HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Acquittal Appeal No.S-13/2023

Appellant : Mahesh Kumar s/o Jethanand Malhi
Through Mr. Rao Faisal Ali advocate.

Respondents : 1. Poonjo Mal s/o Asoo Bheel
Through Mr. Pervez Akhter Talpur and Mr. Taimoor Qureshi advocates.

2. The State
Through Mr. Shahzado Saleem Nahiyoon, Additional P.G.

Date of Hearing: 26.10.2026

Date of Judgment: 26.10.2026

JUDGMENT

***Nisar Ahmed Bhanbhro, J*:** This Criminal Acquittal Appeal is directed against judgment dated 13-09-2023 whereby respondent No.1 Poonjo Mal was acquitted of the charge in S.C.No.124/ 2019 (arising out of F.I.R bearing Crime No. 153/ 2019, under sections 320, 337-G, 279 P.P.C of P.S Umerkot City) Re: *The State v. Poonjo Mal*.

2. Learned counsel for the appellant contended that prosecution witnesses, who were injured, had fully supported the prosecution case and were consistent on material points. He further submitted that it may not have been case for conviction of the respondent under tazir; however, it is fit case for grant of compensation in terms of *diyat* under section 320 P.P.C. He, therefore, prays that this Acquittal Appeal may be allowed and accused be convicted.

3. Learned counsel for the respondent No.1/ accused contended that it was for the prosecution to prove the case beyond shadow of reasonable doubt and since the allegation against the respondent was of causing death of a person in road accident, therefore, the necessary ingredients to attract charge under sections 279, 337-G P.P.C were not established. He further submitted that per own admission of witnesses that the car was being driven at the speed of 50-60 K.Ms per hour which was a normal speed and even during evidence licence of the bike of complainant party was not produced, therefore, he prayed for dismissal of instant Criminal Acquittal Appeal and maintaining the impugned

judgment. However, Mr. Pervez Akhter Talpur advocate, learned counsel for the respondent No.1 submits that since this is a case of accident and on the basis of acquittal recorded by trial court and if maintained by this court, the respondent No.1 shall not initiate proceedings under defamation or malicious laws.

4. Heard arguments and perused the material available on record. Scanning of material available on record reveals that learned trial court extended benefit of doubt to the accused for the following reasons, available at page No.27 and 29 of the paper book:

> *"First of all there is inordinate delay of about 10/11 hours in registration of FIR without any plausible explanation though the police was situated at the distance of 1 ½ km but neither complainant nor any PW or their relatives bother to immediately inform at P.S which suggests that case had been registered after consultation, deliberation and afterthought.* ***I am fortified with unreported judgment dated 27.8.2019 passed by Honourable High Court of Sind, Bench at Sukkur in Cr. Acquittal Appeal No.D-01/2003 Re: Gulab alias Jamaluddin Vs. Ghullam Muhammad & others.*** *It is matter of record that initially, complainant had set-up story of murder which was not accepted by learned Magistrate and took-up cognizance U/Ss. 320, 337-G & 279 PPC but surprisingly he (complainant) did not challenge it before appellate form, meaning thereby it was not murder but unfortunate alleged road accident. Moreover, according to complainant, accused Poonjo caused him kicks/fists but during cross examination has replied which reads as under;*
>
> ***"It is correct to say that I did not receive a single injury."***
>
> *It is not out of place to mention here that complainant and Rajnesh (deceased) were on same motorcycle but during incident when accused alleged hit his car to their motorcycle as a result Rajnesh claimed to be injured seriously but admittedly complainant did not receive single injury or even scratch which does not appeal to a prudent mind. Complainant in his chief examination has deposed that at the time of incident accused hit his car to them as a result Rajnesh sustained severe injuries but not stated a single word regarding wounds if any received by PWs due to collision. Complainant in cross examination has deposed that after incident they arranged vehicle and proceeded to civil hospital, Umerkot whereas during cross examination has replied that his brother in law Bhawani and friends brought Mehran car & motorcycles respectively. He has admitted that MNA Lal Malhi being his maternal uncle helped them in the matter; whereas injured Kapil Dev has replied that his brother Mahesh (complainant) phoned to Babloo whereupon Vikram and other relatives came there having no relationship with MNA Lal Malhi while injured Radhesham has replied that on call his father,*

cousin Babloo and Vicky @ Bhooro Mal reached out of whom Vicky informed to police who came there but it is very surprised that according to PW Bhooro Mal when they reached at the place of incident all injured persons had already been shifted to civil hospital, Umerkot as such they went there. It is also pertinent to mention here that according to injured Radhesham, Vicky informed to police who came at the place of incident whereas IO/SHO Ghulam Hussain has deposed that as per information he reached at the place of incident but injured had already been shifted to civil hospital, Umerkot then he went there which clearly reveals that complainant and PWs/injured persons have tried their best to make dishonest improvements in order to strengthen the prosecution case. I am fortified with case law reported in ***2018 SCMR 772****. According to complainant after alleged incident they informed to their relative who came there and brought them at civil hospital, Umerkot but none of them has been cited as witness to corroborate his version. Moreover, injured Radhesham and Kanwar during cross examination have categorically admitted that contents of their statements U/s 161 & 164 Cr.P.C were not read over to them. Moreover, as per information, when police party headed by SHO Ghullam Hussain came at civil hospital Umerkot where admittedly no any witness/injured including complainant during first aid treatment disclosed the name of accused to police. It is also worthwhile to mention here that although the prosecution is not bound to establish motive in each & every case but once motive is alleged and not proved, then prosecution must suffer the consequences."*

5. The re-appraisal of evidence reveals that the appellant in his evidence deposed that the car hit them, however, the record is silent with regard to ownership of said car. It is also admitted by complainant/ appellant that he did not disclose name of driver while conveying information to police. It is also admitted position that the licence of the motor bike of the appellant party was not produced before the I.O as well as during evidence before the trial court. Moreover, it is admitted position that driver of the car escaped from the scene after the incident; however, the appellant has admitted that he did not disclose name of driver, therefore, it cannot be held with certainty that the respondent Poonjo Mal was driving the car. This is an acquittal appeal and parameters of interference in Appeal against conviction and appeal against acquittal are quite different. It is settled proposition 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.

6. For the forgoing reasons, no case of indulgence of this court is made out; accordingly this Criminal Acquittal Appeal fails, hence same is accordingly dismissed.

JUDGE

Saleem