

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Acquittal Appeal No. S-71 of 2024

Rubi Fakir Chandio.....Appellant

Versus.

The State & others..... Respondents

None present for the Appellant.

Syed Sardar Ali Shah, Additional P.G for the State.

Date of Hearing: **20-02-2025**

Date of Decision: **20-02-2025**

J U D G M E N T

RIAZAT ALI SAHAR J., Instant Crl. Acquittal Appeal is directed against the judgment dated 04.05.2024, passed by Judicial Magistrate (CPC), Ghotki in Criminal Case No. 26 of 2023, arising out of crime No.07 of 2023, registered at P.S, Khanpur Mahar, under sections 379, 504,147 & 149 PPC, whereby respondents/accused were acquitted of the charge.

2. The charge against the private respondents/accused pertains to an incident that allegedly took place on 25-01-2023, when the complainant, accompanied by prosecution witnesses (PWs) Shabana Faqir and Ghouri Fakir, was en route to Khanpur Mahar. Upon reaching the vicinity of Mahro Wah, the accused allegedly intercepted them and directed abusive language towards the complainant and his companions. Upon resistance from the complainant party, the accused purportedly resorted to physical assault, inflicting kicks and fist blows upon them. Amidst the altercation, a certain amount of cash, one gold earring, one gold chain, and a Dholki (drum) reportedly fell to the ground, which the accused are alleged to have unlawfully taken away. Consequently, the complainant proceeded to lodge the **FIR** regarding the incident.

3. Charge was framed against the respondents, to which they pleaded not guilty and claimed trial. Thereafter, prosecution led evidence of prosecution witnesses and recorded statements of accused in terms of section 342 CrPC and after hearing the parties vide impugned judgment acquitted the respondents of the charge.

4. Upon a meticulous examination of the case record, I have arrived at the considered conclusion that the respondents/accused have been rightly acquitted by the learned trial Court. The acquittal is well-founded, as the prosecution's case is riddled with glaring material contradictions and infirmities in the testimonies of the complainant and prosecution witnesses, thereby rendering the entire case doubtful. Notably, there exist inconsistencies concerning the number of accused persons involved, the time of arrival of the prosecution witnesses at the scene of the alleged incident, and the complainant's timing in reaching the police station to lodge the FIR. Additionally, the failure to disclose details of the allegedly stolen property, including the specific amount of cash, further weakens the prosecution's version. These contradictions have been meticulously examined and deliberated upon by the learned trial Court, which rightly determined that the evidence adduced was insufficient to establish the guilt of the accused beyond reasonable doubt.

5. It is a well-settled principle of law that the ordinary scope of an appeal against acquittal is considerably narrow and limited. The approach to an appeal challenging an acquittal must be distinguished from that adopted in an appeal against conviction, as the former is subject to a higher threshold of judicial scrutiny. This distinction arises from the well-established doctrine of *double presumption of innocence*, which is attached to an order of acquittal. In the case of *Zaheer Din v. The State* (1993 SCMR 1628), the Honourable Supreme Court laid down the

following guiding principles for adjudicating an acquittal appeal in a criminal case:

“However, notwithstanding the diversity of facts and circumstances of each case, amongst others, some of the important and consistently followed principles can be clearly visualized from the cited and other cases-law on, the question of setting aside an acquittal by this Court. They are as follows:--

(1) In an appeal against acquittal the Supreme Court would not on principle ordinarily interfere and instead would give due weight and consideration to the findings of Court acquitting the accused. This approach is slightly different than that in an appeal against conviction when leave is granted only for re-appraisal of evidence which then is undertaken so as to see that benefit of every reasonable doubt should be extended to the accused. This difference of approach is mainly conditioned by the fact that the acquittal carries with it the two well accepted presumptions: One initial, that, till found guilty, the accused is innocent; and two that again after the trial a Court below confirmed the assumption of innocence.

(2) The acquittal will not carry the second presumption and will also thus lose the first one if on pints having conclusive effect on the end result the Court below: (a) disregarded material evidence; (b) misread such evidence; (c) received such evidence illegally.

(3) In either case the well-known principles of re-appraisal of evidence will have to be kept in view while examining the strength of the views expressed by the Court below. They will not be brushed aside lightly on mere assumptions keeping always in view that a departure from the normal principle must be necessitated by obligatory observations of some higher principle as noted above and for no other reason.

(4) The Court would not interfere with acquittal merely because on reappraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If however, the conclusion reached by that Court was such that no reasonable person would conceivably reach the same and was impossible then this Court would interfere in exceptional cases on overwhelming proof resulting in conclusion and irresistible conclusion; and that too with a view only to avoid grave miscarriage of justice and for no other purpose. The important test visualized in these cases, in this

behalf was that the finding sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous”.

6. In view of the foregoing circumstances, I am of the considered opinion that the prosecution has failed to establish the guilt of the respondents beyond reasonable doubt. Consequently, the learned trial Court had no option but to acquit the private respondents of the charge. The trial Court, upon a thorough appraisal of the material available on record and after duly considering all legal as well as factual aspects of the case, has rendered a comprehensive and well-reasoned judgment. No illegality, irregularity, misreading, or non-reading of evidence has been found in the impugned judgment that would warrant interference by this Court. Accordingly, the instant Criminal Acquittal Appeal, being devoid of merit, is **dismissed** *in limine*.

JUDGE

Ahmad