IN THE HIGH COURT OF SINDH
CIRCUIT COURT HYDERABAD

Cr. Acquittal Appeal No.D-05 of 2014

PRESENT:
Mr. Justice Naimatullah Phulpoto
Mr. Justice Shamsuddin Abbasi

Date of Hearing:	*27.03.2018*
Date of Judgment:	*27.03.2018*
Appellant:	*Haji Nazar Khan S/o Saleem Khan Pathan, through Mr. Anwar H. Ansari, Advocate.*
Respondents No.1 to 3:	*None present*
The State:	*Through Syed Meeral Shah Bukhari, Additional Prosecutor General, Sindh.*

J U D G M E N T

SHAMSUDDIN ABBASI, J:- Through this acquittal appeal, the appellant has called in question the judgment dated 14.02.2014, passed by the learned Special Judge, Anti-Terrorism Court, Hyderabad, in ATC Case No.03 of 2010, arising out of two crimes bearing Crime No.273 of 2009 and Crime No.40 of 2010, registered at P.S Husri, whereby the respondents / accused No.1 to 3 were acquitted.

2. The brief facts of the prosecution case in Crime No.273 of 2009 are that, complainant Haji Nazar Khan got the FIR lodged at P.S Husri, wherein it has been stated by the complainant that he alongwith

his family was residing at Tando Alam Mari and having agricultural land at Khan Pur District Raheem Yar Khan. His son namely Abdul Hakeem, aged about 18 years, was studying in Sindh Regimental School, Hyderabad, in 10th class. On 07.12.2009, he alongwith his family went to Raheem Yar Khan in his own vehicle, leaving his above named son with his brother Haji Habib Khan. It has been further stated that on 08.12.2009 at 7:00 a.m, when he was present in his house at Raheem Yar Khan, his brother Haji Habib Khan informed him through cell phone that on 07.12.2009 Haji Abdul Hakeem and Fazaluddin had left Tando Alam Mari at night but they had not returned home. On 08.12.2009, Fazaluddin reached home and informed that he and Abdul Hakeem went to purchase articles and on return at 10:00 p.m. when they reached at New Suraj Bricks Company, three persons, out of whom, two having KKs and one having Lathi, were standing there and on the force of weapons the said three persons took them to village Yousani Khosso and then to village Imam Ali Unar, where on road one car was seen parked, wherein two persons armed with weapons were seen on the bulb light. Thereafter, the armed persons folded the eyes of Abdul Hakeem with cloth and set them in the car. After about one hour continuous driving, they stopped the car, got him down and took him downside the road and tied him with a tree and on force of weapon the dacoits abducting Abdul Hakeem went away. After much time he got the cloth untied with the help of teeth and reached the house, hence the present was lodged under Section 365-A PPC.

3. Likewise, the brief facts of the prosecution case in Crime No.40 of 2010 are that, complainant SIP Mehmood Khan Nizamani of P.S Husri lodged the present FIR on 06.02.2010, wherein he has stated

that he was posted as SIP at P.S Husri and on that day when he was present at P.S, he received spy information that abductee Abdul Hakeem Pathan of Crime No.273 of 2009 was available in the house of Jeevan Khan s/o Mairaj Khan Kolhi at Village Sohrab Khan District Mirpurkhas. On such spy information, he informed SDPO S. Mujahid Ali Shah, who issued direction to him and on such direction, he alongwith subordinate staff SIP Gul Muhammad Matlo SIO, Husri, ASI Ghulam Abbas, ASI Fidaullah Bhayoon etc., under roznamcha entry No.29 left the P.S at 0050 hours in official Mobile No.SP-5929 and reached Kissana Mori, where on directions of superior officers, the Police of P.S Husri, P.S Hali Road, P.S Phulleli, P.S Pinyari, P.S Hatri, P.S Tando Jam, P.S Hussainabad, PP Chukhi, PP Nangro reached with whom they proceeded via Hyderabad Mirpurkhas Link Road and reached Missri Shah and proceeded alongwith Mirppurkhas Police and reached near house of Jeewan Kolhi at village Sohrab Khan Mari at 1400 hours. Thereafter, they searched the house but on inquiries they came to know that abductee Abdul Hakeem was taken from there to the Jungle and Tangri Oil Field. The complainant alongwith superior officers reached the pointed place at 1700 hours and encircled the bushes, wherefrom 10 persons seeing the police coming to them started straight firing with intention to kill them and the complainant party also made firing in their defence. After continuous firing for about 30 minutes, the bullets of dacoits reached to the end. Three of the dacoits raising hands produced themselves for arrest and the alleged abductee Abdul Hakeem Pathan was recovered from there. It is further stated that out of 10 armed persons, 07 persons succeeded in escaping away, two of them were identified as Kaloo S/o Yousuf by caste Rind r/o Shahdadpur District

Sanghar and Hakim Ali S/o Ali Bux by caste Talpur r/o Shahdadpur District Sanghar. The apprehended person disclosed their names as Muhabbat Ali alias Muhib S/o Haji Husssain Bux Talpur, from whom one KK alongwith 02 magazines were recovered, Jeewan S/o Mairaj Kolhi, from whom one TT Pistol with two magazines were recovered and third person disclosed his name as Nourez Khan S/o Chakkar Khan Mari and one 12 bore repeater was recovered from him. On inquiry, the abductee disclosed his name as Abdul Hakeem S/o Nazeer Pathan, who also disclosed that the said ten accused abducted him from the area of Husri for ransom. The apprehended accused were inquired about license of the weapon on which they disclosed the weapons without license and that from the place of incident 30 empties of SMG 15 empties of rifle and 12 bore cartridges and 12 empties of 30 bore pistol fired by the accused were found. The accused were arrested and such mashirnama of arrest and recovery was prepared under signaturesof SIP/SIO Ghulam Muhammad and ASI Ghulam Abbas. Thereafter, the accused and case property were brought to P.S alongwith abductee Abdul Hakeem, where the present FIR was lodged for offences punishable under Sections 324, 353, 147, 148, 149 PPC and 6/7 of ATA, 1997.

4. During the investigation, the police could not lay hands upon the accused, who escaped away, but showing two persons Kaloo S/o Yousuf Rind and Hakim Ali S/o Ali Bux Talpur as absconders submitted challan against respondents No.1 to 3 / accused before the trial Court in both the FIRs. However, the trial Court separated the cases of absconding accused from the main case and issued proclamation under Sections 87 & 88 Cr.P.C against them.

5. Upon filing of the application by the learned DDPP on behalf of the state under Section 21M of ATA for joint trial of both the crimes, the learned trial Court proceeded with the joint trial in both the aforesaid crimes.

6. The learned trial Court framed the charge against the accused at Ex-5, but all the accused did not plead guilty and claimed to be tried.

7. In order to prove it's case, the prosecution had examined P.W-1 complainant Haji Nazeer Khan at Ex-9. He produced an FIR of Crime No.273 of 2009 at Ex-9/A. P.W-2 abductee Abdul Hakeem was examined at Ex-10 and P.W-3 Fazaluddin was examined at Ex-11. The learned DDPP closed it's side vide statement at Ex-12 by giving up P.W HC Abdul Razzak on the ground that due to accident he was not fit for evidence. Thereafter, P.W-04 Mashir Zainul Abadin was examined at Ex-13. He produced the mashirnama of place of wardat at Ex-13/A. P.W-05 SIP Mehmood Khan was examined at Ex-14. He produced memo of arrest of the accused at Ex-14/A, copy of FIR of Crime No.40 of 2010 at Ex-14/B and attested copies of other FIRs vide Crimes Nos.41, 42 and 43 of 2010 of P.S Husri at Ex-14/C to 14/E. P.W-06 PC Dildar Hussain was examined at Ex-15. Thereafter, the learned SPP gave up P.W HC Paryal, PW ASI Haq Nawaz and PC Ghanwar Khan on the ground that HC Dildar has already deposed on the same point vide statement at Ex-16. Thereafter, the prosecution examined P.W-7 HC Ghulam Nabi of CIA Center Hyderabad at Ex-17 and then again the learned SPP gave up P.W ASI Fidaullah Bhayoon on the ground that he is formal witness and other witnesses have already deposed on the same point vid statement at Ex-18. By statement at Ex-19 the learned

SPP again gave up P.W ASI Hadi Bux on the ground that SIP Mehmood Khan has already deposed on the same point. The prosecution then examined P.W-08 Incharge ADIC Hyderabad S. Mujahid Ali Shah at Ex-20 and the learned DDPP vide statement at Ex-21 again gave up P.W Inspector Raees Khan on the ground that his evidence is identical to Inspector S. Mujahid Ali. Thereafter, the prosecution examined P.W-09 SIP Gul Muhammad at Ex-22, who produced mashirnama of place of wardat at Ex-22/A and then again the prosecution vide statement at Ex-23 gave up SIP Muhammad Sharif Khoso, SIP Muhammad Qasim and Inspector Muhammad Khan. The prosecution then examined P.W-10 Civil Judge & Judicial Magistrate Tando Adam Mr. Intisar Ali at Ex-24, who produced letter of the I.O addressed to him for recording 164 Cr.P.C statement and identification parade at Ex-24/B. Again the learned DDPP vide statement at Ex-25 gave up P.W Khalid Memon on the ground that he is on the same point. Learned DDPP again vide statement at Ex-26 gave up P.W SIP Ghulam Abbas. Lastly, the prosecution examined P.W-11 I.O Inspector Javed Muhammad at Ex-27, who produced letter of SSP whereby he was appointed as I.O of the case at Ex-27/A, letter of SSP at Ex-27/B whereby also he was appointed as I.O. This witness also produced photocopy of mashirnama of arrest at Ex-27/C, photocopy of mashirnama of arrest and recovery at Ex-27/D. Thereafter, prosecution side was closed at Ex-29.

8. The learned trial Court recorded the statement of accused at Ex-30 to 32, in which all the accused denied the allegations leveled by the prosecution. Accused Jeewan and Naourez Khan did not examine themselves on oath or led any evidence in their defence. Accused Muhabbat also did not examine himself on oath but examined his sister

Mst. Bagh Bari in his defence at Ex-30, who produced copy of daily Kawish dated 06.02.2010 at Ex-30/A.

9. The learned trial Court while passing the impugned judgment has recorded acquittal of the accused mainly for the following reasons:-

> *"In this case the abductee in his cross examination has stated that there was population at the place of kidnapping at some distance so also on the way in between the place of their kidnapping and Yousani Goth, but no private P.W from the locality is cited or examined to corroborate the incident. Although P.W Fazaldin also has been abducted alongwith abductee Abdul Hakeem but he was left on the way and tied up with a tree who according to him opening the Cloth with which he was tried freed himself and then reached his village but, still none has deposed to corroborate his version too. Whereas evidence of complainant Haji Nazar Khan and P.W Zainul Abaidin is almost hearsay evidence and inadmissible and not to be considered therefore, is of no value to implicate the accused persons in this case. Evidence of abductee Abdul Hakeem and Fazaldin is important from the point of view of identification parade which is to be discussed herein below, but both these witnesses have in their 161 Cr.P.C statement stated that they have not given hulias and descriptions of the accused persons. Although, identification parade of abductee Abdul Hakeem is held in this case but P.W Fazaldin is even not held and he has in his evidence stated that he has been regularly attending this Court and has been seen the accused in the Court. But without his identification parade even if he has identified the accused person it is not sufficient because he has seen the glimpses of the accused so his identification parade was necessary but again, since he has not given hulias, descriptions and role of each of accused in their 164 Cr.P.C statement but therefore, even if he was subject to identification parade still it would have proved not valid. Only ocular testimony of abductee Abdul Hakeem looking to the evidence of P.W Fazaldin in the circumstances, therefore of no value.*
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> *So far encounter any recovery of Abdul Hakeem is concerned, it may be pointed out that police of various police station centers and agencies is said to have gone in search of abductee Abdul Hakeem towards Mirpurkhas and house of accused Jeewan Kolhi and then to Tangri Oil Field where the encounter is said to have taken place and abductee Abdul Hakeem is recovered but excepting only one witness others have not given the roznamcha entry number under which they had proceeded for the purpose and returned to their respective thanas. In their case mostly all the police witnesses have in their evidence stated that the firing*

of both the sides was straight but nobody from either side was injured. In this case the police witnesses have in their evidence talked about chain and lock which either was available or which hands of the accused was tied but neither chain nor lock is produced by the prosecution in its evidence. About house of accused Jeewan Kolhi where as per the prosecution story the police is said to have gone first in search of the abductee Abdul Hakeem PC Dildar Hussain (Ex-15) has in his cross examination stated that he had not seen accuse Jeewan nor his house of before and that no person pointed out that house of Jeewan. He has further stated that distance between house of Jeewan Kolhi and oil field is about 100 to 150 km when SIP Mehmood (Ex-14) in his cross examination has stated that firing was straight and none had sustained injury and that they were at distance of 20/30 paces from accused and had not seen lock and chain of kidnapee. P.W PC Dildar has also stated that nobody has chased the accused who had fled away and SIP Mehmood in his cross examination has stated that distance between the Oil Field and PS Husri was 20 kms and that the culprits who fled away were having rifles and that distance between Sohrab Khan Mari and P.S Husri would be 60 kms and distance between house of Jeewan Kolhi and Oil Field would be 70 kms. He in his cross examination has stated that the chain was nto seized which is not case property. When P.W HC Ghulam Nabi (Ex-17) in his cross examination has stated that they were at distance of 50 paces from the accused and has stated that cannot give distance between house of Jeewan and police station Husri and that there was no door to the house of Jeewan but there was hedge. He has stated that he did not know distance between house of Jeewan and Oil Field and that one lock and chain were brought by Inspector before him and that lock was already open. P.W Incharge ADIC S. Mujahid Ali (Ex-20) in his cross examination has stated that around house of Jeewan there was compound wall and 2/3 huts and in cross has stated that distance between police party and accused was 50/60 feet. It has also come in the evidence as per some witness that other houses from house of Jeewan Kolhi were at distance whereas one witness says that there were 5/6 house around house of Jeewan. P.W SIP Gul Muhammad (Ex-22) in his cross examination has stated that house of Jeewan was comprised of one boundary wall and one room and that distance between culprits and them was about 80 paces. These contradictions and discrepancies therefore has rendered the prosecution evidence about encounter and recovery of abductee as doubtful so also arrest of the accused persons.

So far as identification parade is concerned in this connection as mentioned above it is important to note that abductee Abdul Hakeem in his cross examination has admitted that in 161 Cr.P.C statement he did not give names descriptions or hulia of the accused persons. Although his identification parade is held but in absence of hulia, descriptions and specific role of each accused

identification parade of accused on this ground alone is of no value. Again as stated Magistrate Mr. Intisar Ali (E-24) has stated that 28 dummies were called and has admitted that 50 were required and reason given by him is that remaining could not be arranged. Supposing that required dummies could not be arranged therefore the holding of identification parade could be postponed till required number of dummies. Again, the Magistrate has in his cross examination stated that he did not mention about the list of dummies prepared separately and whether the dummies are outsider or from fellow prisoners. He has admitted that entire documents produced there is no mention features and descriptions of the dummies so also about similarity of the clothes of the accused with the dummies. He has admitted that there was identification of five suspects and has admitted that the has not mentioned number of identity card of the witnesses whose photocopies he has annexed with the memo but has admitted that photocopies of his NIC was not available at that day and that NIC number of mashirs of identification parade were also not mentioned but has stated that photocopies are attached. This all shows that the identification parade is not held according to law and according to the norms the same therefore is invalid and not applied against and implicate accused persons in this case.

Case of defence as per their statements under Section 342 Cr.P.C is that they were arrested by CIA Police and before the identification parade and the encounter and as per statement U/s. 342 Cr.P.C of accused Muhabbat that on 05.02.2010 his mother Dhano alias Dhaniani and sister Bhag Bhari and other people of the vicinity Bhari and other people of the vicinity had taken out a procession again their detention by CIA Hyderabad and such news was published in daily Kawish dt. 06.02.2010. Although Daily Kawish dt. 06.02.2010 is produced by this accused alongwith statement U/s. 342 Cr.P.C but it is not got verified by the defence by calling news report of that newspaper as defence witness, therefore, the same being without verification cannot be considered. Again, D.W Bhag Bhari examined in this case to the effect that the accused were arrested by CIA Police previously but her evidence has gone uncorroborated. Still in view of doubts created in the prosecution case through prosecution evidence defence of the accused that they were arrested prior to the identification parade and encounter gets strength from doubtful evidence of prosecution.

10. After hearing learned Counsel for the parties, the learned trial Court vide judgment dated 14.02.2014 acquitted all the accused of the charge, while the case of absconding accused persons was ordered to be kept on dormant file.

11. Being aggrieved and dissatisfied from the said judgment, the appellant / complainant preferred the present appeal.

12. The learned Counsel for the appellant contended that the impugned judgment is illegal, perverse and result of misreading and non-reading of the evidence. He further contended that there were no material contradictions and discrepancies in the evidence of the prosecution witnesses, hence, the learned trial Court has failed to consider the evidence of abductee Abdul Hakeem, who rightly identified the respondents / accused in the identification parade held on 11.02.2010 before the learned Judicial Magistrate No. IX, Hyderabad, wherein the abductee picked up the respondents No.1 to 3 / accused. He further contended that abductee Abdul Hakeem had remained in the captivity of the respondents / accused for two months and that the learned trial Court did not consider the fact that there is no enmity in between the complainant party and respondents / accused. It has been further contended that the abductee was recovered after Police encounter with respondents / accused and the Police also recovered crime weapons from the possession of the respondents / accused and that a separate case of recovery of weapons against the respondents / accused was registered at P.S Husri.

13. On the other hand, the learned Additional P.G has supported the impugned judgment passed by the trial Court.

14. Heard the learned Counsel for the appellant, learned A.P.G for the State and perused the impugned judgment as well as material available on the record.

15. From the perusal of the judgment, it reveals that abductee Abdul Hakeem was recovered after the alleged encounter in between the Police and the respondents / accused. It is a matter of record that according to the prosecution story, the Police party was comprising of 08 Police Stations and 2 / 3 Police Posts of some Police Stations, who had participated in the process of recovery of abductee Abdul Hakeem and during that process, exchange of fires from the sophisticated weapons had taken place in between the parties, which continued for about 30 minutes. It is very surprising to note that none from either side had received any injury. According to the evidence of the police personnel, the distance between the police and dacoits was about 50 / 60 paces and they could see each other. It is very difficult to a prudent mind to believe that on one hand 10 / 13 hardened / dangerous criminal / dacoits armed with sophisticated weapons and on the other hand a huge contingency of police party comprising of more than 8 / 10 police stations, who were also duly armed with official weapons and exchange of firing was continued for about half an hour but none had received any single injury and police safely arrested three accused. Another aspect of this encounter had made the prosecution story doubtful to the extent that the mashirnama of place of incident shows that 12 empties of rifle, 15 empties of SMG, 12 empties of T.T pistol and 15 cartridges were recovered from the place of incident, which reflects that 15 cartridges were shown to have been fired from the repeater, 12 empties from T.T pistol and 15 empties from the rifle, which were shown to have been recovered from the possession of all the three accused / respondents but only 15 empties of SMG rifle were recovered. This piece of evidence itself showed that no encounter had taken place. This fact is also evident

from the evidence of P.W No.07 Ghulam Nabi, SIO of P.S Hatri (Ex-17). He deposed that they were at the distance of 50 / 60 paces from the culprits and 10 / 12 police mobiles had participated in this incident. He further admitted that he was aware of the fact that empties were secured from the place of incident, which were fired by the respondents / accused from their weapons. He also deposed that no empty of police firing was secured from the place of incident. Having perused the evidence of this material witness, there appears doubts in the prosecution case as the alleged encounter in our prudent mind has not taken place but irrespectively it has been managed.

16. Another important aspect of the case was identification parade, it was held on 11.02.2010 in the Court of learned Magistrate-IX, Hyderabad, it was against the criminal circular in which directions were given to the learned Magistrates about the ratio which has to be maintained by the Court during identification parade i.e. one accused against 9 / 10 dummies and this fact has been admitted by the learned Magistrate in his evidence that police had produced five accused for identification parade in this offence and he has managed 28 dummies against five accused, whereas, he has admitted that under the law the requirement was 50 dummies against five accused. Another aspect had come on the record that a question was put to learned Magistrate by the defence Counsel, though he denied in his cross-examination that accused had made a complaint that they were shown witness at CIA Center last night. The police encounter as well as identification parade had made the whole case doubtful particularly if they connect it with the defence of the accused who denied all the allegations against them and led evidence in their defence to the effect that in the statements under

Section 342 Cr.P.C, it was stated by the respondents / accused that they were arrested by CIA Police and on 05.02.2010 the mother of accused Muhabbat namely Dhano alias Dhaniani and sister Bhag Bhari and other people of the vicinity had taken out a procession against the detention of the respondents / accused at CIA Center, Hyderabad, and such news were published in Daily Kawish dated 06.02.2010 and the said newspaper has been produced during recording statement of the accused under Section 342 Cr.P.C, the same fact has also been stated by Mst. Bhag Bhari being a Defence Witness. Moreover, identification of an accused person without reference to the role allegedly played by him during the occurrence was shorn of any evidentiary value as held in the case of *KAMALUDDIN V/S. THE STATE (2018 SCMR 577).*

17. We have carefully perused the prosecution evidence and impugned judgment dated 14.02.2014 passed by learned trial Court and have come to the conclusion that the trial Court had rightly acquitted the accused for the reasons that there were material contradictions in the evidence of the prosecution witnesses with regard to the material particulars of the case. Trial Court has also assigned sound reasons for disbelieving the police encounter and identification parade particularly when the news was published in respect of arrest of respondents / accused in daily Kawish dated 06.02.2010 at the hands of CIA Police Hyderabad before identification parade which was held / conducted on 11.02.2010. There were several reasons in the prosecution case, which had created reasonable doubts, therefore, the benefit of doubt was rightly extended by the learned trial Court in favour of the accused.

18. The appreciation of evidence in appeal against conviction and appeal against acquittal is entirely different as held in the case of

GHOUS BUX V/S. SALEEM & 03 OTHERS (2017 P.Cr.L.J 836), wherein it has been observed as under:-

> *"It is also settled position of law that the appreciation of evidence in the case of appeal against conviction and appeal against acquittal are entirely different. Additional P.G has rightly relied upon the case of Muhammad Usman and 2 others v. The State 1992 SCMR 489, the principles of considering the acquittal appeal have been laid down by honourable Supreme Court as follows:*
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> > *It is true that the High Court was considering an acquittal appeal and, therefore, the principles which require consideration to decide such appeal were to be kept in mind. In this regard several authorities have been referred in the impugned judgment to explain the principles for deciding an acquittal appeal. In the impugned judgment reference has been made to Niaz v. The State PLD 1960 SC (Pak.) 387, which was reconsidered and explained in Nazir and others v. The State PLD 1962 SC 269. Reference was also made to Ghulam Sikandar and another v. Mamaraz Khan and others PLD 1985 SC 11 and Khan and 6 others v. The Crown 1971 SCMR 264. The learned counsel has referred to a recent judgment of this Court in Yar Mohammad and 3 others v. The State in Criminal Appeal No.9-K of 1989, decided on 2nd July, 1991, in which besides referring to the cases of Niaz and Nazir reference has been made to Shoe Swarup v. King-Emperor AIR 1934 Privy Council 227 (1), Ahmed v. The Crown PLD 1951 Federal Court 107, Abdul Majid v. Superintendent of Legal Affairs, Government of Pakistan PLD 1964 SC 426, Ghulam Mohammad v. Mohammad Sharif and another PLD 1969 SC 398, Faizullah Khan v. The State 1972 SCMR 672, Khalid Sahgal v. The State PLD 1962 SC 495, Gul Nawaz v. The State 1968 SCMR 1182, Qazi Rehman Gul v. The State 1970 SCMR 755, Abdul Rasheed v. The State 1971 SCMR 521, Billu alias Inayatullah v. The State PLD 1979 SC 956. The principles of considering the acquittal appeal have been stated in Ghulam Sikandar's case which are as follows:-*
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> > *"However, notwithstanding the diversity of facts and circumstances of each case, amongst others, some of the important and consistently followed principles can be clearly visualized from the cited and other cases-law on the question of setting aside an acquittal by this Court. They are as follows:-*
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> > *(1) In an appeal against acquittal the Supreme Court would not on principle ordinarily interfere and instead would give due weight and consideration to the findings of Court acquitting, the accused. This approach is slightly*

different than that in an appeal against conviction when leave is granted only for the re-appraisement of evidence which then is undertaken so as to see that benefit of every reasonable doubt should be extended to the accused. This difference of approach is mainly conditioned by the fact that the acquittal carries with it the two well accepted presumptions: One initial, that till found guilty, the accused is innocent; and two that again after the trial a Court below confirmed the assumption of innocence.

(2) The acquittal will not carry the second presumption and will also thus lose the first one if on points having conclusive effect on the end result the Court below: (a) disregarded material evidence; (b) misread such evidence; (c) received such evidence illegally.

(3) In either case the well-known principles of re-appraisement of evidence will have to be kept in view when examining the strength of the views expressed by the Court below. They will not be brushed aside lightly on mere assumptions keeping always in view that a departure from the normal principle must be necessitated by obligatory observances of some higher principle as noted above and, for no other reason.

(4) The Court would not interfere with acquittal merely because on reappraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If, however, the conclusion reached by that Court was such that no reasonable person would conceivably reach the same and was impossible then this Court would interfere in exceptional cases on overwhelming proof resulting in conclusion and irresistible conclusion; and that too with a view only to avoid grave miscarriage of justice and for no other purpose. The important test visualized in these cases, in this behalf was that the finding sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous."

13. In another case of State/Government of Sindh through Advocate General Sindh, Karachi v. Sobharo (1993 SCMR 585), it is held as follows.

"14. We are fully satisfied with appraisal of evidence done by the trial Court and we are of the view that while evaluating the evidence, difference is to be maintained in appeal from conviction and acquittal and in the latter case interference is to be made only when there is gross misreading of evidence resulting in miscarriage of justice. Reference can be made to the case of Yar

Muhammad and others v. The State (1992 SCMR 96). In consequence this appeal has no merits and is dismissed."

19. The judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous. The scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of the innocence is significantly added to the cardinal rule of criminal jurisprudence as the accused shall be presumed to be innocent until proved guilty. In other words, the presumption of innocence is doubled as held by the Honourable Supreme Court of Pakistan in the case of *THE STATE & OTHERS V/S. ABDUL KHALIQ & OTHERS (PLD 2011 S.C 554),* the relevant portion is reproduced hereunder:-

"16. We have heard this case at a considerable length stretching on quite a number of dates, and with the able assistance of the learned counsel for the parties, have thoroughly scanned every material piece of evidence available on the record; an exercise primarily necessitated with reference to the conviction appeal, and also to ascertain if the conclusions of the Courts below are against the evidence on the record and/or in violation of the law. In any event, before embarking upon scrutiny of the various pleas of law and fact raised from both the sides, it may be mentioned that both the learned counsel agreed that the criteria of interference in the judgment against ' acquittal is not the same, as against cases involving a conviction. In this behalf, it shall be relevant to mention that the following precedents provide a fair, settled and consistent view of the superior Courts about the rules which should be followed in such cases; the dicta are:

Bashir Ahmad v. Fida Hussain and 3 others (2010 SCMR 495), Noor Mali Khan v. Mir Shah Jehan and another (2005 PCr.LJ 352), Imtiaz Asad v. Zain-ul-Abidin and another (2005 PCr.LJ 393), Rashid Ahmed v. Muhammad Nawaz and others (2006 SCMR 1152), Barkat Ali v. Shaukat Ali and others (2004 SCMR 249), Mulazim Hussain v. The State and another (2010 PCr.LJ 926), Muhammad Tasweer v. Hafiz Zulkarnain and 2 others (PLD 2009 SC 53), Farhat Azeem v. Asmat ullah and 6 others (2008 SCMR 1285), Rehmat Shah and 2 others v. Amir Gul and 3 others (1995 SCMR 139), The State v. Muhammad Sharif and 3 others (1995 SCMR 635), Ayaz Ahmed and another v. Dr. Nazir Ahmed and another (2003 PCr.LJ 1935), Muhammad Aslam v. Muhammad Zafar and 2 others (PLD 1992 SC 1), Allah Bakhsh and another v.

Ghulam Rasool and 4 others (1999 SCMR 223), Najaf Saleem v. Lady Dr. Tasneem and others (2004 YLR 407), Agha Wazir Abbas and others v. The State and others (2005 SCMR 1175), Mukhtar Ahmed v. The State (1994 SCMR 2311), Rahimullah Jan v. Kashif and another (PLD 2008 SC 298), 2004 SCMR 249, Khan v. Sajjad and 2 others (2004 SCMR 215), Shafique Ahmad v. Muhammad Ramzan and another (1995 SCMR 855), The State v. Abdul Ghaffar (1996 SCMR 678) and Mst. Saira Bibi v. Muhammad Asif and others (2009 SCMR 946).

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 re-appraisal 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. It is averred in The State v. Muhammad Sharif (1995 SCMR 635) and Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals."

20. No doubt, offence of kidnapping for ransom is always heinous offence but we have examined the evidence in this case very carefully and have come to the conclusion that the prosecution had

failed to prove it's case against the respondents / accused beyond reasonable shadow of doubt. Consequently, we do not find any substance in the arguments advanced by the learned Counsel for the appellant. The judgment passed by the learned trial Court does not suffer from any illegality or irregularity and the same cannot be interfered by this Court, therefore, we by upholding the judgment dated 14.02.2014 passed by the learned trial Court, dismiss the present acquittal appeal.

21. These are the reasons for our short order dated 27.03.2018 pronounced in open Court, whereby this acquittal appeal was dismissed.

JUDGE

JUDGE

Shahid