

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Acquittal Appeal No.D-219 of 2019

(Muhammad Haroon v. Riaz and others)

Present:

Justice Muhammad Faisal Kamal Alam
Justice Tasneem Sultana

Appellant : Muhammad Haroon Bhatti through
Mr. Shabbir Ali Bozdar, Advocate.

Respondents No.1 to 4. : Riaz and 03 others through Mr. Sardar
Akbar F. Ujjan, Advocate.

Respondent No.5. : The State through Mr. Aftab Ahmed
Shar, Additional Prosecutor General.

Date of Hearing : **04-08-2026**
Date of Judgment : **13-08-2026**

J U D G M E N T

TASNEEM SULTANA, J.- Through this Criminal Acquittal Appeal, the appellant/complainant has assailed the judgment dated **31.10.2019**, passed by learned 1st. Additional Sessions Judge/Model Criminal Trial Court, Naushahro Feroze, in Sessions Case No.293 of 2017, arising out of Crime No.92 of 2017, under Sections 302, 324, 337-H(ii), 147, 148, 149 and 34 PPC, registered at Police Station Daris, whereby respondents No.1 to 4 were acquitted by extending them the benefit of doubt.

2. Brief facts of the prosecution case are that prior to the occurrence, Muhammad Yaseen and accused Mitho alias Porho had exchanged harsh words over throwing cattle manure in a government plot, whereafter Mitho alias Porho restrained him from passing through the common street in front of his house. On 14.03.2017 at about 8:00 a.m., complainant Muhammad Haroon, Muhammad Yaseen, Ghulam Qadir, Mehboob Ali and Muhammad

Umar were proceeding towards the minor canal through the common street when they encountered Mitho alias Porho armed with a DBBL gun, Riaz Bhatti armed with a DBBL gun, Peer Bux armed with a .44-bore rifle, Ghulam Qadir alias Ghulam armed with a pistol, Muhammad Essa alias Gul Muhammad armed with an SBBL gun, and two unidentified persons armed with SBBL guns. Mitho alias Porho challenged Muhammad Yaseen for passing through the street despite having been restrained and fired at him with the intention to kill, while Riaz Bhatti fired at Ghulam Qadir with the same intention, causing firearm injuries to both. The accused thereafter left while making aerial firing and abusing the complainant party. Muhammad Yaseen succumbed to his injuries on the way to Taluka Hospital, Moro, whereas injured Ghulam Qadir was referred to Nawabshah for treatment. After completion of the postmortem examination and funeral rites, the complainant appeared at Police Station Daris and lodged the F.I.R.

3. After usual investigation, the police submitted charge-sheet under Section 173, Cr.P.C. before the competent Court against accused Riaz Bhatti, while accused Peer Bux, Ghulam Qadir alias Ghulam and Muhammad Essa alias Gul Muhammad were let off and their names were kept in column No.2 of the charge-sheet, whereas accused Mitho alias Porho was shown as an absconder. The learned Civil Judge and Judicial Magistrate, Moro, vide order dated 12.05.2017, took cognizance against all the accused. The requisite documents were supplied to respondents No.1 to 4 in terms of Section 265-C, Cr.P.C., whereafter a formal charge was framed against them at Ex.05, to which they pleaded not guilty and claimed trial vide their respective pleas recorded at Ex.06 to Ex.09.

4. To prove its case, the prosecution examined PW-1 Muhammad Haroon, complainant, at Ex.10, who produced the F.I.R at Ex.10/A; PW-2 Ghulam Qadir, injured eyewitness, at Ex.11; PW-3 Mehboob Ali, eyewitness, at Ex.12; PW-4 Dr. Ghulam Shabir, Medical Officer, at Ex.13, who produced the police letter, provisional and final medical certificates of injured Ghulam Qadir, Lash Chakas Form and postmortem report of deceased Muhammad Yaseen at Ex.13/A to Ex.13/E; PW-5 Fayyaz Ahmed, Tapedar, at Ex.14, who produced the police letter and site sketch at Ex.14/A and Ex.14/B; PW-6 P.C. Abdul Sattar at Ex.15, who produced the receipt regarding handing over of the dead body at Ex.15/A; PW-7 Badaruddin, mashir, at Ex.16, who produced the mashirnamas relating to inspection of the dead body, injuries of Ghulam Qadir, place of occurrence, clothes of the deceased, arrest of accused Riaz Bhatti and recovery of the DBBL gun at Ex.16/A to Ex.16/G; PW-8 SIP Din Muhammad, Investigating Officer, at Ex.17, who produced the chemical report, ballistic report and copies of roznamcha entries at Ex.17/A to Ex.17/D; and PW-9 SIP Rizwan Hyder Arain, author of the F.I.R., at Ex.18. Thereafter, the prosecution closed its side vide statement at Ex.19.

5. Thereafter, statements of respondents No.1 to 4 were recorded under Section 342, Cr.P.C. at Ex.20 to Ex.23, wherein they denied the allegations, claimed innocence and asserted that they had been falsely implicated on account of a dispute relating to passage through their land. They, however, neither examined themselves on oath in terms of Section 340(2), Cr.P.C. nor led any evidence in their defence.

6. During trial, accused Mitho alias Porho remained an absconder and the case against him was kept on dormant file until his arrest or appearance.

7. Learned trial Court, after hearing learned counsel for the complainant, learned prosecutor for the State and learned counsel for the accused, acquitted respondents No.1 to 4 by extending them the benefit of doubt vide the impugned judgment dated 31.10.2019. Being aggrieved, the complainant has preferred the instant Criminal Acquittal Appeal.

8. Learned counsel for the appellant/complainant contended that the impugned judgment is contrary to law and the evidence available on record; that learned trial Court failed to appreciate the ocular account furnished by the complainant, injured witness Ghulam Qadir and eyewitness Mehboob Ali; that the presence of injured Ghulam Qadir at the place of occurrence stood established by the injuries sustained by him; that the ocular account was fully corroborated by the medical evidence regarding the firearm injuries sustained by the deceased and injured witness; that the recovery of the DBBL gun on the pointation of respondent Riaz Bhatti and the positive ballistic report connecting four crime empties with the recovered weapon provided further corroboration to the prosecution case; that learned trial Court placed undue reliance upon minor discrepancies and defects in the investigation which did not affect the substance of the prosecution case; that the respondents were specifically nominated and their respective roles were clearly described by the eyewitnesses; and that the impugned judgment suffers from misreading and non-reading of material evidence, therefore, the same is liable to be set aside and the respondents convicted in accordance with law.

9. Conversely, learned counsel appearing on behalf of respondents No.1 to 4 supported the impugned judgment and contended that the prosecution had failed to establish its case beyond reasonable doubt; that

the F.I.R. was lodged after considerable delay, which remained unexplained; that the statements of the material witnesses under Section 161, Cr.P.C. were recorded after delay despite their availability; that all the eyewitnesses were closely related to the deceased and no independent inhabitant of the locality was examined although the alleged occurrence took place in a common village street; that the ocular account suffered from material discrepancies regarding the time and circumstances of the occurrence, inspection of the place of incident and preparation of the site sketch; that the alleged weapon was recovered about one month after the occurrence from an open and accessible place without associating independent mashirs; that the prosecution failed to establish the safe custody and transmission of the weapon to the Ballistic Expert; and that no recovery, forensic evidence or specific act of firing was attributed to respondents Peer Bux, Ghulam Qadir alias Ghulam and Muhammad Essa. He lastly contended that the view taken by learned trial Court is a possible and plausible view emerging from the evidence and does not warrant interference in an appeal against acquittal.

10. Learned Additional Prosecutor General supported the impugned judgment and submitted that the prosecution evidence suffered from material infirmities and did not establish the guilt of the respondents beyond reasonable doubt. He further submitted that the appellant had failed to point out any perversity, arbitrariness or gross misreading or non-reading of material evidence warranting interference in the acquittal recorded by learned trial Court; therefore, the appeal is liable to be dismissed.

11. We have heard learned counsel for the parties at length and carefully examined the record.

12. The prosecution case rests upon the ocular account furnished by complainant Muhammad Haroon, injured witness Ghulam Qadir and eyewitness Mehboob Ali, supported by the medical evidence, the alleged recovery of a 12-bore DBBL gun at the pointation of respondent Riaz Bhatti and the report of the Ballistic Expert. The homicidal death of Muhammad Yaseen and the firearm injuries sustained by Ghulam Qadir stand established through the medical evidence.

13. The principal question requiring determination is whether the appreciation of evidence made by learned trial Court, culminating in the acquittal of the respondents, suffers from any perversity, arbitrariness, gross misreading or non-reading of the evidence warranting interference by this Court.

14. The occurrence allegedly took place on 14.03.2017 at about 8:00 a.m., whereas the F.I.R. came to be registered at about 9:00 p.m. the same day. The delay was sought to be explained by reference to removal of the injured to hospital, postmortem proceedings and funeral arrangements. The statements of the material witnesses under Section 161, Cr.P.C. were, however, recorded on 17.03.2017 despite their availability from the date of occurrence, and no satisfactory explanation was furnished for such delay, coupled with the delayed recording of statements of the material witnesses, afforded room for consultation and deliberation and, therefore, required the prosecution evidence to be examined with greater caution.

15. The prosecution primarily relies upon the ocular account furnished by complainant Muhammad Haroon, injured witness Ghulam Qadir and eyewitness Mehboob Ali. On careful examination, certain circumstances affecting the evidentiary worth of the ocular account emerge from the

record. The injured witness placed the occurrence at about 10:00 a.m., whereas the prosecution case fixes it at about 8:00 a.m. and the Medical Officer examined him at about 9:00 a.m. The complainant claimed that Ghulam Qadir, Mehboob Ali and Muhammad Umar were present when the Tapedar inspected the place of occurrence, whereas the Tapedar stated that they were not present at the time of inspection and preparation of the site sketch. Mehboob Ali also stated that he was not present when the Tapedar visited the place. The site sketch neither depicts the relative positions of the parties nor clearly identifies their respective residences. These circumstances assume significance because the prosecution relied upon closely related witnesses although the occurrence allegedly took place in a common village street where several inhabitants admittedly gathered after hearing the firearm reports, yet no independent witness was examined.

16. The medical evidence establishes that Muhammad Yaseen died as a result of firearm injuries and that Ghulam Qadir also sustained firearm injuries. Medical evidence, however, is essentially corroborative in character. It may establish the nature and location of injuries, the probable weapon used and the cause of death, but does not identify the assailants or independently establish the participation of any particular accused. In the present case, the medical evidence proves the occurrence of firearm injuries, but does not furnish such independent assurance as would remove the doubts arising from the ocular account and the surrounding circumstances.

17. The prosecution also relied upon the recovery of a 12-bore DBBL gun allegedly effected on the pointation of respondent Riaz Bhatti and the report of the Ballistic Expert, according to which four crime empties had

been fired through the recovered weapon. The alleged recovery was effected about one month after the occurrence from a watercourse near the village. The Investigating Officer admitted that no independent inhabitant of Village Manaheen or Village Umaid Ali Bhatti was associated as mashir despite their admitted availability, nor did he disclose that any effort had been made to secure such persons or furnish any explanation for their non-association. He further admitted that the place of recovery was accessible to the co-villagers and any member of the public. The mandatory requirements of Section 103, Cr.P.C. were, therefore, not shown to have been complied with. In **Tayyab Hussain Shah v. The State (2000 SCMR 683)**, the Honourable Supreme Court held as under:-

“The other piece of evidence is the recovery of gun statedly at the pointation of the appellant. No member of the public was made to join the said recovery. The plea of the accused was that the gun had been planted on him and this fake recovery was proved by the police witnesses namely, the Investigating Officer alongwith the Foot Constable. The plea is that the said recovery is of no evidentiary value as the same was made in violation of requirements of section 103, Cr.P.C. In the case of State through Advocate-General, Sindh v. Bashir and others (PLD 1997 SC 408) Ajmal Mian, J., as he then was, later Chief Justice of Pakistan, observed that requirements of section 103, Cr.P.C. namely that the two members of the public of the locality should be Mashirs to the recovery, is mandatory unless it is shown by the prosecution that in the circumstances of a particular case it was not possible to have two Mashirs from the public. If, however, the statement of the police officer indicated that no effort was made by him to secure two Mashirs from public, the recoveries would be doubtful. In the instant case, from the statement of the Investigating Officer it is apparent that no efforts were made to join any member of the public to witness the said recovery. In the overall circumstances of the case, we do not find it safe to rely on the said recovery. Once recovery of gun is considered doubtful the report of the fire-arm expert that the empty statedly recovered from the spot matched with the gun loses its significance.”

The record further reveals that the weapon was allegedly recovered on 14.04.2017, whereas it was received by the Forensic Science Laboratory on 21.04.2017. No explanation was furnished for this interval. The

Investigating Officer also admitted that the official who allegedly carried and deposited the weapon before the Ballistic Expert was not cited as a prosecution witness. Thus, apart from the doubtful recovery itself, the prosecution also failed to establish the uninterrupted chain of safe custody of the recovered weapon until its examination by the Ballistic Expert. In these circumstances, the positive ballistic opinion cannot be treated as furnishing independent and unimpeachable corroboration capable of dispelling the doubts arising from the prosecution evidence. Moreover, this evidence pertains only to respondent Riaz Bhatti. No weapon was recovered from respondents Peer Bux, Ghulam Qadir alias Ghulam or Muhammad Essa; no forensic material connected them with the occurrence; and no specific act of firing was attributed to any of them. Their alleged liability, therefore, rests entirely upon acceptance of the ocular account regarding their presence and participation in the unlawful assembly, the evidentiary worth whereof has already been discussed.

18. When the aforesaid circumstances are considered together, we find that the appreciation of evidence made by learned trial Court cannot be termed arbitrary, perverse or the result of gross misreading or non-reading of the evidence. Our conclusion is founded upon an independent reappraisal of the entire evidence available on record. The ultimate conclusion culminating in the acquittal of the respondents represents a possible, plausible and legally sustainable view emerging from the evidence available on record and, therefore, does not warrant interference in the exercise of appellate jurisdiction. The Honourable Supreme Court of Pakistan in the case of **Muhammad Riaz versus Khurram Shehzad and another (2024 SCMR 51)** has held as under:-

“10. The aforesaid set of circumstances creates misgivings and suspicions regarding the presence of the prosecution witnesses at the scene of the crime, and the discrepancies and defects in the investigation and the prosecution case pointed out by the learned High Court in the impugned judgment also colors the case in doubt and improbability. Therefore, the learned High Court rightly held that the prosecution badly failed to substantiate the case against the respondent No. 1, and the learned Trial Court was not justified in convicting him on the strength of untrustworthy or uncorroborated evidence which was full of material contradictions, especially contradictions in the ocular and medical evidence. It is a well-settled exposition of law that in an appeal against acquittal, the Court would not ordinarily interfere and would instead give due weight and consideration to the findings of the Court acquitting the accused which carries a double presumption of innocence, i.e. the initial presumption that an accused is innocent until found guilty, which is then fortified by a second presumption once the Court below confirms the assumption of innocence, which cannot be displaced lightly.”

19. It is well settled by now that the scope of appeal against acquittal is very narrow and there exists a double presumption of innocence in favour of the accused, and that the Courts generally do not interfere with the impugned judgment unless they find the reasoning therein to be perverse, arbitrary, foolish, artificial, speculative or ridiculous, as held by the Honourable Supreme Court in the case of **State versus Abdul Khaliq and others (PLD 2011 SC 554)**, wherein it has been held as under:-

“From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced that the scope of interference in appeal against acquittal is most narrow and limited because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence, such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. It has been categorically held in a plethora of judgments that interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law

and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the re-appraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities. It is averred in *The State v. Muhammad Sharif* (1995 SCMR 635) and *Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others* (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals.”

20. In view of the above facts and circumstances, we are of the considered view that the impugned judgment does not suffer from any illegality, perversity, misreading or non-reading of the evidence warranting interference by this Court. Consequently, this Criminal Acquittal Appeal is **dismissed**, and the impugned judgment dated 31.10.2019 is maintained.

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