

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Acquittal Appeal No. S – 08 of 2025

Fresh case

1. For orders on office objection at flag 'A'
2. For hearing of main case.

None present for the Appellant/complainant
Syed Sardar Ali Shah Rizvi, Additional PG for the State

Date of hearing & decision: 07.02.2025.

JUDGMENT

RIAZAT ALI SAHAR, J.- The appellant/complainant by way of instant Criminal Acquittal Appeal has impugned judgment dated 09.01.2025, passed by learned IInd. Additional Sessions Judge, Khairpur, whereby the private respondent has been acquitted of the offence, for which he was charged.

2. The facts of the prosecution case briefly stated are that on 07.02.2020 complainant Ali Dino Shaikh lodged his FIR at Police Station, Kumb, stating therein that on 01.05.2017 he along with his caste-fellow Mukhtiar Ahmed Shaikh went to Ranipur with some work and after getting free they were returning to their houses and booked a motorcycle taxi of one Obhayo Mallah from Ranipur for Kumb, when at about 05:00 pm they reached near the bridge of Ali Bahar Wah, they were forcibly stopped by five armed persons on two motorcycles, out of them, one was identified as Waheed Ali S/o Sheral Wassan and remaining four were unknown, their faces were opened, if seen again would be recognized. Accused Waheed Ali robbed from the complainant cash of Rs.1000000/- in shape of two packets of 5000

denomination notes and two mobile sets of Samsung valuing Rs.60000/-. The complainant entreated the accused persons in the name of Almighty Allah and then accused persons escaped away on their motorcycles towards eastern side. Thereafter, he made complaints to highups and also filed a petition for registration of FIR before the Court of Sessions Judge/Ex-Officio Justice of Peace, Khairpur and after obtaining the order from the Court of 2nd. Additional Sessions Judge, Khairpur, he appeared at Police Station, Kumb where he lodged the FIR.

3. After usual investigation, the Investigating Officer submitted the charge sheet before the concerned Magistrate.

4. The learned trial Court after completing usual formalities, framed charge against the private respondent at (Ex.2) to which he pleaded not guilty and claimed to be tried vide his plea at (Ex.3).

5. At the trial, prosecution has examined PW-1 SIP Aijaz Ali Dahar at (Ex.4), he produced copy of order dated 29.10.2019 and FIR at (Ex.4/A) and (Ex.4/B), PW-2 ASI Allah Wadhayo Shar at (Ex.5), he produced memo of site inspection at (Ex.5/A), PW-3 Mukhtiar Ahmed Shaikh at (Ex.6), statement of process-server PC Zaheer Hussain Shah recorded at (Ex.7), wherein he has stated that eyewitness Obhayo Mallah has expired, PW-4 Complainant Ali Dino at (Ex.8). Thereafter the side of prosecution was closed by learned DDPP for the State at (Ex.09).

6. Thereafter, statement of accused was recorded under Section 342 Cr.P.C at (Ex.10) wherein, he has denied the allegations of the prosecution leveled against him, claimed to be innocent and falsely

implicated in this case at the hands of complainant party and police. However, accused neither examined himself on oath under Section 340 Cr.P.C nor led any evidence in his defence though opportunity was given to him.

7. I have heard learned Additional PG for the State and perused the impugned judgment as well as the material available on record.

8. The FIR of the incident has been lodged with delay of about three years; such delay having not been explained plausibly by the appellant/complainant; could not be over looked. It is reflecting consultation and deliberation. In this case there are three eyewitness of the incident namely complainant Ali Dino, eyewitness Mukhtiar and motorcycle taxi driver Obhayo Mallah. PW Mukhtiar in his evidence has not supported the version of the complainant as setout in the FIR by deposing that he does not know anything about the instant case, whereas PW Motorcycle taxi driver Obhayo Mallah has expired before recording his evidence. Only there remains the solitary evidence of complainant Ali Dino, which is also full of contradictions in respect of the date of the incident so also he did not produce any valid receipt for purchasing two mobile sets and did not produce any proof for possessing such a huge amount of Rs.1000000/-. The evidence of Investigating Officer also does not corroborate the version of the complainant, who in his evidence has deposed that the complainant has failed to produce any valid proof for possessing such a huge amount on the relevant date nor the purchasing receipts of the two mobile sets. While keeping in view the above contradictory evidence of the complainant Ali Dino, eyewitness Mukhtiar and Investigating Officer, the learned trial Court was right to record acquittal of the

private respondent by way of impugned judgment, which is not found to be arbitrary or cursory to be interfered with by this Court under the pretext that it is rendered on the basis of improper assessment of evidence.

9. In case of **State & another vs. Abdul Khaliq & others (PLD 2011 SC-554)**, it has been held by the Hon'ble Apex Court that;

"The scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. Interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Judgment of acquittal should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous. The Court of appeal should not interfere simply for the reason that on the reappraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities".

10. In view of the facts and reasons discussed above, it could be concluded safely that the impugned judgment is not calling for any interference by this Court by way of instant criminal acquittal appeal. It is dismissed in *limine*.

Judge

ARBROHI