

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
MIRPURKHAS.**

Criminal Acquittal Appeal No.D-63 of 2024

Before:

Mr. Justice Amjad Ali Sahito.

Mr. Justice Jan Ali Junejo.

Appellant : Nabi Bux son of Mubarak,  
Through Mr. Sikandar Ali Kolachi, Advocate.

The State: Through Mr. Shahzado Saleem, Additional  
Prosecutor General Sindh.

Date of Hearing: 01.09.2025

Date of decision: 01.09.2025

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

**Amjad Ali Sahito, J.**- By this judgment, we intend to dispose of Crl. Acquittal Appeal No.D-63 of 2024, against the judgment dated 23.11.2024, passed by learned Anti-Terrorism Court Mirpurkhas Division @ Mirpurkhas, in D.C/Special Case No.12 of 2023 filed under sections 302, 324, 337-F(i), 147, 148/149 PPC, R/w Ss. 6/7 of Anti-Terrorism Act, 1997, whereby the respondents namely Arbaz, Abdul Qadir, Muzaffar Ali, Haji Ghulam Qadir, Ali Muhammad, Kamran, Ubaidullah, Hadi Bux and Allah Bux were acquitted under section 245-H(1), Cr.P.C, which the appellant/complainant has impugned the Judgment before this Court against the above named respondents by way of filing instant Criminal Acquittal Appeal.

2. The brief facts of the complaint are that on 02-07-2022 at about 1330 hours the brother of the complainant is available at shop of accused Abdul Qadir, where accused Arbaz made straight fired upon complainant's brother namely Munawar Ali S/o

Mubarak Nohani with his gun and murdered him and Muzafar Nohani also made straight fire upon Nasir and injured him. Accused Abdul Qadir alongwith other accused with deadly weapons and they also caused Butt of weapons to complainant's brother Munawar Ali and brother Munawar Ali has been expired and complainant received information through mobile phone, therefore in presence of Ali Ghulam S/o Ali Muhammad and Habibullah S/o Ghulam Hussain participated in postmortem proceedings and burial him in village then accused Abdul Qadir for saving himself lodged F.I.R also shown the accused Alam and others, they are innocent and not commit offence as per our information, but accused Abdul Qadir for saving himself due to personal grudge lodge the F.I.R against Alam Khan and others. Accused persons in collusion with each other murdered the brother of the complainant and for saving themselves lodged the false FIR and conceal and suppressed the facts. The accused persons are involved in the murder of brother of the complainant, but for damaging the case, the complainant/accused Abdul Qadir lodged the F.I.R by concealing the facts.

3. Firstly statement under section 200 Cr.P.C of the complainant was recorded and after statement of the complainant under section 200 Cr.P.C, preliminary inquiry was held in which statements under section 202 Cr.P.C of Ali Ghulam, Habibullah, M.O Dr. Kashif Ali and mashir Ali Muhammad. After recording the statements of the witnesses, the complaint was brought on file and allotted Special Case No.12/2023 and B.Ws were issued against all the accused, who appeared before trial Court and filed their requisite sureties.

4. On 27.05.2025 charge against all the accused was framed at Ex.03, to which they pleaded not guilty and claimed trial vide their pleas recorded vide Ex.04 to 12, respectively.

5. At trial, the complainant Nabi Bux examined himself at Ex.13, who produced copy of application made by him to DIG Mirpurkhas at Ex.13/A, USB allegedly containing CCTV footage and some pictures of the incident at Ex.13/B and Ex.13/C-1 to

13/C-6. P.W-2 Ali Ghulam was examined at Ex.14, P.W-3 Habibullah at Ex.15 and P.W-4 Medical Officer Dr. Kashif Ali Khan was examined at Ex.16, who produced copies of referral letters, provisional and final medical certificates and post mortem report at Exs.16/A to 16/D and thereafter the complainant side was closed vide statement filed at Ex.17.

6. The respondents in their statements recorded under section 342 Cr.PC denied the allegations leveled by the appellant/complainant against them and claimed innocence. Neither they had examined themselves on oath, nor led any evidence in their defence.

7. Per learned counsel for the appellant/complainant sufficient record is available against the respondents, but the learned trial court did not consider the real facts and acquitted the respondents/accused. It is further argued that the learned trial Court had committed gross illegality and material irregularity while passing the judgment and he prayed that notice be issued to the respondents.

8. On the other hand learned A.P.G supported the impugned Judgment and states that there is material contradiction in evidence of witnesses and submits that the instant criminal acquittal appeal may be dismissed and he further states that the complaint was filed with the delay of four months without any plausible explanation.

9. We have heard learned counsel for the appellant/complainant and learned A.P.G for the State and have perused the record.

10. From the perusal of record, it appears that the alleged incident occurred on 02.07.2022, whereas the present complaint was filed on 26.11.2022 after an unexplained delay of four months and nineteen days. From the evidence on record, it appears that the complainant, Nabi Bux, did not witness the incident himself and relied solely on the testimony of Habibullah and Ali Ghulam. It is important to note that, in the complaint, the

complainant claimed that upon learning the facts of the incident from these two individuals, he immediately submitted an application to the DIG Mirpurkhas for re-investigation. However, the application addressed to the DIG, produced by the complainant, is merely a photocopy. Even a cursory examination of the same does not reflect any date or acknowledgment of receipt by trial Court. Furthermore, in neither the application to the DIG nor the subsequent applications filed before the trial Court did the complainant assert that the facts of the incident were disclosed to him by Habibullah and Ali Ghulam. Interestingly, in the complaint perhaps in an attempt to portray Habibullah and Ali Ghulam as independent and unrelated witnesses, the complainant introduced them simply as his co-villagers. However, during cross-examination, he admitted that both were, in fact, his brothers-in-law. This relationship was also admitted by both witnesses during their respective testimonies. Consequently, both witnesses also had the same close relationship with the deceased, Munawar Ali, i.e., they were his brothers-in-law. Despite this close familial relationship, neither witness intervened during the incident to rescue the deceased, nor did they take him to the hospital.

11. Moreover, neither of them was attacked or injured during the occurrence. They bore no bloodstains, did not inform the police about the incident, and did not lodge any report. They were not named as witnesses in the FIR lodged by Abdul Qadir, nor did they participate in the identification of the deceased's body during the post-mortem examination at the hospital. The complainant also failed to mention their presence either at the scene of the crime or at the hospital when he arrived in Mirwah Gorchani after learning of his brother's death. Furthermore, both witnesses failed to appear before the police in connection with Crime No. 30/2022, which pertains to the same incident. Prior to recording their evidence in this complaint, they had never claimed before any authority or forum that they were present at the scene and had witnessed the occurrence.

12. They also failed to inform the complainant about the incident for several months. There are also contradictions in their testimonies. While Ali Ghulam stated that on the day of the incident he travelled alone to Mirwah Gorchani by motorcycle and that Habibullah arrived separately by rickshaw, Habibullah stated that they both travelled together by rickshaw. This inconsistency further undermines the credibility of their claim of having witnessed the incident. It is also noteworthy that the complainant himself initially appeared before the Court multiple times and even brought the widow of the deceased to assert that the police had failed to arrest the accused Zulfiqar. Later, as submitted by learned counsel for the defence, the complainant entered into a compromise with Alam and others and, abandoning that pursuit, filed the present complaint against the current accused. Since the entire case of the complainant rests solely on the evidence of Ali Ghulam and Habibullah whose testimonies, as discussed above, are not worthy of reliance the complaint fails to establish any credible basis against the present accused.

13. As regards the allegations of fear, terror, and harassment, no substantive evidence has been brought on record. This aspect had already been considered and rejected by trial Court during the trial of the State case arising out of Crime No. 30/2022.

14. In light of the above discussion, it is evident that the present complaint suffers from an unexplained and substantial delay, is based entirely on the testimony of related witnesses whose credibility stands impeached due to material contradictions and omissions, and lacks independent corroboration. No reliable or convincing evidence has been produced to substantiate the allegations against the accused. The complainant has failed to establish a prima facie case, and the claim of fear, terror, and harassment remains unproved.

15. We are fully satisfied with appraisal of evidence done by the learned trial Court and we are of the view that while evaluating the evidence, the difference is to be maintained in appeal from conviction and acquittal appeal and in the latter case interference

is to be made only when there is gross misreading of evidence resulting in miscarriage of justice.

16. The over-all discussion involved a conclusion that the learned counsel for the complainant has miserably failed to establish the guilt against the respondents/accused beyond any shadow of doubt, in these circumstances, the learned trial Court has rightly evaluated the evidence while recording acquittal of the respondents. It is well settled principle of law that in criminal cases every accused is innocent unless proved guilty and upon acquittal by a Court of competent jurisdiction such presumption doubles. Very strong and cogent reasons are required to dislodge such presumption. The reasons given by the learned trial Court in its judgment have not been found by us to be arbitrary, fanciful or capricious, requiring any interference by this Court. Consequently, the instant appeal filed by the appellant/complainant merits no consideration, which is dismissed accordingly.

**J U D G E**

**J U D G E**

*\*Adnan Ashraf Nizamani\**