

**JUDGMENT SHEET**

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

Cr. Acquittal Appeal No.S-168 of 2020

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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-6585/2020
3. For hearing of main case.

05.12.2022.

Mr. Muhammad Rahim Gaju, Advocate for appellant.  
Ms. Sana Memon, Assistant P.G Sindh.

**JUDGMENT**

Through this Criminal Acquittal Appeal, the appellant / complainant has called in question the judgment dated 15.09.2020 passed by learned 10<sup>th</sup> Civil Judge & Judicial Magistrate, Hyderabad (trial Court) in Criminal Case No.728 of 2020 (Re: The State v. Aamir and others) emanated from Crime No.60 of 2020 registered at P.S Husri Hyderabad for offence under Section 380, 34 PPC, whereby respondents/accused have been acquitted of the charges.

2. Heard Mr. Muhammad Rahim Gaju, Advocate for appellant and learned Assistant P.G appearing for the State and have gone through the impugned judgment as well evidence adduced by the prosecution before the trial Court. It is the case of buffalo theft in which respondents were alleged to have committed the offence; however said buffalo as per evidence adduced by the prosecution before trial Court were recovered from Devi trees and not from exclusive possession of any of the respondents/accused. Before parting with the judgment it will be appropriate to reproduce concluding Paragraphs No.16 & 17 of the impugned judgment which reads as under:-

**“16.** The prosecution has miserably been failed to connect the accused persons with alleged recovery of stolen buffalo beyond the shadow of doubt because it is noted in the testimonies of the all the three examined PWs, wherein they have given different versions with regard to recovery of alleged stolen buffalo, for ready reference the relevant lines from their respective examination in chief are reproduced hereunder

**As per complainant /PW-1:**

*“ASI called me at police Station alongwith Esso and Gul Hassan on 20-03-2020, wherefrom we went on private vehicle to Jungle near village Abdul Hakeem Khoso wherefrom we found my stolen*

*buffalo in weak condition and her mouth was tied, wherefrom we brought at police station and ASI prepared such Memo and handed over me and I took my buffalo back to my house on the same day i.e., 20-03-2020”.*

**As per Mashir/PW-2:**

*“Thereafter ASI Noor Muhammad Burririo got recovered buffalo on 20<sup>th</sup> April 2020 from the Devi Trees situated near village Hakeem Khoso and he prepared some documents and obtained my thumb impression thereon”.*

**As per IO/PW-3:**

*“On 20.03.2020, accused Aamir Khoso further disclosed that he can get recovered the stolen Buffalo, accordingly at his pointation I recovered the Buffalo from the place Near Village Hakeem Khoso, I prepared such Memo on spot in presence of same Mashirs”*

From above statements of PWs it is crystal clear that the **PW-3/IO** ASI Noor Muhammad Burririo has claimed that he interrogated the accused Aamir Khoso and the said accused voluntarily became ready to discover the alleged stolen buffalo and the accused lead him/**IO/PW-3** to the alleged place of recovery i.e., Jungle near village Hakeem Khoso and he recovered the buffalo on 20-03-2020, and it appears that he does not speak of presence of complainant or the mashirs, whereas mashirs/**PW-2** Gul Hassan Khaskheli deposed that **PW-3/IO** recovered buffalo on 20-04-2020 from Devi Trees near village Hakeem Khoso, he failed to mention if the recovery was result of pointation of accused Aamir Khoso and he failed to mention about the presence of complainant, more particularly, mashir/**PW-2** contradicted the very date of alleged recovery which was alleged to have been affected on 20<sup>th</sup> March 2020 whereas he deposed as 20<sup>th</sup> April 2020, and whereas the complainant/PW-1 has also failed to mention if the alleged recovery was made on the pointation of accused Aamir Khoso, particularly in presence of mashirs, moreover, the prosecution has failed to produce any Roznamcha Entry under which the accused Aamir Khoso was interrogated by ASI/IO and also failed to produce departure entry under which IO/ASI left police station for the purpose of recovery of alleged stolen buffalo on the pointation of accused as alleged and has also failed to produce arrival entry under which ASI/IO returned at police station after recovery, and I believe that non production such vital entries basically cuts the roots of prosecution claim of alleged recovery, thus the alleged recovery not being free from doubt cannot be believed for the purpose of conviction of accused persons.

17. The Honourable Supreme Court of Pakistan in case of *Shahid Abbas v. Shahbaz and others reported in 2009 SCMR 237* was pleased to observe that “*for extending benefit of doubt, it is not necessary that there should be many circumstances creating doubt but if a single circumstance creates reasonable doubt in*

*prudent mind about the guilt of accused makes him entitled to its benefit not a matter of grace and concession but as a matter of right”, whereas in the present case there are many circumstances discussed hereinabove which create reasonable doubt in holding the accused persons guilty of the offences for which they are charged with, hence the point under discussion is decided as doubtful in the circumstances.”*

3. After having assessed the evidence whatever was brought before the trial Court, I am of the opinion that evidence adduced by the prosecution 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



