

IN THE HIGH COURT OF SINDH, CIRCUIT COURT

LARKANA

Cr. Acquittal Appeal No.D-37 of 2011.

PRESENT:

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

Appellant	Mohammad Panah son of Allah Bux alias Bakhshan, through Mr. Ahsan Ahmed Qureshi, Advocate.
Respondent No.1	Abdul Hakeem son of Muhammad Waris, through Mr. Rafique Ahmed K. Abro, Advocate.
The State	through Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh.
Dates of Hearing:	<u>14.10.2025.</u>
Date of Decision:	<u>14.10.2025.</u>

J U D G M E N T

Ali Haider 'Ada', J.- Instant criminal acquittal appeal is directed against the judgment dated 29.10.2011, passed by the learned IInd Additional Sessions Judge, Jacobabad, in Sessions Case No.91 of 2008 (Re: State v/s Abdul Hakeem and another) emanated from Crime/FIR No.137 of 2006, registered at Police Station Thull, under Sections 302, 324, 337-F(v), 34, PPC, whereby the respondent, namely, Abdul Hakeem son of Muhammad Waris Ghunio, was acquitted of the charge.

2. The brief facts of the prosecution case are that on 07.09.2008 at 09-00 PM, in the Mosque Usman Ghani situated in village Sher Khan Ghunio taluka Thull District Jacobabad, the present accused along with absconding accused Abdul Ghani and one unidentified accused, duly armed with TT Pistols in furtherance of common intention committed the murder of

deceased Hafiz Muhammad Haroon by causing him fire arm injuries, attempted to commit murder of Abdul Bari by firing from TT Pistol upon him, which hit him, hence the FIR to the above effect was lodged.

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 Tapedar namely Gul Hassan Khoso, complainant Muhammad Pannah Ghunio, injured/PW Abdul Bari, Muhammad Essa, Dr. Abdul Hameed, SIO Sanaullah Sarki and PC Shahnawaz, 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 No.1/accused of the charge extending him benefit of doubt vide impugned judgment dated 29.10.2011. Aggrieved by the same, the appellant Muhammad Pannah Ghunio, who is the brother of deceased Muhammad Haroon, has maintained this Criminal Acquittal Appeal.

7. Mr. Ahsan Ahmed Qureshi, learned Counsel for the appellant, has contended that the learned trial Court while deciding the case did not record cogent reasons for acquitting the respondent No.1; that all the PWs in fact fully supported the prosecution case and their version was also corroborated by the medical evidence, 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 Mohammad Panah,

injured Abdul Bari and eyewitness Abdul Mali, in their depositions have fully implicated the accused/respondent No.1, in the commission of the crime and their evidence inspire confidence; that the accused/respondent No.1 had remained absconder in the case for about eleven years; that the murder took place inside the mosque and direct role of firing with T.T pistol was assigned to present accused/respondent; that there are minor contradictions in the medical and the ocular evidence; that sufficient evidence is available on record to believe that the respondent No.1 has committed the alleged offence, therefore, he is liable to be convicted for the same.

8. The learned DPG, after consulting the record, did not support the impugned judgment, contending that the FIR was registered against accused person who along with one unidentified accused made firing in the "Mosque", where brother of the complainant was done to death. He, therefore, contended that the findings of acquittal recorded by the learned trial Court, which are not based on well-founded reasoning, are calling for interference by this Court.

9. Learned counsel for the respondent No.1, contended that one of the important witnesses, namely, Abdul Jabbar was given up by the prosecution and if he had been examined, he could have not supported the case of prosecution; that it was stated by the prosecution that "Muazan" was present in the Mosque, but he was not examined; that incident took place at the time of Nimaz but no any single person was examined; that incident took place at 09:00 p.m in dark hours of the night but there is no mention of electric bulb; that I.O of the case in his examination-in-chief had deposed that there are 30/40 houses, whereas, the complainant had deposed that there are 300 houses in the village.

10. We have heard learned Counsel for the appellant, learned counsel for respondent No.1 as well as learned Deputy

Prosecutor General for the State and have perused the material available on record.

11. It is settled law that if a simple circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right. Reliance in this regard is placed on the cases of *TARIQ PERVEZ v. THE STATE* (1995 SCMR 1345), *MUHAMMAD SAEED v. THE STATE* (2008 P.Cr.L.J. 1752), *GHULAM MURTAZA v. THE STATE* (2010 P.Cr.L.J. 461), *MOHAMMAD MANSHA v. THE STATE* (2018 SCMR 772).

12. In the present case, while acquitting the respondent, the learned Trial Court has recorded cogent and well-reasoned findings in the operative portion of the impugned judgment. The prosecution's case primarily rests upon the ocular testimony of the prosecution witnesses, who attributed the motive of the occurrence to a matrimonial dispute between the accused and the deceased. Such statements, being inherently interested in nature, do not inspire confidence and cannot safely be relied upon. No independent witness was associated to substantiate the veracity of the alleged incident.

13. Moreover, one of the material witnesses, namely Abdul Jabbar, was given up by the prosecution, which clearly indicates that his testimony would not have supported the prosecution's version. It was further alleged that the "Muazzin" of the mosque was present at the relevant time; however, he too was not examined. The incident is stated to have occurred at the time of Namaz, yet no independent person from the vicinity or congregation was produced in evidence.

14. A bare perusal of the site plan prepared by the Patwari/Tapedar (PW-1/Ex. No. 05) reveals that PW Gul Hassan did not indicate the presence of any eyewitnesses, including the

complainant, at the place of occurrence, thereby casting serious doubt upon their presence at the scene.

15. Furthermore, the injured witness, Abdul Bari, was examined by the police after an inordinate delay of eleven days from the date of incident, despite the fact that he had accompanied the complainant and other witnesses to the police station and had not sustained any injury that could have incapacitated him from making a statement promptly. Such unexplained delay appears to have been caused deliberately with a view to fabricate or improve the evidence against the accused persons. It is well-settled law that even a delay of one or two days in recording the statements of witnesses, if not satisfactorily explained, is considered fatal to the prosecution case and adversely affects its credibility. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court of Pakistan in the case of *Muhammad Asif v. The State* (2017 SCMR 486), wherein it was held as under:

“There is a long line of authorities/precedents of this Court and the High Courts that even one or two days unexplained delay in recording the Statement of eye-witnesses would be fatal and testimony of such witnesses Cannot be safely relied upon.”

16. In this regard, reliance can also be placed on *“Muhammad Sadiq v. The State* (PLD 1960 SC 223), *Tariq Gul v. Ziarat Gul* (1976 SCMR 236), *Muhammad Iqbal v. The State* (1984 SCMR 930) and *Haroon alias Harooni v. The State and another* (1995 SCMR 1627). Similarly, it has been settled by the august Supreme Court of Pakistan in *Muhammad Khan vs. Maula Bakhshah* (1998 SCMR 570) that:

“It is settled law that credibility of a witness is looked with serious suspicion if his statement under Section 161, Cr.P.C. is recorded with delay without offering any plausible explanation.”

17. 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.

18. It is an important to note that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from appeal against acquittal. It is well settled law that once the trial court records an acquittal, the accused earns presumption of double innocence, and the appellate court should not reverse such findings unless find the reasoning in the impugned judgment to be perverse, arbitrary, foolish, artificial, speculative and ridiculous or based on misreading or non-reading of evidence, as was held by the Supreme Court in the case of **State v. Abdul Khaliq and others (PLD 2011 SC 554)**.

19. The reasons given by the learned trial Court in its impugned judgment have not been found to be arbitrary, fanciful or capricious warranting interference by this Court. Hence instant Criminal Acquittal Appeal being devoid of merit is hereby dismissed.

Judge

Judge