

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA**

Cr. Acquittal Appeal No.D-08 of 2021.

**PRESENT:**

**Mr. Justice Amjad Ali Sahito,  
Mr. Justice Ali Haider 'Ada',**

Appellant	The State, through Mr. Ali Anwar Kandhro, Additional Prosecutor General, Sindh.
Respondent No.4	Saindad @ Saeedo son of unknown by caste Jatoi, has not been served with the notice, therefore, he is not in attendance.
Dates of Hearing:	<u>15.10.2025.</u>
Date of Decision:	<u>15.10.2025.</u>

**J U D G M E N T**

**Ali Haider 'Ada', J.-** Instant criminal acquittal appeal is directed against the judgment dated 26.09.2020, passed by the learned 1<sup>st</sup> Additional Sessions Judge/MCTC Shikarpur, in Sessions Case No.41 of 2013 (Re: State v/s Abdul Khalique and others) emanated from Crime/FIR No.173 of 2012, registered at Police Station Khanpur, District Shikarpur, under Sections 301, 324, 353, 399, 148, 149, PPC, whereby the respondent, namely, Saindad son of Muhammad Bux Jatoi, was acquitted of the charge.

2. According to FIR lodged by Inspector Ghulam Qadir Ansari that on 10.10.2012, he with his sub-ordinate staff HC Nawab Ali, HC Irshad Ali, PC Qamaruddin, driver PC Bijar Ali left PS for patrolling on the main road Shikarpur-Kandhkot. During the course of patrolling from different places at about 06:30 a.m, reached at Unar Curve situated on the main road of Kandhkot where saw 09 accused on 04 Motorcycles duly armed with deadly weapons emerged on the road and alighted while signaled to passenger coaches and trucks with intent to commit dacoity when same were passing from the road. The police party identified notorious accused everyone Qadir Bakhsh @ Khalique @ Bhalique @ Bago 3, Turial @ Samo 4, Saindad @ Saeedo 5, Dost Ali @ Dosi 6, Shakoor all duly armed with Kalashnikovs 7, Mukhtiar 8, Mircho both duly armed with pistols and 9, Kisho @ Kashmir duly armed with gun. The police party made aid from mobile Shahbaz-3 & Shahbaz-4 which were also on patrolling through wireless message. On receipt of wireless message

mobile Shahbaz-3 LPC Sadaruddin Jakhro with his staff and police mobile Shahbaz-4 Incharge LPC Mubarak Ali with his staff came there. On their reaching the police party asked the accused to surrender themselves along with the weapons but accused started straight firing upon them with intent to commit their Qatl-i-Amd and police party also started firing upon accused in a right of private defense. The exchange of firing between the parties continued for about 15 minutes. During exchange of firing notorious criminal accused of Crime No. 13/2011, U/S: 377 PPC and 45/2008 U/S 17(3) EHO of PS Rustam on his Unique Motorcycle tried to escape but due to receiving of firearm injuries he fell down from the motorcycle and asked his accomplices for stopping the firing as he has received firearm injury from accused side. After that, all remaining accused boarded on same motorcycles and made their escape good while making aerial firing towards eastern side. Later on, HC Nawab Ali and HC Irshad Ali were associated as mashirs and found notorious criminal accused Abdul Khaliq @ Khaliq @ Bago having received firearm injury on his umbilicus region and was dead so also found one Kalashnikov lying beside him which was unloaded and found containing 03 live bullets in its magazine and the same were sealed on the spot. The motorcycle lying beside the dead accused was bearing registration number Nil which was also seized by them. Thereafter such joint mashirnama was prepared in the presence and in the signatures of above mashirs and body of dead accused along with recovered case properties were brought at P.S Khanpur where the complainant Inspector SHO Ghulam Qadir Ansari lodged FIR to the above effect against the accused on behalf of State.

3. Formal charge was framed by the learned trial Court against the above-named respondent/accused, to which he pleaded 'not guilty' and claimed to be tried.

4. To establish the charge, the prosecution examined PW-1 complainant SHO/Inspector Ghulam Qadir Ansari, PW-2 ASI Nawab Hullo, PW-3 SIP/IO Rustam Ali Sanjrani & PW-4 Dr. Ghulam Asghar Manghar, who exhibited several relevant documents.

5. Then the statement of accused under section 342, Cr.P.C was recorded, wherein he denied the prosecution allegations and pleaded his innocence. However, neither he examined himself on oath nor led any evidence in his defence in terms of Section 340(2), Cr.P.C.

6. On conclusion of trial, the learned trial Court acquitted the respondent/accused of the charge extending him benefit of doubt vide impugned judgment dated 26.09.2020. Aggrieved by the same, the learned Additional Prosecutor General, Sindh, appearing on behalf of State, has maintained this Criminal Acquittal Appeal.

7. We have heard learned Additional Prosecutor General Sindh for the appellant and have perused the material available on record.

8. Learned Addl. P. G appearing for the appellant, has contended that the learned trial Court while deciding the case did not record cogent reasons for acquitting the respondent; that all the PWs in fact fully supported the prosecution, as such, the learned trial Court while passing the impugned judgment did not act justly and equitably and thus passed the impugned judgment without applying judicious mind to the facts of the case; that complainant SHO/Inspector Ghulam Qadir Ansari and eyewitnesses ASI Nawab Hedio, & SIP/IO Rustam Ali Sanjrani, in their depositions have fully implicated the accused/respondent, in the commission of the crime and their evidence inspire confidence; that the accused/respondent along with other absconding accused started straight firing upon police with intent to commit their Qatl-i-Amd; that the exchange of firing between the parties continued for about 15 minutes and during such exchange of firing notorious criminal accused, namely, Abdul Khaliq @ Khaliq @ Bago of Crime No.13/2011, U/S: 377 PPC and 45/2008 U/S 17(3) EHO of PS Rustam, was found dead; that sufficient evidence is available on record to believe that the respondent/accused has committed the alleged offence, therefore, he is liable to be convicted for the same.

09. We have given anxious consideration to the contentions of learned Addl. P. G, appearing for the appellant and have very carefully scanned the entire material available on record.

10. Admittedly, there appear major contradictions in the case of prosecution. PW-1 complainant SHO/Inspector Ghulam Qadir Ansari, has deposed that *"we visited the main Shikarpur-Kandhkot road and they were returned back to village Khawasti, whereas, PW-2 ASI Nawab Ali Hedio, has deposed that "firstly we patrolled and reached at last point of jurisdiction of our PS at Sarwar Kot and then started patrolling at main road. Further PW-1 has deposed that "I do not remember whether we stayed at any place of patrolling or not. While contradicting the evidence of PW-1, the PW-2 stated that "we stayed at Sarwar Kot for about 15*

minutes and then proceeded ahead for patrolling at main road. In last PW-1 has deposed that "we were on western side on road while the accused were on eastern side of the road, while PW-2, contradicting it, has deposed that "accused were from western side and we were on eastern side". Keeping in view the aforesaid contradictions and when the same were judged from the case file in shape of admission of both material P.Ws about neither sustaining injury by any of personnel from the police party nor hitting any bullet to the police mobile , though the exchange of firing between the parties have lasted for fifteen minutes, even layman can imagine that story put forwarded by the prosecution is managed one.

11. Furthermore, the perusal of paper book shows that investigation of the case was carried out in casual manner, as PW-3 I.O of the case did not bother to examine any independent witness from the adjacent villages as admitted by him in his cross-examination. Not only he did so but also the investigation carried out by him appears to fill the documentation record only to favour the complainant party. For the sake of convenience, his cross-examination is reproduced below :

*"The empties fired from the accused were lying southern side of the road of the place of incident, while the empties fired from the police party were lying on both side of the road in scattered condition at distance of 50/60 paces."*

12. We have not seen any material piece of evidence, which was not discussed by the learned trial Court while passing the impugned judgment. The reasons recorded by the learned trial Court in support of findings of acquittal are based on evidence on record and the conclusion drawn by the learned trial Court as to the innocence of accused is appropriate. It is well-settled principle of law that the extraordinary remedy of an appeal against an acquittal is different from an appeal against the judgment of conviction and sentence, because presumption of double innocence of the accused is attached to the order of acquittal. Thus, on the examination of the findings of acquittal as a whole, credence is accorded to the findings of the subordinate Court whereby the accused had been exonerated from the charge of commission of the offence. To reverse an order of acquittal, it must be shown that the acquittal order is unreasonable, perverse and manifestly wrong; therefore, the order of acquittal passed by the trial Court, which is based on correct appreciation of evidence, will not warrant interference in appeal. The Honourable Supreme Court while dealing with the appeal against acquittal has been pleased to lay down the principle in the case of **Muhammad Shafi Vs**

**Muhammad Raza & another (2008 SCMR 329)** that “*an accused is presumed to be innocent in law and if after regular trial he is acquitted, he earns a double presumption of innocence and there is a heavy onus on the prosecution to rebut the said presumption. In view of the discrepant and inconsistent evidence led, the guilt of accused is not free from doubt, we are therefore, of the view that the prosecution has failed to discharge the onus and the finding of acquittal is neither arbitrary nor capricious to warrant interference.*”

13. In view of above facts and reasons, the impugned acquittal judgment does not suffer from any illegality or infirmity and misreading or non-reading of evidence leading to miscarriage of justice; therefore, the same is not open for interference by the High Court under Section 417, Cr.P.C. Hence, this acquittal appeal being devoid of merit is dismissed.

**Judge**

**Judge**