

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
MIRPURKHAS.**

Criminal Acquittal Appeal No.S-29 of 2025

Appellant/Complainant : Shahzad Ahmed son of Arshad Ali,
Through Mr. Munawar Ali Abro, Advocate.

The State : Through Mr. Neel Parkash, D.P.G.

Respondents : Nand Lal and Dayaram both sons of Ghamoon
Bheel through Kanjee Mal Bheel.

Date of Hearing : 20.08.2025

Date of decision : 20.08.2025

J U D G M E N T

Amjad Ali Sahito, J.- By this judgment, I intend to dispose of CrI. Acquittal Appeal No.S-29 of 2025, against the impugned judgment dated 15.05.2025, passed by learned Civil Judge & Judicial Magistrate-II Kot Ghulam Muhammad, in Cr. Case No.41/2025 (Cr. Case No.139/2024 (Old) (Re. The State Vs. Nand Lal & another) whereby the respondents namely Nand Lal and Dayaram both sons of Ghamoon by caste Bheel were acquitted u/s.245-(1), Cr.PC, which the appellant/complainant has impugned the Judgment before this Court against the above named respondents by way of filing instant Criminal Acquittal Appeal.

2. The facts of the case, as set out in the F.I.R. lodged by the complainant Shahzad Ahmed, are that he had entrusted livestock comprising four buffaloes, two male buffaloes, and two he-goats to Nandlal and Dayaram, both sons of Ghamoon Bheel and residents of Village Ghulam Hussain Hadiyatullah Shaikh, Deh-211, Taluka Kot Ghulam Muhammad, on 18-05-2023 at about 1600 hours, in the presence of Shahbaz Shaikh and Sarfraz Ali. The livestock, valued at Rs. 1,000,000/- (Ten Lac Rupees), was handed over under a profit-sharing agreement with a fifty percent share. Subsequently, Nandlal and Dayaram relocated to an undisclosed location. Later, the complainant encountered them in Bhukori and inquired about the

livestock, to which they responded that the buffaloes had been sold. As a result, the complainant lodged the present F.I.R., alleging criminal breach of trust. On completion of investigation, the police submitted report u/s 173 Cr.P.C before the competent Court of law.

3. The necessary papers were supplied to the accused at Ex.1 and the formal charge was framed against accused at Ex.2 and plea of accused was recorded at Ex.2/A in which accused pleaded not guilty and claimed for trial.

4. At trial, the prosecution examined Complainant Shahzad Ahmed (PW-1) at Ex.6, who application for lodging the F.I.R, at Ex.6/A, Affidavit at Ex.6/B, Photographs at Ex.6/C (i) & (ii). Sarfraz Ali (PW-2) at Ex.7, who produced memo of Sarzmeen/site inspection at Ex.7/A. Shahbaz Ali (PW-3) at Ex.8. Investigation Officer Liaquat Ali (PW-4) at Ex.9, who produced Roznamcha entries No.11, 13, 16 at Ex.9/A and Roznamcha entries No.3&7 at Ex.9/B. After examination of material witnesses the prosecution closed its side.

5. The statements of respondents/accused under section 342 Cr.P.C were recorded at Ex.11&12, in which they denied the prosecution allegations leveled against them and they have falsely been implicated in this case. They however did not examine themselves on oath nor led any evidence in their defence.

6. Per learned counsel for the appellant/complainant sufficient record is available against the respondents, but the learned Magistrate had acquitted the respondents on flimsy grounds. It is further argued that the learned Magistrate has not considered the real facts as well as the evidence of PWs, which supported the case of the appellant/complainant and acquitted the accused persons by passing the impugned judgment, which is against the law, equity and natural norms of justice. Learned counsel further argued that the respondents/accused persons have caused significant loss to the appellant/complainant and they are not entitled for acquittal and prayed that the respondents/accused may be convicted.

7. On the other hand learned D.P.G and learned counsel for the respondents/accused have supported the impugned Judgment and state that the appellant/complainant deliberately lodged the FIR with

the delay of one year. They have further argued that there is material contradiction in ocular evidence of PWs and submit that the instant criminal acquittal appeal may be dismissed.

8. I have heard learned counsel for the appellant/complainant, learned counsel for the respondents/accused and learned D.P.G for the State and have perused the record.

9. From the perusal of the record, it emerges that the appellant/complainant lodged the FIR with an unexplained delay of one year, which fact he himself admitted during the course of his evidence before the learned trial Court. The appellant/complainant further admitted in his deposition that he did not produce any purchase receipt in support of his claim. The learned Magistrate, after appreciating the evidence, rendered judgment and acquitted the respondents/accused persons. It would be appropriate to reproduce paragraph No.10 of the said judgment, which reads as under:

10. Date of alleged incident is shown in F.I.R as 18-05-2023 while instant F.I.R was lodged on 20-05-2024 which no satisfactorily explanation has been given. There is so much delay in lodging the F.I.R therefore it is creating sufficient dent in the prosecution case. It is well settled principle of case law that delay in lodging F.I.R has considered a serious element in favour of accused. Here is delay of more than one year in lodgment of F.I.R and leads to the inference that it was lodged after due deliberation and consultation. The Delayed in FIR shows dishonestly on the part of complainant and it was lodged with deliberation and consultation, reliance upon case law of Honourable Supreme Court of Pakistan in 2024 SCMR 1427.

It is well settled principle of law that, in 2024 SCMR 1116 [Supreme Court of Pakistan] SADARAN BIBI ve The STATE and others

---Benefit of doubt--- For giving benefit there may not many circumstances, as a single doubt enough to give benefit of the same to the accused".

AND, if a single circumstance would create reasonable doubt in a prudent mind then accused would be entitled award such benefit, not as matter of grace and concession but as of right (2015 P.CR.L.J 1096, 913, 1995 SC 1345). In view of discussed position point No.1 is not proved against the accused beyond reasonable shadow of doubt.

10. However, the learned counsel for the appellant/complainant has failed provide any proof regarding falsify the observations given by learned Magistrate in the impugned judgment and the learned Magistrate has passed the judgment with cogent reasons

11. I am fully satisfied with appraisal of evidence done by the learned trial Court and I am of the view that while evaluating the evidence, the difference is to be maintained in appeal from conviction and acquittal appeal and in the latter case interference is to be made only when there is gross misreading of evidence resulting in miscarriage of justice.

12. The over-all discussion involved a conclusion that the learned counsel for the appellant/complainant has miserably failed to establish the guilt against the respondents/accused beyond any shadow of doubt, in these circumstances, the learned trial Court has rightly evaluated the evidence while recording acquittal of the respondents. It is well settled principle of law that in criminal cases every accused is innocent unless proved guilty and upon acquittal by a Court of competent jurisdiction such presumption doubles. Very strong and cogent reasons are required to dislodge such presumption. The reasons given by the learned trial Court in its judgment have not been found by us to be arbitrary, fanciful or capricious, requiring any interference by this Court. Consequently, the instant appeal filed by the appellant/complainant merits no consideration, which is dismissed accordingly.

J U D G E

Adnan Ashraf Nizamani

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