

**JUDGMENT SHEET**

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

Cr. Acquittal Appeal No.S-121 of 2022

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE(S)</b>
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1. For orders on office objections.
2. For orders on MA-4941/2022
3. For hearing of main case.

**12.12.2022.**

None present for appellant.

Mr. Muhammad Ali Noonari, Deputy Prosecutor General.

**JUDGMENT**

Through this Criminal Acquittal Appeal, the appellant / complainant has assailed the judgment dated 29.03.2022 passed by learned Assistant Sessions Judge-VIII, Hyderabad (Trial Court) in Sessions Case No.1286 of 2016 (Re: The State v. Rashid Ali) emanated from Crime No.177 of 2016 registered at P.S Airport, Hyderabad for offences under Sections 324, 337-F(iii), 34 PPC, whereby respondent/accused Rashid Ali has been acquitted of the charges.

2. Perusal of record it reflects that this appeal against acquittal was presented in the office on 23.04.2022 and initially it came before the Court for hearing on 30.05.2022 when none was present on behalf of appellant; hence, urgent application was dismissed. Right from 30.05.2022 to date none has been appearing to pursue this appeal. Mr. Muhammad Ali Noonari, learned Deputy Prosecutor General, present in Court in connection with other cases, waives notice of instant appeal and after going through the impugned judgment as well opposing instant appeal has drawn attention of the Court to relevant portion of the impugned judgment at Point No.1, which reads as under:-

**“POINT NO.1**

*“The prosecution in order to prove its case has examined as many as four witnesses including complainant Hashmat Hussain s/o Munawar Hussain, who brought the ocular account of alleged incident.*

*A careful appraisal of evidence highlights some significant and notable contradictions as serious inconsistencies are floating on*

*surface. A very significant defect is with respect to huge delay of more than 2 years in lodging of FIR, which has not been satisfactorily explained as the FIR was lodged on 22.10.2016 and the incident allegedly occurred on 07.04.2014. It is very surprising to note that the complainant received gun-short injury in his back allegedly fired by the accused while going towards home on 07.04.2014 and he also obtained medical letter dated 07.04.204 (Ex-6/D) from police as well as provisional MLC on 07.4.2014 and final MLC on 19.4.2014. However, it took him more than two years to lodge FIR, which delay is extraordinary and abnormal without any plausible or sane explanation. Despite verbal contention of complainant in the evidence of receipt of threats from accused and approaching police for lodging of FIR and their refusal/reluctance, nothing in substance could be produced to substantiate the abnormal delay. No application under section 22-A of Cr.P.C was admittedly filed for alleged refusal / reluctance of police to lodge FIR. The allegation of extension of threats from accused as a reason for delay is also unsubstantiated as the evidence of complainant is silent as to whether he ever sought help from police or reported the threats for appropriate action against the accused. Although an application dated 20.10.2016 filed with SSP Hyderabad was produced as (Ex-3/A), the same was also purportedly filed around the same time of lodging of FIR with a delay of more than two years of occurrence of alleged incident especially when there is admission of existence of matrimonial dispute as disclosed by brother of complainant, PW-02 Rizwan Hussain s/o Munawar Hussain (Ex-04), who admitted: **“It is correct to suggest that prior to lodging of FIR, there was matrimonial dispute between complainant and accused Rashid Ali”**, which becomes material as false implication cannot be ruled out in the absence of any eyewitness.*

*It is settled principle that for extending benefit of doubt there must not be many infirmities in the prosecution story a single infirmity creating doubt in the mind of reasonable person same must be brought in the favour of accused. Reliance can be placed on **2018 P.Cr.L.J 1216. Criminal trial---***

*---Benefit of doubt---Scope---Single circumstance creating reasonable doubt in a prudent mind about the guilt of the accused would entitle him/her to the benefit not as a matter of grace and concession but as a matter of right, furthermore, reliance is placed on 2008 SCMR 1221. (e) Criminal trial....Benefit of doubt, principle of ----for the purpose of benefit of doubt to an accused, more than one infirmity is not required----single infirmity creating reasonable doubt in the mind of a reasonable and prudent person regarding the truth of charge, makes the whole case doubtful.*

3. In view of above, I am of the considered opinion that the evidence as brought on record was not proved by the prosecution; therefore, does not inspire confidence; hence, no illegality and infirmity has been committed by

the trial Court in the impugned judgment while acquitting the respondents, which may warrant interference by this Court. It is also settled principal of law that after getting acquittal, the accused always earns double presumption of his innocence and Superior Courts have avoided to interfere with such acquittal findings. There is no cavil with the legal proposition that an acquittal appeal stands on a different footings than an appeal against conviction. In acquittal appeal, the Superior Courts generally do not interfere with unless they find that miscarriage of justice has taken place. The factum that there can be a contrary view on re-appraisal of the evidence by the Court hearing acquittal appeal simpliciter would not be sufficient to interfere with acquittal judgment. Reliance can be placed upon case of **MUHAMMAD ASGHAR and another v. The STATE (PLD 1994 Supreme Court 301)**.

4. In view of above legal position, it appears that instant appeal has wrongly been filed, even the basic ingredients for initiating appeal against acquittal, as laid down by the Honourable Supreme Court of Pakistan in the case of **GHULAM SIKANDAR and another v. MUMARAZ KHAN and others (PLD 1985 Supreme Court 11)**, are also lacking in this case. Accordingly, instant appeal against acquittal is dismissed alongwith pending application.

JUDGE

Shahid