Heman, their father Saboo and cousin Bhojo Bheel were sleeping at home. At about 2:30 a.m on 04-07-2020, they awoke to the barking of dogs. In the light of a torch, they saw Juman Shar armed with a pistol, Sahib Dino carrying a

hatchet, and Sanwan holding a lathi. The accused surrounded Heman's cot, and Juman Shar warned the complainant's family to remain silent. Acting on the instigation of Sahib Dino, Juman Shar fired a pistol shot at Heman with the intent to kill him. Heman fell to the ground and died from his injuries in front of them. After committing the offence, the accused fled on a motorcycle hurling abuses and threats. The complainant then informed the police who arrived there and shifted the body to Taluka Hospital Umerkot for post-mortem and later handed it over to Sabho and Bhojo and then complainant went to P.S where he lodged instant FIR to the above effect.

**3.** The learned trial after observing all formalities and recording evidence of the complainant party as well as statement of accused, acquitted the respondents through the impugned judgment.

**4.** Learned A.P.G submits that though all the witnesses have supported the case but the learned trial Court has erroneously acquitted the respondents without appreciating their corroborative evidence. He prayed for setting aside the impugned judgment so also conviction and sentence to the respondents.

**5.** Heard and perused.

**6.** It is a matter of record that though the prosecution witnesses have shown the accused present at the place of occurrence and no overt act has been assigned to them in the commission of the offence. The entire case revolves around the role of absconding co-accused Juman Shar while the present accused were only shown to be standing at the spot without any specific allegation of participation. Even the recovery of hatchet and lathi is of no consequence as it has not been proved that these were used in the commission of the crime. Therefore, the learned Trial Court has rightly exonerated them from the charge. It is not out of context to clarify that an appeal against acquittal has distinctive features from an appeal against conviction, as in the former case the presumption of double innocence is attached. We have carefully perused the record and find no illegality, irregularity or infirmity in the impugned judgment, which is a speaking order and based on proper appraisal of evidence, hence not requiring interference. It is a well-

settled principle of law that for creating a shadow of doubt it does not need to be many circumstances; even a single circumstance raising reasonable doubt in the prudent mind entitles the accused to its benefit, not as a matter of grace or concession but as a matter of right. The reliance is placed on the case of **Muhammad Masha v. The State (2018 SCMR-772)**, wherein the Hon'ble Supreme Court of Pakistan has held that:

*4.--- Needles to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of accused, then accused would be entitled to the benefit of such doubt, not as a matter of grace and concession but as a matter of right. It is based on the maxim, "it is better that ten guilt persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR-1345), Ghulam Qadir and 2 others v. The State (2008 SCMR-1221), Muhammad Akram v. The State (2009 SCMR-230) and Muhammad Zaman v. The State (2014 SCMR-749).*

**7.** It is also a well-settled law that after earning the acquittal from the trial Court, the double presumption of innocence is earned by the accused. The Court sitting in appeal against acquittal always remains slow in reversing the judgment of acquittal, unless it is found to be arbitrary, fanciful and capricious on the face of it or is the result of bare misreading or non-reading of any material evidence. In the case of **Muhammad Mansha Kousar v. Muhammad Asghar and others (2003 SCMR 477)**, the Honourable Apex Court observed as under: -

*"that the law relating to a reappraisal of evidence in appeals against acquittal is stringent in that the presumption of innocence is doubled and multiplied after a finding of not guilty recorded by a competent court of law. Such findings cannot be reversed, upset and disturbed except when the judgment is found to be perverse, shocking, alarming, artificial and suffering from error of jurisdiction or misreading, non-reading of evidence... Law requires that a judgment of acquittal shall not be disturbed even though second opinion may be reasonably possible".*

8. Similar view was reiterated by the Honourable Apex Court in the case of ***Muhammad Tasaweer v. Zulkarnain and 2 others*** (PLD 2009 SC 53), in the following words:-

*“Needless to emphasize that when an accused person is acquitted from the charge by a Court of competent jurisdiction then, the double presumption of innocence is attached to its order, with which the superior courts do not interfere unless the impugned order is arbitrary, capricious, fanciful and against the record.”*

9. The upshot of the above discussion is that the impugned judgment is well-founded and well-reasoned, based on proper appraisal of the evidence and thus it calls for no interference by this Court. Even otherwise, it is re-iterated that the acquittal recorded by the Court of competent jurisdiction, would not be disturbed until there is any misreading or non-reading of the evidence resulting in miscarriage of justice, which, as elaborated above, has not been noticed here. Consequently, the instant Criminal Acquittal Appeal is **dismissed** in *limine* accordingly.

**JUDGE**

**JUDGE**

**\*Faisal\***