

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

Criminal Acquittal Appeal No. D- 08 of 2022.

PRESENT:

Mr. Justice Amjad Ali Sahito.  
Mr. Justice Jan Ali Junejo.

Appellant : Mst.Haneefan Khatoon through  
Mr.Muhammad Afzal Jagirani, Advocate.

Respondents No.1 & 2 : Ali Gul Malik & another through Mr. Zafar Ali  
Malghani, holding brief for Mr.Amanullah  
Luhur, Advocate.

Respondent No.3 : The State through Mr. Aitbar Ali Bullo,  
D.P.G.

Date of Hearing : 29.4.2025.

Date of Order : 29.4.2025.

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

**JAN ALI JUNEJO-J**:- This Criminal Acquittal Appeal has been preferred by appellant/complainant against the judgment dated 09.02.2022 passed by the learned 1<sup>st</sup> Additional Sessions Judge/MCTC, Kandhkot, whereby after full-fledged trial, the accused/respondents No.1 and 2 were acquitted of the charges in Sessions Case No.168/2021 R: State v. Ali Gul and another arisen out of Crime No.17./2021 of P.S Tangwani registered for offence under Sections 302, 114, 149 PPC.

2. Crux of the prosecution case, as unfolded in the FIR, are that on on 08.03.2021 in the morning time complainant along with prosecution witnesses were available in the house when at about 08.00 a.m. accused Usman, Ali Gul (respondents No.1 and 2) Gul Khan, Noor Khand and Dildar out of whom co-accused Gul Khan was armed with lathi while rest were empty handed, who barged into the house and on instigation of accused Usman, co-accused Gul Khan caused lathi blow to her husband Shahzado on his head and then all accused caused him kicks and fist blows to Shahzado. Injured Shahzado was taken to hospital for treatment under police letter who later succumbed to injuries on 21.3.2023, hence the complainant lodged the FIR to the above effect.

3. Investigation followed and finally accused/respondents No.1 and 2 were sent up to stand trial while showing co-accused Gul Khan absconding.

4. Formal charge was framed against the accused/respondents No.1 and 2 to which they pleaded not guilty and claimed trial.

5. In order to prove its case, prosecution examined as many as 11 prosecution witnesses, thereafter the learned A.D.P.P closed the prosecution side vide statement at Ex.22.

6. Statement of accused was recorded under section 342 Cr.P.C. at Ex.23 to 24, 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 09.02.2022 whereby accused/respondents No.1 and 2 have been acquitted, hence this appeal.

8. Learned counsel for the appellant/complainant has argued that the judgment passed by learned trial Court having been passed without appreciating sufficient evidence brought on record is illegal and liable to be set aside. He submitted that accused/respondents were nominated in the FIR with role that they alongwith two others caused kicks and fists blows to deceased thus actively participated in the commission of offence, when co-accused Gul Khan caused lathi blow to deceased Shahzad on his head which resulted into his death, therefore, acquittal of accused has caused serious miscarriage of justice under impugned judgment passed by trial Court, which is liable to be set aside.

9. Conversely, learned D.P.G duly assisted by Mr.Zafar Ali Malgani, holding brief for Mr.Amanullah Luhur, counsel for the respondents No.1 and 2, supported the impugned judgment and contended that after recording of evidence, it was surfaced that deceased was murdered by co-accused Gul Khan and the present accused/respondents were falsely implicated in this case on the basis of statements of highly interested and partisan witnesses who were admittedly closely related to the complainant. Besides, the prosecution evidence also suffered to multiple contradiction on material aspects.

10. Only role attributed to the accused/respondents No.1 and 2 is that they alongwith two others being empty handed collectively caused kicks

and fists blows to deceased Shahzado, after co-accused Gul Khan caused lathi blow to Shahzado on his head, who was hospitalized and succumbed to the injuries on 21.3.2021. Then the FIR was lodged on 22.3.2021 that is after delay of 13 days without furnishing plausible explanation.

11. The case of the prosecution hinges mainly upon interested witnesses which required corroboration by independent evidence in shape of medical evidence which is lacking in this case as perusal of postmortem report reflects that only injury found on the person of deceased was located on head caused by hard blunt substance/lathi which is attributed to co-accused Gul Khan, while no other marks of violence were seen on his body. Besides, it is admitted by the prosecution witnesses in their evidence recorded at trial that after deceased received lathi injury on head, he went unconscious, therefore, allegation of complainant in FIR that rest of accused including respondents No.1 and 2 subsequently caused kicks and fists blows to deceased does not appeal to a prudent mind. The delay of 13 days in lodging FIR without furnishing plausible explanation further cast doubt on the prosecution's version more particularly when admittedly there was standing landed dispute between the parties. On all these counts, prosecution case against present accused/respondents appears to be highly doubtful and false implication of present accused/ respondents in the background of previous enmity by complainant can not be excluded from consideration.

12. We have also scanned the prosecution evidence recorded at the trial which suffers from material contradictions as well as conflict between ocular account and medical evidence creating serious doubt into the prosecution case against the present accused/respondents. Perusal of impugned judgment dated 09.02.2022 also reflects that it is well reasoned and elaborated one. It would be imperative to reproduce relevant paras of the impugned judgment hereunder:

“20. I have scanned the depositions of prosecution witnesses and found that they have narrated the incident in like manner even during their cross examination they mostly remained consistent with regard to their ocular version. However, some aspects have been observed which creates doubt in the case of prosecution to the extent of both present accused, such as, complainant in her FIR has stated that there was dispute over land between them and proclaimed offender namely Gul Khan. It is surprising to prudent mind that the dispute of complainant party was with proclaimed offender Gul Khan then instigation by accused Usman appears doubtful being not directly in conflict with complainant party over the matter of land. In addition to this PW Manzoor Ahmed (son of deceased Shahzado) during his cross examination admitted that accused Usman and his mother had come to see Shahzado at Sukkur Hospital. Such admission

of PW Manzoor Ahmed further makes the involvement of accused Usman dubious, as in ordinary course of life, assailant will never visit his enemy at Hospital along with mother. Moreover, there is no active role of accused Usman except instigation. So far as the role of instigation attributed to accused Usman is concerned, it is held in the case of Liaqat Ali and others Versus The state reported in 2021 SCMR 455 as under:-

"Co-accused had been acquitted because he had not caused any injury to any person and the only allegation leveled against him was that of instigating his co-accused at the spot."

21. It is further held in the case of Muhammad Rafique alias Neela and others Versus The state reported in 2020 SCMR 664 as under:-

"Jafar Hussain, real father of the accused, is saddled with instigation; he has rightly been acquitted by the trial Court; whereas triviality of abrasions, swayed on the High Court to exercise caution qua Muhammad Naveed and Muhammad Saeed is an equally expedient choice. Doctrine of abundant caution is a silver lining in our jurisprudence to ensure safe administration of criminal justice and application thereof does not necessarily imply destruction of entire volume of evidence".

22. So far as, case of co-accused Ali Gul is concerned, he has been assigned the general role of causing kicks and fists blows to deceased along with two other proclaimed offenders namely Noor Khan and Dildar. Such ocular version of prosecution to the extent of accused Ali Gul does not find corroboration from the memo of injuries made by police and MLC as well as post mortem report of deceased. From the perusal of above documents, there appears only one injury on the head of deceased which has been attributed to proclaimed offender namely Gul Khan and no mark of violence was seen on the body of deceased in result of causing kicks and fists blows.

23. Moreover, complainant and PW Manzoor Ahmed during their cross examination deposed that deceased fell down on the floor after receiving lathy injury and became unconscious, In view of above version of PWs, it does not appeal to prudent mind that rest accused caused kicks and fists blows to Shahazado who was already unconscious after receiving lathy injury. Such version of PWs does not make a sense.

24. Aforesaid aspects have made the prosecution version highly doubtful to the extent of present accused only and it would be unsafe and unjust to award conviction to the present accused persons on the basis of available evidence as while deciding a criminal case the basic duty of the court is to scrutinize the evidence brought on record strictly in accordance with the established judicial norms without being influenced by facts of the case. It is held in the case of Ayoúb Masih Versus the State reported in PLD 2002 Supreme Court 1048 as under:-

"The rule of benefit of doubt which is described as golden rule, is essentially a rule of prudence which cannot be ignored while dispensing justice in accordance with law. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". It will not be out of place to mention here that this rule occupies pivotal place in the Islamic Law and is enforced rigorously in view of the saying of Holy Prophet (Peace Be Upon Him) that the mistake of Qazi/Judge in releasing a criminal is better than his mistake in punishing an innocent".

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.

13. 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.

14. 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.)**

15. 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)**.

16. In these circumstances, we are of the 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, we are of the view that impugned judgment of acquittal recorded by learned trial Court under impugned judgment dated 09.02.2022 does not call for any interference by this Court, therefore, the instant criminal acquittal appeal being devoid of merits is dismissed.

**JUDGE**

**JUDGE**

Shabir/P.S