

**IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Acquittal Appeal No.470 of 2010

Dates of hearing : 11.09.2019

Date of judgment : 03.10.2019

Appellant / State : through Mr. Saleem Akhtar  
Buriro, Additional Prosecutor  
General & Mr.Hussain Bux,  
A.P.G, Sindh.

Respondents / accused : through Mr. Mohammad  
Mohammad Boota & others Ashraf Samo, Advocate

-----

**JUDGMENT**

**Muhammad Saleem Jessar, J.-** By means of instant Criminal Acquittal Appeal, the appellant / State has assailed Judgment dated 05.04.2010 passed by learned Special Judge, Anti-Corruption (Provincial), Karachi whereby he acquitted respondents / accused in Special Cases No.36/2008 and 22/2009 arising out of F.I.R. No.28/2008 registered at ACE Karachi under sections 161/420/468/471/477-A/34 PPC, read with Section 5(2) of Prevention of Corruption Act, 1947.

Brief facts giving rise to the filing of instant acquittal appeal, as per FIR No.28/09 dated 01-09-2008 lodged on the basis of complaint made by Khawaja Mohammad Mukhtiar Butt, are that instant case was registered with the approval of competent authority as a result of enquiry conducted into Complaint No.196/2007 of ACE Karachi initiated on the complaint of Khwaja Mukhtiar Butt S/o Khwaja Mehboob Alam Butt. The allegations in the said complaint were that revenue officials named in the complaint were the custodians of the record of rights and were duty bound not to prepare wrong record or intentionally act in defiance of law, rules and procedure but they all in collusion with private persons with common intention prepared wrong record in respect of Survey No.301 Deh Mehran, measuring 500 Sq Yds. Originally the record of right according to VF-VII of Deh Mehran Malir Town Karachi was in the name of Mr. Zulfiqar Ali Bhutto, the then Prime Minister of Pakistan, which was later

on transferred in the name of his legal heirs. It was further alleged that through some non-effective documents including a forged sale deed dated 17-11-1981, a fraudulent and wrong record was entered in the name of Muhammad Boota, vide wrong entry No. 1650 of VF-VIL, of Deh Mehran Malir Town Karachi. The Sub Registrar Azizur Rehman had registered General Power of Attorney vide entry No. 970 dated 31-12-2005 on the basis of wrong record and expired NOC. It was further alleged that accused namely, Mushtaq Ahmed Solangi, the then Mukhtiarkar Malir Town, Ghulam Rasool Samoo, the then Tapedar of Deh Mehran, Azizur Rehman the then Sub Registrar T-Div.IX, Muhammad Boota S/o Ch. Nazar Muhammad and Ali Asghar S/o Muhammad Boota (beneficiaries), committed offences punishable under sections 161/420/468/471/477-A/34 PPC read with Section 5(2) Act-II-1947 through intentional acts and willful omission.

After registration of FIR, investigation started which passed through several hands and stages and ultimately interim challan was submitted in the Court on 17-09-2008 which was subsequently treated as final challan by the court.

A formal charge was framed on 17.07.2009 against three official accused namely, Mushtaq Ali Solangi, the then Mukhtiarkar Gadp Town Karachi, Ghulam Rasool Samoo, the then Tapedar of Deah Mehran, Azizur Rehman, the then Sub-Registrar as well as against two private persons/beneficiaries namely, Muhammad Boota and Ali Asghar S/o Muhammad Boota.

In order to prove its case prosecution examined as many as six witnesses namely, PW-1 Complainant Khwaja Muhammad Mukhtiar Butt, PW-2 Aijaz Ali, Assistant Mukhtiarkar, PW-3 Muhammad Yaseen Patwari, PW4 S.I. Ali Akhtar Noorani PW-5, S.I. Mohammad Faizan Khan and PW-6 Inspector Haq Nvaz. Thereafter, prosecution side was closed vide statement Ex 17.

Statements of accused were recorded under Section 342 Cr. P.C. in which they denied prosecution allegations and claimed to be innocent; however, neither they examined themselves on oath nor produced any defense witness.

After formulating the points for determination, recording evidence of prosecution witnesses and hearing counsel for the parties, learned trial

Court acquitted the accused / respondents vide impugned judgment. Against the said judgment of acquittal the appellant / State has preferred instant Cr. Acquittal Appeal.

I have heard learned Additional Prosecutor General and Asst. Prosecutor General appearing for the appellant/ State as well as learned counsel for respondents / accused and have gone through the material available on the record.

Learned Additional Prosecutor General, Sindh submitted that accused Mushtaq Ali Solangi was the Mukhtiarkar of Malir while accused Ghulam Rasool Samoo was Tapedar of Deh Mehran. He next submitted that accused Aziz-ur-Rehman (since expired) was Sub-Registrar of Gushan-e-Iqbal who allegedly executed the power of attorney on behalf of accused Muhammad Boota in favour of his son accused Ali Asghar. He next submitted that complainant Khuwaja Muhammad Mukhtiar Butt, Exhibit No.8 at page No.53 moved an application to the Anti-Corruption Authorities which subsequently was incorporated into FIR in terms of Section 154 Cr. P.C. vide crime No.28 of 2008 Exhibit-13/1 at page 211, wherein he stated that residential plot out of survey No.301 was originally owned by late Mr. Shaheed Zulfiqar Ali Bhutto, the former Prime Minister of Pakistan, vide entry No.1058 dated 06.02.1974 at page 71 and after his demise the said property was mutated in the name of his legal heirs vide entry No.1058/1 at page 73. He next submitted that accused Muhammad Boota in connivance with official respondents / accused by maneuvering and preparing false as well as fake documents kept false entry in Revenue Record of Rights being entry No.1565/2 followed by other fake entry No.1650 at page 67. He further submitted that original property out of the survey No.301 (5-29 Acres) is still in the name of legal heirs of late Mr. Shaheed Zulfiqar Ali Bhutto and they had not sold out the same to anybody else even not authorized anybody to sell or transfer the same to third party including the accused Muhammad Boota. He further submitted that entire evidence is based upon the documents which were adduced before the trial Court but the trial Court without appreciation of the same has wrongly acquitted the Respondents. Hence he prayed for allowing instant appeal and for conviction of the Respondents / accused. He also contended that although PW-3 Tapedar Muhammad Yaseen was declared hostile by the prosecution but his hostility would not vitiate the veracity of the prosecution evidence/case. In support of his arguments he

relied upon the cases reported in 2005 YLR 1872, 2011 SCMR 401 and 2018 P. Cr. L.J. 490.

On the other hand, learned counsel appearing for the Respondents/accused submitted that complainant has not come with clean hands and he himself is a land grabber. According to him, in fact the complainant intended to grab the property belonging to late Mr. Shaheed Zulfiqar Ali Bhutto and for this purpose he approached the accused, thereby claiming mutation of the disputed property in his favour which was refused by the accused; therefore, in order to get revenge of the said refusal, he cooked up a false story vis-à-vis present case. He next submitted that complainant himself has presented the declaration of gift in respect of the property in dispute and subsequently he sold out the same to one Khursheed Alam. He further submitted that order dated 20.02.2007, Exhibit-10/5 at page 75 was passed on an application moved by the complainant and said Sarfaraz Alam to whom Khursheed Alam sold out the land in dispute. He further submitted that though the property in disputed is still in the name of legal heirs of deceased Zulfiqar Ali Bhutto, despite that the complainant himself has been enjoying its illegal possession and has been getting its entire produce in the shape of rents etc. He also submitted that accused Ghulam Rasool was appointed in the Revenue Department as Tapedar in the year 1994, whereas the offence pertains to the year 1981. Hence, malafide on the part of complainant is very much evident and it shows that the complainant in order to take revenge of refusal made by the official Respondents/accused in collusion with the anti-corruption authorities has filed this case which has no independent legs to stand upon. He, therefore, prayed for dismissal of the appeal against acquittal. In support of his contentions, he placed reliance upon the case-law reported in 2002 SCMR 713, 2004 SCMR 215, 2007 YLR 3321, 1986 P.Cr.L.J. 1714, 1991 P.Cr.L.J. Note 336 and 2004 P.Cr.L.J. 1151. He focused upon the statement of accused Tapedar Ghulam Rasool at page 283 at relevant page 285 i.e. answer to the question No.5 which reads as under: -

"Q.No.5. Do you want to say anything else?

Ans- I was selected for Tapedari Course in 1994, I produce the copy of Tapedari Certificate dt 27-2-1995. as exb 19/1. Thereafter I was appointed as Tapedar on 16-11- in Distt Badin I produce my appointment letter as exb 19/2. On 24.10.2002 I was transferred to Karachi. I produce such letter as exb. 19/3. In the year 2004, one Mukhtiar But came to my office and produced a fake authority letter of late

Zulfiqr Ali Bhutto regarding property of survey No.471, showing the date of issuance as March 1964, I produce the copy of said letter as Ex.19/4. On the basis of said fake letter he also produced gift deed dt in the name of Haji Alam executed in favour of Khursheed Alam. I produce the same as exb. 19/5. Mukhtiar Butt also produced the copy of sale agreement of same property viz. Survey No 471. I produce the said sale agreement and receipt as exb. 19/6. Mukhtiar Butt also produced site plan and an appl. for connection of Gas I produce the same as exb. 19/7 and 19/8 respectively. The said Mukhtiar Butt further produced another Sale agreement showing the sale of property by Khursheed Alam to Sarfaraz Alam. I produce the same as exb. 19/9. Mukhtiar Butt requested to enter the both Sale agreements in the record of rights I refused doing so as I found the documents fake. Upon which he extended threats and moved a false application before ACE officials. He approached Inspector Faizan, who also threatened me for the consequence not obliging the said Mukhtiar Butt. I have been falsely implicated by said Mukhtiar Butt. In fact, he is the main culprit. I produce the details for property of Mr. Z.A. Bhutto which is still intact in the name of his LRs as exb. 19/10. The property of accused Boota has no concern with the land/property of late Z.A. Bhutto. The said property of accused Boota has already been cancelled by DDO Malir. I also referred exb. 18/1 the inquiry report produced by accused Mushtaq Solangi. I am innocent. Actual culprit Mukhtiar Butt is in illegal possession of Survey No.471, the property of late Z.A. Bhutto"

The allegations against the accused persons in the F.I.R. as well as in the Charge seem to be that all the accused i.e. officials as well as private persons *in connivance with each other prepared fake record in respect of Survey No.301, Deh Mehran, admeasuring 500 Sq. Yards in favour of accused Mohammad Boota on the strength of fake sale deed dated 17.11.1981 and converted the ownership of above property vide fake/forged Entry No.1650 VF-VII, Deh Mehran Malir Town Karachi which was the property of Sheheed Zulfiqar Bhutto.* In addition accused Aziz-ur-Rahman, since deceased was also charged for illegally registering the General Power of Attorney vide No.970, dated 31.12.2005, on the basis of fake/wrong record and expired NOC. Thus, **all the accused** were charged to have committed offence punishable under sections 161/420/468/471/477-A/34 PPC read with Section 5(2) of Prevention of Corruption Act, 1947. It seems that general allegations have been leveled against all the accused persons and no specific role / offence has been attributed to each accused.

It is very strange that even against the private persons allegation has been levelled of committing offence under section 5(2) of Prevention

of Corruption Act (Act II of 1947), although the said section relates to the offences detailed therein allegedly committed by a **public servant** which is crystal clear even from the language of section 5(2) of the said Act which read as under:

“(2) Any **public servant** who commits or attempts to commit criminal misconduct shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both.”

Admittedly, accused Mohammad Boota and Asghar Ali are not **public servants**, thus their alleged involvement in the commission of alleged offence under section 5(2) of the Act-II of 1947 is totally illegal and unlawful.

Furthermore, from the perusal of the F.I.R. it seems that in the column of ‘Date and time of incident’ it is written “1981 onward” whereas F.I.R. was registered on 01.09.2008 i.e. after about 27 years from the date of commencement of the alleged offence. However, if it is presumed that the ACE came to the knowledge of the alleged incident consequent upon the complaint moved by P.W. Khawaja Mohammad Mukhtiar Butt as is evident from the contents of the F.I.R., even then there is delay of about two years as the said complaint was moved in the year 2006 whereas F.I.R. was registered in the year 2008.

No explanation has been furnished by the complainant / prosecution for such an inordinate delay in lodging the F.I.R. which has also put severe dents and created serious doubts in the prosecution case. Needless to emphasize that a delay of even few hours in lodging the FIR without submitting any plausible explanation is fatal to the prosecution case. In this connection reference may be made to the case of Mst. NAZIA ANWAR Vs. The STATE and others reported in 2018 SCMR 911 wherein Honourable Mr. Justice Dost Mohammad Khan, while recording his separate view in the said case, took the delay of only two hours as fatal to the prosecution case. It was held in the said case as under:

“The most vital point in the case attracting the court's attention is the fact of FIR, having been lodged at the crime spot after more than two hours, no reason much less plausible has been given by the prosecution at any stage. The FIR lodged at the crime spot, in a murder case, would create reasonable suspicion that the crime was un-witnessed one, therefore, preliminary investigation are carried out and witnesses are set up. It is the prosecution case itself that immediately after the occurrence many men reached the crime house and the dead body could be conveniently taken

within no time to the police station but instead, the complainant waited for the arrival of the police not taking a single step to shift the dead body.”

In the case reported as Ayub Masih v. The State (PLD 2002 SC 1048) Honourable Supreme Court held as under:-

*“The unexplained delay in lodging the F.I.R. coupled with the presence of the elders of the area at the time of recording of F.I.R. leads to the inescapable conclusion that the F.I.R. was recorded after consultation and deliberation. The possibility of fabrication of a story and false implication thus cannot be excluded altogether. **Unexplained inordinate delay in lodging the F.I.R. is an intriguing circumstance which tarnishes the authenticity of the F.I.R., casts a cloud of doubt on the entire prosecution case and is to be taken into consideration while evaluating the prosecution evidence. It is true that unexplained delay in lodging the F.I.R. is not fatal by itself and is immaterial when the prosecution evidence is strong enough to sustain conviction but it becomes significant where the prosecution evidence and other circumstances of the case tend to tilt the balance in favour of the accused.**”*

In another case reported as Said Wahab Vs. State (2018 YLR 2398) it was observed that occurrence had allegedly taken place at 5.10 p.m. and the report was lodged at 7.10 p.m. while FIR was registered at 9.30 p.m. Police Station and hospital were situated in almost the same vicinity, despite that there was delay of about two hours in lodging of FIR which showed that registration of the FIR was wilfully delayed and the complainant party was given time for consultation and deliberation whereafter murasila was drafted and then the formal FIR was chalked out against the accused persons. It was held that such aspect of the case reacted on the genuineness of the story set-up by the prosecution.

In view of unexplained delay of at least two years occurred in the instant case in registration of FIR, possibility of deliberation and false implication of the accused could not be overruled.

Yet there is another aspect of the case i.e. none of the prosecution witness has specifically deposed that he himself had seen any accused person to have committed act of forgery, fraud or cheating etc. It is a settled law that in the absence of ocular evidence connecting the accused with the commission of the alleged offence it would not be safe to record conviction of the accused particularly when any link in the chain in the circumstantial evidence is missing. In this connection reference may be made to the decision of Honourable Supreme Court in the case of

Munawar Shah Vs. Liaquat Hussain reported in 2002 SCMR 713 wherein it was held as under:

*“In a recent case of Mohammad Ijaz Ahmed v. Raja Fahim Afzal and 2 others (1998 SCMR 1281) a Bench of learned three Judges while relying upon Ghulam Sikandar and another v. Mamaraz Khan and others (PLD 1985 SC 11), held that in a case where there is no ocular evidence connecting any of the respondents with the commission of the offence alleged against them it would not be safe to record conviction of the accused particularly when any link in the chain in the circumstantial evidence is missing. “*

It is also significant to point out that Superior Courts have also not appreciated conduct of the Anti-Corruption Establishment / Police in taking cognizance of the matter which came into existence as a result of certain disputes between private persons in respect of private lands. In the instant case admittedly civil litigations were pending between the private respondents and the complainant, for instance; Civil Suit No.1536/2006 filed by accused Mohammad Boota against the complainant Khawaja Mohammad Mukhtar Butt and others and Appeal No.28 of 2007 before the District Officer (Revenue) & Special Judicial Magistrate, Malir Town City District Government, Karachi etc. In this connection reference may be made to the dictum laid down by Honourable Supreme Court in the case of Rasool Khan and others Vs. Haji Banaras Khan and others reported in PLD 2004 SC 364 wherein it was held:

*“It would be pertinent to note that the respondents have also resorted to the civil remedy and have filed civil suit in the year 1998 which is pending adjudication, hence there was no justification to invoke the jurisdiction of the criminal Court as the very fact that the mutation was fraudulently entered or not is yet to be determined by the Civil Court.”*

Yet in another case reported as Fayyaz Ahmed Vs. Adeel Ashfaq and others (2007 YLR 3321 [Karachi]) following observations were made by this Court:

*“13. It is also seen that admittedly the dispute is in respect of private land between private persons and just by arraying the Sub-Registrar Zafar Baloch as one of the accused in the complaint, the case has been brought under the Anti-Corruption laws. It was pointed out to the Anti-Corruption Authorities in the two letters written by the applicants/respondents that such a case is not maintainable under the Anti-Corruption Laws however the same was ignored by the Anti Corruption Authorities.”*

In the case of Fayyaz Ahmed (Supra) reference was also made to an unreported judgment of a Division Bench of this Court, authored by



Honourable Mr. Justice Amir Hani Muslim, as he then was, wherein it was held:

*“(9) .....The law does not authorize Anti-Corruption Police to entertain any application of any private person in respect of private land. If a complaint of a private person pertains to an entry of land, which is not owned by the Government is allowed to be entertained it would amount to usurping the powers of revenue authority provided under the Sindh Land Revenue Act, 1967. The Officer of the ‘Anti-Corruption can only take cognizance in those matters in which the Government land is involved and they do not have the authority to determine dispute in regard to entries pertaining to private lands nor the law authorized them to entertain any complaint in regard to title dispute between the private parties. The authority of Anti-Corruption Police is confined to investigate into the entries kept in respect of government lands and dispute in regard to the private lands are subject to jurisdiction of the revenue authorities and/or of the civil courts.”*

From the perusal of the material available on the record it seems that even in the investigation / inquiry conducted by ACE complainant Khawaja Mohammad Mukhtar Butt was also found to be involved in occupying the land illegally belonging to Bhutto Family but instead of implicating him as an accused, he was arrayed simply as a witness. In this respect reference may be made to the report of Regional Revenue Officer in the enquiry held on the direction of Revenue Minister, a copy whereof was produced by accused Mushtaq Ali while recording his statement under section 342 Cr. P.C. and which was also exhibited by the trial Court as Ex.18/1. In the said report, *inter alia*, following finding was given by the Enquiry Officer:

*“During site visit, it was found that Mukhtar Butt has illegally constructed shops and boundary wall on S. No.471 of deh Mehran Tapo Malir. No entry is available in favour of Mukhtiar Butt in Revenue Record. A certificate is available with the Mukhtiar Office malir in which it is certified that late Zulfiqar Ali Bhutto authorize Mr. Haji Mohammad Alam s/o Choudry Ahmed Din to hold possession of plot of land measuring 500 Sq. Yards in S. No.471 deh Mehran Tapo Malir. This certificate appears to be **bogus** as the date given in certificate is 24<sup>th</sup> March 1964 and the S.No. 471 was formed from S. No.301 in the year 1974. The said certificate was produced by Mukhtiar Butt before the Revenue authorities in support of his **illegal claim of possession.**”*

Besides, there are also certain admissions made by the prosecution witnesses which are also fatal to the prosecution case and go in favour of the accused persons / respondents. P.W.1 Khawaja Mohammad Mukhtiar

Butt on whose complaint investigation / enquiry was commenced by ACE in his cross-examination made following admissions:

*“I was not authorized in writing to supervise the land.....It is correct that a Electric Meter as well as Sui - Gas meter are installed at plot, in my name.....I do not know about any sale agreement executed by Sarwari Begum in favour of accused Mohammad Boota.....It is fact that survey No.471 is property of Bhutto family. It is not a fact that survey No.471 is in my possession. The owners have constructed shops over survey No.471 after 2006.”*

P.W.2 Aijaz Ali, who was Assistant Mukhtiarkar at the relevant time, in his cross-examination admitted as under:

*“It is correct that under entry No.1650 Sarwari Begum and Akhtari Begum have sold 500 sq. yards from Survey No.301 to accused Mohammad Boota.....Entry in the name of Mohammad Boota was effected on the basis of registered sale deed in the year 1981.”*

P.W. 3 Patwari Mohammad Yaseen did not support the prosecution case, therefore he was declared hostile by learned DDPP appearing for the State.

P.W. 4 S.I. Ali Akhtar Noorani, who registered the F.I.R., arrested the accused and conducted initial investigation, in his cross-examination made following admissions:

*“It is correct that on 13.02.1983 Akhtary Belgum had sold the plot in question to Mohamamd Boota.....It is correct that according to Form VII Sawrari Begum made her attorney to Akhtary Begum.....It is correct that i did not make Akhtary Begum as witness. Vol. Says due to lack of time it was not possible for me as the investigation were transferred to other IO.....”*

P.W. 5, S.I. Mohammad Faizan Khan, second I.O. of the case, in his cross-examination admitted as under:

*“I see Ex.14/2 and say that according to this entry the land was transferred to Mohammad Boota by Sarwary Begum as attorney of Akhtary Begum. It is correct that the said entry was entered in the record of rights on 13.02.1983. It is correct that on the basis of said entry PO Awa given by accused Mohammad Boota to his son Ali Asghar. It is correct that no complaint was lodged by Mst.Akhtary Begum or Sarwary Begum, neither any statement of said ladies were recorded during the enquiry.*

P.W. 6 Inspector Haq Nawaz, who was the third I.O. of the case, in his cross-examination made following admissions:

*“It is correct that the actual owners/L.R.s of land neither approached to ACE for action nor they were investigated*

*during inquiry.....It is correct that entry No.1058/I is still intact in the name of LR's of Mr.Zulfiqar Ali Bhutto. It is correct that in 1983, when the entry No.1565 was made / entered in the record accused Ghulam Rasool Sammo was not posted at Deh Mehran Tapo Malir Karachi.”*

Above admissions create doubts in the prosecution case. Particularly, the most important fact emerging from such admissions is that although star witnesses in the instant case could be the Legal Heirs of Mr.Zulfiqar Ali Bhutto, as well as the two ladies from whom the accused Mohammad Boota is alleged to have purchased the land in question namely, Mst. Sarwary Begum and Mst. Akhtary Begum; however, none of them has been examined by the prosecution. No explanation has, at all, been furnished by the prosecution for their non-examination. This is also fatal to the prosecution case as it is settled principle of law that despite availability of disinterested witnesses, non-examination of such witnesses in the case gives inference that in case such witnesses had been examined, they would have deposed against the prosecution as envisaged under Article 129(g) of Qanoon-e-Shahadat Order, 1984. In the case of Bashir Ahmed alias Manu vs. the State reported in 1996 SCMR 308 it was held by Honourable Supreme Court that despite presence of natural witnesses on the spot they were not produced in support of the occurrence an adverse inference under Article 129(g) of Qanun-e-Shahadat Order could easily be drawn that had they been examined, they would not have supported the prosecution version. In another case reported as Mohammad Shafi vs. Tahirur Rehman (1972 SCMR 144) it was held that large number of persons had gathered at the place of occurrence but prosecution failing to produce single disinterested witness in support of its case, therefore no implicit reliance could be placed on evidence of interested eye-witnesses. In the case reported in 1980 SCMR 708, it was observed that no witness of locality nor owner of hotel was produced in support of prosecution case nor any independent evidence to corroborate testimony of the three eye-witnesses was produced, as such, the acquittal was upheld by the Honourable Supreme Court.

It has also been held by the Superior Courts that conviction must be based and founded on unimpeachable evidence and certainty of guilt, and any doubt arising in the prosecution case must be resolved in favour of the accused. In the case reported as Wazir Mohammad Vs. The State (1992 SCMR 1134) it was held by Honourable Supreme Court as under:

*“In the criminal trial whereas it is the duty of the prosecution to prove its case against the accused to the hilt, but no such duty is cast upon the accused, he has only to create doubt in the case of the prosecution.”*

In another case reported as Shamoon alias Shamma Vs. The State (1995 SCMR 1377) it was held by Honourable Supreme Court as under:

*“The prosecution must prove its case against the accused beyond reasonable doubts **irrespective of any plea raised by the accused in his defence.** Failure of prosecution to prove the case against the accused, entitles the accused to an **acquittal.** The prosecution cannot fall back on the plea of an accused to prove its case.....**Before, the case is established against the accused by prosecution, the question of burden of proof on the accused to establish his plea in defence does not arise.**”*

It would also be pertinent to point out at this stage that the consideration for deciding a Criminal Appeal against acquittal are quite difference from that of a Criminal Appeal against conviction as in the former case presumption of double innocence of the accused is available in the case. It is a settled principle of law that the superior Courts act slowly in interfering with an order of acquittal, unless grounds for acquittal are perverse, wholly illogical or unreasonable.

In the case reported as Mirza Noor Hussain vs. Farooq Zaman and 2 others (1993 SCMR 305) it was held by the Honourable Supreme Court as under:

*“.....the judgment of the trial Court is supported by sound reasons and this Court cannot substitute its own findings in place thereof unless.....that the findings.....are ‘artificial’, ‘shocking’, ‘ridiculous’, ‘based on misreading of evidence’ and ‘leading to miscarriage of justice’.”*

In another case reported as Yar Mohammad and 3 others Vs. The State (1992 SCMR 96) Honourable Supreme Court observed as under:

*“Unless the judgment of the trial Court is perverse, completely illegal and on perusal of evidence no other decision can be given except that the accused is guilty, there has been complete misreading of evidence leading to miscarriage of justice, the High Court will not exercise jurisdiction under section 417, Cr. P.C. In exercising this jurisdiction the High Court is always slow unless it feels that gross injustice has been done in the administration of criminal justice.”*

In the case of Ghulam Sikandar and another vs. Mamraz Khan and others reported in PLD 1985 SC 11 it was held as under:

*”.....The Courts often in such like difficult situation have applied test of “impossibility” by asking questions; whether it was impossible for any reasonable person to have held the impugned view on appreciation of evidence on account of which the acquittal took place.” and “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.” And “The important test visualized in these cases, in this behalf was that the findings sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous.”*

Yet in a recent judgment passed in the case of Mohammad Shafi alias Kuddoo Vs. The State and others reported in SCMR 2019 1045, Honourable Supreme Court held as under:

“It is by now well settled that acquittal carries with it double presumption of innocence; it is reversed only when found blatantly perverse, resting upon fringes of impossibility and resulting into miscarriage of justice. It cannot be set aside merely on the possibility of a contra view. The High Court has derogated from settled principles of law and thus departure does not commend itself with approval. Resultantly, Criminal appeal is allowed, impugned judgment dated 15.2.2016 is set aside. The appellant is acquitted from the charge and shall be set at liberty forthwith, if not required in any other case.”

The case-law relied upon by the appellant are of no help to him as the facts of the cited cases and that of the instant case are distinguishable. Needless to emphasize that under the criminal administration of justice, each criminal case is to be decided on its **own merits**.

The upshot of above discussion is that aforesaid factors and discrepancies create serious doubts in the prosecution case, therefore the trial Court rightly passed impugned judgment thereby acquitting the accused / respondents. Consequently, instant Criminal Acquittal Appeal is dismissed and the impugned Judgment dated 05.04.2010 passed by learned Special Judge, Anti-Corruption (Provincial), Karachi whereby he acquitted respondents / accused in Special Cases No.36/2008 and 22/2009 arising out of F.I.R. No.28/2008 registered at ACE Karachi under sections 161/420/468/471/477-A/34 PPC, read with Section 5(2) of Prevention of Corruption Act, 1947 is hereby maintained.

JUDGE