

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Acquittal Appeal No.S-134 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
-------------	---

1. For orders on office objections.
2. For orders on MA-8974/2023
3. For hearing of main case.

04.10.2023

Mr. Shahnawaz Bughio, Advocate for Appellant.

=

JUDGMENT

ARSHAD HUSSAIN KHAN, J.- Through this Criminal Acquittal Appeal, the appellant / complainant has called in question the judgment dated 11.08.2023 passed by learned Civil Judge & Judicial Magistrate-II, Sehwan (Trial Court) in Criminal Case No.152 of 2021 (Re: The State v. Muhammad Bux & others) arising out of Crime No.13 of 2021 registered at P.S Jhangara for offence under Section 382 PPC, whereby respondents / accused namely Muhammad Bux, Raza Muhammad and Raheem Bux have been acquitted of the charges.

2. It is alleged by the complainant in FIR that on 03.09.2021 he and his niece namely Sahib were available at their lands when at about 1900 hours the accused party having weapons came there in Tractor with Trolley and loaded solar plates, dinamor, inverter and other articles on trolley and then went away on which the complainant kept silent due to fear of any untoward incident. He approached the accused for return of stolen articles who refused saying that if the complainant party vacates the land then the stolen articles will be returned; hence, FIR of the incident was lodged.

3. As per learned Counsel the trial Court has not considered the real facts of the case; that the trial Court has passed the impugned judgment illegally and without applying its judicious mind; hence, he prays for setting aside the impugned judgment.

4. Heard and perused the record.

5. Record reflects that after full dressed trial, the trial Court, having evaluated the evidence produced by the prosecution, acquitted the accused / respondents No.1 to 3. After having careful examination of the impugned

judgment, I am of the considered view that the prosecution evidence as brought on record 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 could warrant interference by this Court. In the instant case although the alleged crime was occurred in presence of the complainant yet he took seven days for lodging the FIR. Furthermore, the evidence of the PWs also appears to be contradictory and no specific role has been assigned to any of the accused; hence, it creates doubts in the prosecution case. It is by now settled principle of law that if a single doubt creates in a case of any accused then the benefit of which is to be extended to the accused as a matter of right.

6. Apart from the above, the acquittal order could only be interfered with when the same is found perverse, arbitrary, unreasonable, ridiculous based on misreading of material evidence or based on surmises unwarranted under the law, but in the instant case no such eventuality is found available. 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 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)**.

7. In view of above as well as keeping in view the pronouncements of the Hon'ble Supreme Court, it appears that instant appeal against acquittal has wrongly been filed, even the basic ingredients for initiating appeal against acquittal, as laid down by the Hon'ble 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, this Appeal is dismissed alongwith pending application.

JUDGE

