

JUDGMENT SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Acquittal Appeal No.S-290 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on MA-14048/2022
2. For orders on office objections.
3. For orders on MA-14049/2022
4. 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 impugned the judgment dated 29.10.2021 passed by learned Civil Judge & Judicial Magistrate-I / MTMC, Dadu (Trial Court) in Criminal Case No.156 of 2021 (Re: The State v. Abdul Razzaque and others) arising out of Crime No.14 of 2021 registered at P.S Pat Gul Muhammad for offences under Sections 447, 147, 148, 149, 504, 506 PPC, whereby respondents /accused namely Abdul Razaque, Wazeer @ Wazeer Ahmed, Qurban and Aalim have been acquitted of the charges.

2. Perusal of record it reflects that this appeal against acquittal was presented in the office on 29.11.2021 and since its inception neither the appellant nor his Counsel have come forward to pursue it or get it listed before the Court for hearing. Mr. Muhammad Ali Noonari, learned D.P.G, present in Court in connection with other matters, waives notice of instant appeal and after going through the impugned judgment and opposing instant appeal has drawn attention of the Court to paragraph No.12 of the impugned judgment, which reads as under:-

“12. After perusal of evidence as above of the prosecution witnesses, it appears that prosecution witnesses including complainant stated that the accused had illegally occupied landed property of the complainant but after perusing the FIR and deposition of witness they have stated that few years ago accused persons were cultivating their land and later on discontinued to cultivate the land and occupied on land illegally. Complainant and PW had not disclosed that the date, time and manner of offence occurred at place of incident at the

*first instance in their evidence. The presence of complainant party on the spot at the relevant time, when the accused persons allegedly took possession of the landed property of the complainant was not mentioned anywhere, thus the element of criminal trespass was missing. Further complainant improved his version by deposing that on 05.06.2021 accused persons being armed with weapons illegally occupied on the land. Said development in the case seemed to be an afterthought and mala fide of complainant. Inquiry Officer had stated to have recorded statements of the eye-witnesses, completed formalities and recommended the disposal of the FIR under "C" class. Further to bring case within S.441, P.P.C., the intention specified therein must be the dominant intention, if the primary intention was something other than intimidation, insult or annoyance, the said S.441, P.P.C. would not apply only civil Court could determinate the title and ownership of the property. Nothing in the shape of documentary evidence nor any witness had been produced by the prosecution to the effect that the property in question was the exclusive ownership of the complainant side and alleged act of the accused persons, in circumstances, did not amount to criminal trespass. Evidence as well as the other materials on the record in such a situation did not make sense that the accused persons had committed the act of criminal trespass. No independent and confidence inspiring evidence has been produced by the prosecution to substantiate the criminal intention to intimidate, annoy or insult them and element of intimidation insult and annoyance within the meaning of section 441 PPC is completely missing in the evidence of eyewitness. These are material and major contradictions making entire story highly doubtful and cut the roots of prosecution case. In the regard it is settled law that to disbelieve a witness, it was not necessary that there should be numerous infirmities and the Honorable Supreme court of Pakistan in the case of **Bisharat Ali VS Mohammad Safdar and another, reported in 2017 SCMR 1601** has been pleased to observed that "if material contradictions were found in the statements of witnesses the benefit thereof would go to the accused". The discussed discrepancies are sufficient to shed a dent to the entire prosecution case, which creates heavy amounts of doubts in prudent mind as such the evidence of the prosecution witnesses are contradictory to each other which cast the serious doubts rendering entire episode doubtful. Hence the point in question, is therefore also answered 'not proved as doubtful'.*

3. After assessing the above evidence, it appears that said 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 interfering with such

acquittal findings. There is no cavil with the legal proposition that an acquittal appeal stands on a different footing 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, if any.

JUDGE

Shahid