

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Criminal Acquittal Appeal No. S-438 of 2023
(Abbas Ali vs. Muhammad Tahir and others)

DATE	ORDER WITH SIGNATURE OF JUDGES
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1. For order on office objection a/w reply at flag A
2. For orders on M.A.No. 10667/2023
3. For hearing of main case

28.11.2025

Mr. Muhammad Yaseen, Advocate for the Appellant.
Ms. Rubina Qadir Additional Prosecutor General Sindh.

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J U D G M E N T

Ali Haider 'Ada', J:- Through this Criminal Acquittal Appeal, the appellant/complainant has assailed the judgment dated 03.08.2023 passed by the learned Judicial Magistrate XXII, Karachi South, in Criminal Case No. 6574 of 2020, whereby the respondents were acquitted in Crime No. 248 of 2020 registered at P.S. Napier, Karachi, for offences punishable under sections 452, 427, 337-A(i), 337-A(iii), 337-F(i), 504, 147, and 148 PPC.

2. Briefly, the appellant lodged an FIR alleging that on 21.08.2020, at about 7:30 to 8:00 a.m., when the complainant party was asleep, they awoke due to noise and found the respondents along with some unknown persons breaking the gate while using abusive language. Upon resistance, the accused allegedly caused injuries to the complainant party. The complainant claimed ownership of the property, but despite this, the accused continued their acts. The complainant received medical treatment and, thereafter, the matter was reported to the police on 02.09.2020 upon directions of the Justice of Peace.

3. Subsequently, charge was framed against the respondents, to which they pleaded not guilty and claimed trial. The prosecution examined six witnesses and produced documentary evidence. After closure of the prosecution side, the statements of the accused under section 342 Cr.P.C. was recorded, wherein they professed innocence and sought acquittal. After hearing the parties, the learned trial Court passed

the impugned judgment acquitting the respondents. The present appeal seeks reversal of that acquittal.

4. Learned counsel for the appellant argued that the trial Court committed misreading and non-reading of evidence. It is contended that the medical evidence corroborates the ocular account, but the trial Court failed to appreciate this and wrongly extended benefit of doubt to the respondents, resulting in a perverse judgment.

5. Conversely, the learned Additional Prosecutor General supported the impugned judgment, arguing that the trial Court properly evaluated the entire material, recorded sound reasoning, and that the scope of interference in an acquittal appeal is narrow. She submits that the appellant has failed to point out any illegality or gross irregularity warranting interference.

6. Heard and perused the record.

7. It is well-settled that an acquittal stands on a different footing from a conviction. An accused, once acquitted, enjoys a double presumption of innocence, and unless the impugned judgment is shown to be arbitrary, perverse, suffering from misreading or non-reading of evidence, or based on an incorrect application of law, interference is not warranted. The scope for upsetting an acquittal is narrow, and heavy burden lies on the prosecution to show that the findings are unreasonable or contrary to the record. Reliance may be placed on **Fida Hussain alias Saboo v. The State, 2025 SCMR 993**, wherein the Hon'ble Supreme Court reiterated that unless the findings are perverse or in gross violation of law, an acquittal is not to be disturbed.

8. Coming to the merits, the complainant claimed to be the owner of the property, but failed to produce any ownership document before the trial Court. In the absence of such proof, the essential ingredients for constituting criminal trespass were not established. Further, although CCTV footage was produced, no forensic examination of the footage was conducted. The person who produced the USB/CCTV footage was not examined as a witness, thereby depriving the footage of evidentiary

value. The ocular account also suffered from major contradictions and material inconsistencies. In **Ishtiaq Ahmed Mirza and others v. Federation of Pakistan and others (PLD 2019 SC 675)**, the Hon'ble Supreme Court laid down the criteria for admissibility of evidence derived from modern devices, as held that:

“Following are the requirements for admissibility of an audio tape or video in evidence before a court of law and the mode and manner of proving the same before the court:(i) No audio tape or video could be relied upon by a court until the same was proved to be genuine and not tampered with or doctored.

(ii) A forensic report prepared by an analyst of the Provincial Forensic Science Agency in respect of an audio tape or video was per se admissible in evidence in view of the provisions of section 9(3) of the Punjab Forensic Science Agency Act, 2007.

(iii) Under Article 164 of the Qanun-e-Shahadat Order, 1984 it laid in the discretion of a court to allow any evidence becoming available through an audio tape or video to be produced.

(iv) Even where a court allowed an audio tape or video to be produced in evidence, such audio tape or video had to be proved in accordance with the law of evidence.

(v) Accuracy of the recording must be proved and satisfactory evidence, direct or circumstantial, had to be produced so as to rule out any possibility of tampering with the record.

(vi) An audio tape or video sought to be produced in evidence must be the actual record of the conversation as and when it was made or of the event as and when it took place.

(vii) The person recording the conversation or event had to be produced.

(viii) The person recording the conversation or event must produce the audio tape or video himself.

(ix) The audio tape or video must be played in the court.

(x) An audio tape or video produced before a court as evidence ought to be clearly audible or viewable.

(xi) The person recording the conversation or event must identify the voice of the person speaking or the person seen or the voice or person seen may be identified by any other person who recognized such voice or person.

(xii) Any other person present at the time of making of the conversation or taking place of the event may also testify in support of the conversation heard in the audio tape or the event shown in the video.

(xiii) The voices recorded or the persons shown must be properly identified.

(xiv) The evidence sought to be produced through an audio tape or

video had to be relevant to the controversy and otherwise admissible.

(xv) Safe custody of the audio tape or video after its preparation till production before the court must be proved.

(xvi) The transcript of the audio tape or video must have been prepared under independent supervision and control.

(xvii) The person recording an audio tape or video may be a person whose part of routine duties was recording of an audio tape or video and he should not be a person who has recorded the audio tape or video for the purpose of laying a trap to procure evidence.

(xviii) The source of an audio tape or video becoming available had to be disclosed.

(xix) The date of acquiring the audio tape or video by the person producing it before the court ought to be disclosed by such person.

(xx) An audio tape or video produced at a late stage of a judicial proceeding may be looked at with suspicion.

(xxi) A formal application had to be filed before the court by the person desiring an audio tape or video to be brought on the record of the case as evidence."

9. On such aspect, if the medical evidence is examined, the Medico-Legal Officer (MLO) admitted that the complainant failed to produce the original police letter for medical treatment. He also stated that the time of medical examination was 7:15 p.m., which reflects a lapse of nearly twelve hours from the alleged occurrence, thereby creating serious doubt regarding the prosecution version. The MLO further conceded that the kind of weapon was not specifically mentioned. Thus, the medical evidence merely confirms the seat and nature of injuries and the type of weapon, but it does not establish any nexus between the injuries and the accused. Medical evidence neither pinpoints the assailant nor establishes the identity of the perpetrator; at best, it can support the prosecution to the extent of showing the locale of the injuries, their duration, and the probable weapon used. Reliance is placed on **Muhammad Mansha v. The State (2018 SCMR 772)**.

10. Moreover, nothing has come on record to show which specific accused caused any particular injury to the complainant party, nor does the deposition of witnesses assign any fatal or specific role. Reliance is placed on **Ansar Mehmood v. The State (2011 SCMR 1524)** and **Niaz and others v. The State (2024 P Cr.LJ 1473)**.

11. Furthermore, there is an unexplained delay in the registration of the FIR. When the complainant party first approached the police for obtaining a medical letter, their primary duty was to immediately lodge the FIR, which they failed to do. This delay reflects deliberation and afterthought. Reliance is placed on **Ghulam Mustafa v. The State (2025 SCMR 1633)**.

12. It is a settled golden principle of criminal jurisprudence that if any benefit arises from the circumstances of the case, the accused being the favourite child of law is entitled to such benefit. Reliance is placed on **Qurban Ali v. The State (2025 SCMR 1344)**.

13. In view of the above facts and circumstances, no ground has been made out for interference with the judgment passed by the learned trial Court. Accordingly, the instant Criminal Acquittal Appeal is hereby dismissed, and the judgment dated 03.08.2023 passed by the learned trial Court is maintained.

JUDGE

Wasim/PS