

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Spl. Criminal AT Acquittal Appeal No. 149 of 2021**  
(*The State v. Izzat Khan*)

DATE

ORDER WITH SIGNATURES OF JUDGES

Present:  
Naimatullah Phulpoto, J.  
Irshad Ali Shah, J.

1. For hearing of MA No.1980/2022
2. For hearing of main case

**01.10.2024**

Mr. Abrar Ali Khichi, Additional Prosecutor General for the State  
Mr. Mamoon A.K Shirwany, advocate for the respondent

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**IRSHAD ALI SHAH, J.**- The facts, in brief, necessary for the disposal of the instant acquittal appeal are that the police party of PS SITE Super Highway Industry, led by Inspector Humayun Khan; on 25.8.2018, on information went to Memon Goth to apprehend habitual criminals dealing with sale and purchase of Narcotics Substance and illicit weapons, where it reached at about 11:00 hours; the said criminals with no loss of time fired at them intending to commit their murder, thereby a passerby named Bilal Akbar died by sustaining bullet injury at the hands of the culprits involved in the incident who mostly made their escape from the place of the incident leaving behind crime weapon and the private respondent who was apprehended with 1130 grams of Charas; on inquiry he disclosed the names of the culprits who made their escape from the place of the incident; he was taken to PS Gadap City and was booked accordingly. At trial, the private respondent by making an application u/s. 265-K Cr.PC sought his premature acquittal and was acquitted accordingly by learned Judge Anti-terrorism Court No.XII, Karachi, vide order dated 07.07.2021, which is impugned by the *State* before this Court by preferring the instant acquittal appeal.

2. It is contended by learned Addl. PG for the State that the private respondent has been acquitted by the learned trial Court without providing a fair opportunity to the prosecution to prove its case against

him, therefore, his acquittal is to be examined by this Court. By contending so, he sought to set aside the impugned order with a direction to the learned trial Court to conduct a regular trial against the private respondent, which is opposed by learned counsel for the private respondent by contending that a regular trial against the private respondent would serve no purpose.

3. Heard arguments and perused the record.

4. The learned trial Court has recorded the acquittal of the private respondent mainly for two reasons i) that he was empty-handed at the time of the incident ii) the prosecution has failed to bring its witnesses to prove its case against him. The private respondent was a member of the unlawful assembly, which allegedly in the prosecution of its common object deterred the police officials from discharging their lawful duty as a public servant by firing at them intending to commit their murder, whereby a passerby named Bilal Akbar died after sustaining fire shot injury. No doubt, no weapon has been secured from the private respondent but such fact alone is not enough to contribute to his premature acquittal simply for the reason that vicarious liability on his part is apparent. Materially, all the witnesses were public servants, if they were not attending the Court, despite service of notice, then coercive action ought to have been taken compelling them to attend the learned trial Court for recording their evidence. It was not taken obviously. Like accused prosecution too has the right to a fair trial to prove its case; such right is guaranteed by Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973. In these circumstances, the impugned order is set aside with the direction to the learned trial Court to proceed further with the case and to make its disposal on merits after recording evidence in accordance with the law.

5. The instant Crl. AT Acquittal Appeal is disposed of in the above terms.

**JUDGE**

**JUDGE**