

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

Criminal Acquittal Appeal No.S- 08 of 2022.

Appellant	:	Ghulam Nabi Memon present in person.
Respondents No.1, 2, 3& 5	:	Nemo
Respondent No.6	:	The State through Mr. Aitbar Ali Bullo, D.P.G.
Date of Hearing	:	14.5.2025.
Date of Order	:	14.5.2025.

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

**AMJAD ALI SAHITO -J.-** This Criminal Acquittal Appeal has been preferred by appellant/complainant against the judgment dated 18.01.2022 passed by learned Civil Judge and Judicial Magistrate-V/MTMC, Shikarpur in Direct Complaint No.01 of 2022 filed by the complainant for offence under Section U/S: 337-F(v), H2, 149 PPC, whereby after full-fledged trial, the accused/respondents were acquitted of the charges.

2. Crux of the prosecution case, as per Direct Complaint, are that complainant Ghulam Nabi Memon own his inherited property for which accused persons kept evil eye to occupy it and applications in that context have also been moved before different forums. On 09-11-2020 at 04:30 pm, complainant alongwith Khadim Hussain reached at Meerani Muhalla, accused Asif, Nawab, Aghal, Mehrab and Sikander came on white color car, bearing No. BSE-247 and hit to his motorbike with the result his left leg was fractured. Then all accused alighted from car and caused him injuries on his person. Complainant approached SHO PS New Foujdari for registration of FIR and letter for treatment which was refused therefore, he obtained treatment from private Kumbhar/Daaho as well as private Dr.Mujeeb Pathan, Orthopedic. He further claimed that after receiving medical certificate from Medical Officer RBUT (Civil Hospital) Shikarpur, he filed

applications U/s 22-A & 22-B Cr.P.C for registration of FIR twice, which were dismissed by learned 1<sup>st</sup> Additional Sessions Judge/Ex-Officio Justice of Peace, Shikarpur vide orders dated 22.7.2020 and 03.4.2021 respectively.

3. Subsequently the complainant filed Direct Complaint before learned trial Court Consumer Protection Court, Shikarpur, who after holding preliminary enquiry took cognizance against accused Nawab, Aghal, Asif, Mehrab and Sikander out of whom, accused Mehrab died during proceedings, hence proceedings against accused Mehrab were abated. Later on, the case was received by learned trial Court/Civil Judge and Judicial Magistrate-V, Shikarpur.

4. Formal charge was framed under section 342 Cr.P.C against accused at Ex.8, to which they pleaded not guilty & such pleas of the accused persons were recorded vide Exh:09/A to 09/C.

5. In order to prove its case the learned counsel from complainant examined PW.1/Complainant: Ghulam Nabi at Ex.10, PW.2/witness Khadim Hussain at Ex.11, PW.3/witness Gul Zaman at Ex.12, PW.4/ Medical Officer Fida Hussain Soomro at Ex.13. Prosecution closed its side vide statement at Ex.14.

6. Statement of accused was recorded under section 342 Cr.P.C at closed side of evidence, through statement at Ex.14. The Examinations of accused persons have been recorded at Ex. **15 to 18**, wherein the accused/respondents denied the allegations leveled against them by the prosecution and claimed their innocence. However, they did not produce any defense witness nor examined themselves on oath.

7. On conclusion of trial, after hearing learned counsel for the parties, learned trial Court passed judgment dated 18.01.2022 whereby accused/respondents have been acquitted from the charge, giving rise to filing of instant appeal.

8. Complainant present in person mainly contended that accused/respondents are nominated in the complaint with specific role of hitting their car to their motorcycle and broke his leg; version of complainant was supported by his witnesses as well as medical evidence, therefore, sufficient evidence was available on record to connect the accused with the commission of offence yet learned trial

failed to consider overwhelming evidence passed impugned judgment of acquittal which is only result of misreading and non-reading of evidence, hence liable to be set aside.

9. Conversely, learned DPG appearing for the State supported the impugned judgment; ocular account was not supported by medical evidence; statements of prosecution witnesses suffered from material contradictions at the trial and there were certain dishonest improvements in the prosecution case which casted serious doubt into the veracity of prosecution case therefore, learned trial court rightly acquitted accused/respondents vide impugned judgment which being well reasoned does not call for any interference by this Court.

10. I have heard learned counsel for the respective parties and perused the material brought on record.

11. Allegation against the present accused/respondents is that on 03.11.2020 @ 04:30 pm, complainant alongwith PW Khadim Hussain were going on motorcycle, when reached in Meerani Muhalla accused/respondents nominated in complaint while driving white color car bearing registration No.BSE-247, hit their motorcycle from backside and broke leg of complainant. It is further claimed in the complaint that thereafter all accused alighted from car and caused kicks and fits blows to complainant.

12. Perusal of record reflects that prior to filing Direct Complaint, complainant filed Cr. Misc. Appln. No.899/2020 under Section 22 A and B Cr.P.C before learned 1<sup>st</sup> Additional Sessions Judge/Ex-Officio Justice of Peace which was dismissed vide order dated 22.7.2020 wherein it was specifically observed that report was called from SSP Shikarpur who denied any occurrence alleged by the complainant. It was further reported that there is standing landed dispute between the parties and matter is purely of civil nature, resultantly his application was dismissed. Later on he repeated application under Section 22 A and B Cr.P.C for same relief in which it was informed by the applicant that he has challenged the medical certificate in Medical Board which was not being held, therefore, his second application was also dismissed vide order dated 03.4.2021 while observing that no directions could be issued for registration of

FIR unless report of Special Medical Board is received. It further reflects from record that requisite fees for convening Special Medical Board was never paid by applicant therefore, it never held nor any report of Special Medical Board is brought on record in which applicant appears to be instrumental with malafide and ulterior motives.

13. Record further reveals that complainant in his previous application U/S 22 A and B Cr.P.C and application moved to SSP Shikarpur he did not allege accused alighted from the car and caused him kicks and fists blows. Besides, complainant himself committed improvement in prosecution story while giving name of Shaheen in place of Gul Zaman as witness of occurrence in the application, while in his direct complaint he gave name of Gul Zaman and Khadim Hussain as witness of occurrence. Such dishonest improvement also casted serious dent into the prosecution case and shaken the credibility eye-witnesses of occurrence, making entire episode of prosecution case highly doubtful.

14. Perusal of record further reveals that direct complaint in hand was filed on 20.08.2021 after 09 months of alleged incident, for which no plausible explanation has been furnished by complainant creating serious doubt more particularly when admittedly there was standing dispute between the parties over inherited property of complainant and such factum also stood proved by the report of SSP Shikarpur furnished before learned Ex-Officio Justice of Peace, Shikarpur wherein it was further suggested that no incident as alleged by complainant has taken place and at the most dispute between parties stand on landed property. In such eventuality, testimony of witnesses of complainant, who admittedly happen to be close relatives of complainant, required strong corroboration by independent evidence in the shape of circumstantial evidence and medical evidence. Perusal of record reflects that complainant Ghulam Nabi stated in his cross examination that on 03<sup>rd</sup> November 2020 (though in his direct complaint he stated that incident occurred on 09.11.2020), he alongwith Khadim Hussain allegedly went to attend court of learned 3<sup>rd</sup> Additional Sessions Judge, Shikarpur to attend hearing in the case titled as Mehar and others. Whereas on enquiry it was confirmed through CFMS that no case with such title was fixed

before learned 3<sup>rd</sup> Additional Sessions Judge, Shikarpur on the particular date.

15. I have scanned the prosecution evidence which reflects that PW Ghulam Nabi admitted in his cross examination that he has mentioned in application U/S 22 A and B Cr.P.C that he alongwith PW Khadim Hussain and PW Gul Zaman collectively left Court on motorcycle and reached Meerani Muhalla which is contradictory to his own story given in Direct Complaint as well as admission in his cross examination that he alongwith PW Khadim Hussain were going on motorcycle and were hit by car of accused and Gulzaman reached there when they were lying on ground. Same assertion is also contradicted by PW Khadim Hussain who stated that Gul Zaman reached there after ten minutes of hitting their motorcycle by car of accused and PW Gul Zaman also contradicted the same by stating that when he reached in Meerani Muhalla he witnessed complainant and Khadim Hussain were lying down and accused were beating complainant. Thus it stand proved that PW Gul Zaman was not riding on motorcycle with complainant and PW Khadim Hussain. Besides PW Khadim Hussain stated that he went unconscious after their motorcycle was hit and could not see accused persons and complainant told him that present accused/respondents had hit their motorcycle. and further stated that Gul Zaman reached there after ten minutes which also proves that very occurrence of hitting motorcycle by present accused/respondents through their car was neither witnessed by PW Khadim Hussain nor PW Gul Zaman. All this make the entire prosecution case highly doubtful and reduce the credibility of testimony of prosecution witnesses to none.

16. As regards the medical evidence is concerned, per complainant he got private treatment from Dr. Mujeeb Pathan, Jinnah Hospital Karachi for which he produced such medical prescription which contained stamp showing date of visit on 06.12.2020 i.e. after delay of 25 days of alleged incident. Besides complainant failed to produce report from concerned Radiologist nor examined any Radiologist to prove the factum of alleged fracture.

15. In view of above, it appears that prosecution case suffers from various doubt, dishonest improvement in the case and material contradictions creating serious doubt into the prosecution case

against the present accused/respondents. Perusal of impugned judgment dated 18.01.2022 also reflects that it is well reasoned and elaborated one. It would be imperative to reproduce relevant paras of the impugned judgment hereunder:

“9. There is no denial to the universally admitted fact that, accused are presumed innocent until proven guilty and burden to prove always lies on shoulder of person whoever asserts except some exceptions arise as per circumstances. Present case is structured on ocular account furnished by complainant Ghulam Nabi, which is required to be corroborated through his testimony as well as of his star witnesses, Khadim Hussain and Gul Zaman. Medical evidence is also required to be supportive to prove its case. It is borne out from record that, complainant Ghulam Nabi alleged that, on 03<sup>rd</sup> November 2020, he alongwith Khadim Hussain came to attend court of Honorable 3<sup>rd</sup> Additional Sessions Judge, Shikarpur. Complainant Ghulam Nabi pointed out in his cross examination that, on the day, case titled as Mehar and others was fixed for hearing. Whereas, counsel for accused submitted rather admitted by counsel for complainant, confirmed through CFMS that, no case of with such title was fixed before Honorable Court of 3<sup>rd</sup> Additional Sessions Judge, Shikarpur. Such facts brought in notice of this court are sufficient to conclude that, complainant remained fail to prove first step advanced by him to corroborate his presence.

Perusal of record in hand indicates that, offence took place on 09.11.2020 application U/s 22-A & 22-B CrPc has been disposed on 11-02-2021 while direct complaint in hand has been filed on 20.08.2021 after 09 months of alleged incident, for which no plausible explanation has been furnished by complainant, rather due deliberation, consultation and after thought story can't be ruled out. Reliance is placed on after delay of filed on **Re-Bhojo & another versus The state, 2020 YLR Note 26.**

10. It is further alleged that, accused Nawab Khan, Mehrab, Asif Pathan, Aghal came at Meerani Muhalla, the way adopted by complainant to move to his house, and accused Asif driving his car, BSE-247 hit it to complainant Ghulam Nabi from back side with the result he got fracture of left leg. It is also alleged that, all accused, Nawab, Asif, Mehrab, Aghal and Sikander, hitting him alighted from car, caused kicks and fists blows to him as well as Khadim Hussain. The narrations of alighting from car and causing kicks and fists blows to both PWs have been missing in memo of application U/s 22-A & 22-B CrPc. An application moved by complainant to SSP Shikarpur has been produced by accused Nawab, same it not denied by complainant party, wherein complainant also missed facts of alighting and causing injuries to them. It is also noted with the application that, complainant Ghulam Nabi has changed name of witness of occurrence namely Gul Zaman with Shaheen. Such dishonest improvement of complainant to

enhance gravity of offence casted serious doubts on the veracity of eye-witnesses and made the episode as doubtful. Wisdom is derived from reported matter Re-Najaf Ali Shah v/s The state, (2021 SCMR Page 736) and Nazim Ali and others v/s The state(2019 MLD Page 1533).

Perusal of record further evinces that, per PW Khadim Hussain he on the day of incident also got injuries at hands of accused whereas, complainant Ghulam Nabi negated his averments by saying that, he got self suffered injuries while falling from motorbike. On another occasion complainant Ghulam Nabi stated that, they left Court at 03:00 pm, reached within one and half hour at Meerani Muhalla, he and Khdim Hussain loses senses after sustaining injuries whereas, PW Khadim Hussain replied said suggestions by saying that, they left court at 04:00pm, consumed half hour to reach Meerani Muhalla, and he was well oriented when Gul Zaman arrived. PW-Ghulam Nabi discarded whole version of complainant by deposing that, neither he is able to identify each accused with their name nor can implicate them as real culprit. The circumstances observed herein are sufficient to hold that, nothing of like nature has ever occurred as projected before this Court.

11. Another important factor observed by this Court is necessary to mention here that, per complainant he got injuries on 09.11.2020 got private treatment. In that context he has produced prescription slip of one Dr. Mujeeb Pathan, Jinnah Hospital Karachi but complainant remained fail to erase the date of his examination mentioned by with stamp of doctor as 06.12.2020 the date of examination of doctor remained unanswered mystery as what were the reasons which is why doctor examined the patient after 25 days of alleged incident. Additionally, complainant has also produced PS copy of report of private Lab, Digital X-ray instead films which shows fracture of Shaft of left tibia and fibula bone, but remained fail to get examine the radiologist. Dr. Fida Hussain Soomro has also been examined but he too neither produced radiologist opinion nor X-ray of victim through which fracture be it may could be proved. Non production of X-rays films is fatal for case of complainant. Guidelines have been drawn from reported matter Re-Malik Mehmood v/s The state and 5 others(2008 YLR 2175)

Without going in further discussion, observations made herein supra are sufficient to hold that, ocular account furnished by prosecution is contrary to medical evidence hence, can't be based for conviction of accused. It is an axiomatic principle of criminal law that, not many circumstances creating doubt in prosecution case are required but only one circumstance creating doubt in the prosecution case is enough to acquit the accused. Reliance in this regard is placed on the case of **Muhammad Akram V. The State 2009 SCMR 320**, wherein Hon'ble Supreme Court of Pakistan has held that, "For giving benefit of doubt it is not necessary that there should be many circumstances creating doubt, if there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the

accused then accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right". The prosecution case in hand is dipped in sea of doubts. Even a slight break, in chain of circumstances would definitely make the grip of chain loose upon accused, especially when the same is built upon basis of feeble evidence. Hence, points in discussion are answered as 'Negative rather Doubtful'.

Thus prosecution failed to bring on record sufficient evidence to connect the accused/respondents with the commission of alleged offence. In view of such circumstances, this Court is of the considered view that prosecution has failed to prove its case beyond shadow of reasonable doubt.

16. It is a well-settled principle of law that a criminal case is to be decided based on the totality of impressions gathered from the circumstances of the case and not on the narrow ground of cross-examination or otherwise of a witness on a particular fact stated by him. A similar view had been expressed by the Honourable Supreme Court of Pakistan in the case **of State v. Rab Nawaz and another (PLD 1974 SC 87) wherein Honourable Supreme Court** has observed that a criminal case is to be decided based on the totality of circumstances and not based on a single element.

17. It is noteworthy that in the impugned judgment the learned trial Judge has pointed out some material contradictions, which are sufficient to declare that the prosecution could not establish the case against the respondents/accused beyond reasonable doubt and where a single circumstance creating reasonable doubt in the prudent mind about the guilt of the accused, then accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right. In this regard, reliance is placed on the cases of **Tariq Pervaiz v. The State [1995 SCMR 1345]** **Muhammad Akram v. The State [2009 SCMR 230]** and **LalBux alias Lal v. the State (2023 YLR 321) (authored by Zulfiqar Ahmed Khan J.)**

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. In these circumstances, I am of the considered opinion that the quality and standard of prosecution evidence is lacking, which is required to establish a criminal case for justifying conviction and sentence. Hence, acquittal of accused/respondents recorded by learned trial Court under impugned judgment dated 18.01.2022 does not call for any interference by this Court. Resultantly the instant criminal acquittal appeal being devoid of merits is dismissed.

**JUDGE**

Shabir/P.S