

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

CRIMINAL SPECIAL ATA NO. D-126 OF 2004  
MUHAMMAD ISMAIL V/S THE STATE  
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CRIMINAL SPECIAL ATA NO. D-135 OF 2004  
GHULAM SARWAR V/S THE STATE

SINDH HIGH COURT CIRCUIT COURT HYDERABAD

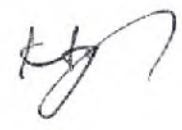
**Composition of Bench**

HON'BLE MR. JUSTICE MOHAMMAD KARIM KHAN AGHA

HON'BLE MR. JUSTICE RASHEED AHMED SOOMRO (D.B)

Date of last hearing (heard/reserved): 10-06-2020

Decided on: 17-06-2020

(a) Judgment approved for reporting YES 

**CERTIFICATE**

Certificate that the Judgment/Order is based upon or enunciates a principle of law/decide a question of law which is of first impression/distinguishes over-rules/explains a previous decision.

Strike-out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first page of the Judgment.

(iii) Court Associate must ask the Judge written the judgment whether the judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

09/08/2004 776  
①  
09/08/2004

1651  
09-6-2004.

IN THE HIGH COURT OF SINDH, HYDERABAD CIRCUIT.

Criminal Appeal No. 126 of 2004.

Muhammad Ismail  
S/O Khamiso Khan Kheri,  
Muslim, adult,  
at present confined at  
Central Prison, Hyderabad.

..... APPELLANT.

VERSUS

The State.

..... RESPONDENT.

- Crime No.175 of 2003.
- U/S 302, 460, 397, 109,  
120-B PPC 17(4) PHE R/W  
S.6/7 of Anti-Terrorism  
Act, 1997.
- P.S. Town Mirpurkhas.



IN THE HONOURABLE HIGH COURT OF 777  
SINDH HYDERABAD, BENCH @ HYDERABAD.

Appellate Jurisdiction. (5)

SPL. CASE NO. 49/2003.

Ghulam sarwar s/o  
Hakim Ali Rajput,  
Presently Confined in  
Central Prison Hyderabad.

U/s, 460, 397 109,  
120-B PPC 17(4)  
PHE.  
S.7 ATA Crime No.  
175/2003 OF P.S  
Town Mirpurkhas.

..... Appellant.

Versus

The state ..... Respondent.

ORDER SHEET  
IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD

**Cr. Special A.T. Appeal No.D-126 of 2004**  
**Cr. Special Jail A.T Appeal No.D-135 of 2004**  
[Confirmation Case No.04 of 2004]

DATE	ORDER WITH SIGNATURE OF JUDGE
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10.06.2020

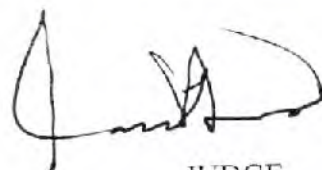
Mr. Muhammad Sachal R. Awan, advocate for appellant Muhammad Ismail in Cr. Special A.T. Appeal No.D-126 of 2004.

Syed Tarique Ahmed Shah, advocate for appellant Ghulam Sarwar in Cr. Special A.T. Appeal No.D-135 of 2004.

Mr. Abdul Hameed Bajwa, advocate for acquitted accused Ishtiaque Ahmed.

Mr. Shewak Rathore, D.P.G for the State.

Learned counsel for appellants have read out the entire evidence. Mr. Muhammad Sachal R. Awan learned counsel for appellant Muhammad Ismail and Syed Tariq Ahmed Shah learned counsel for Ghulam Sarwar have made their submissions. In response to show cause notice given by this court. Mr. Abdul Hameed Bajwa advocate on behalf of acquitted accused Ishtiaque Ahmed has also made his submissions. None appeared on behalf of acquitted accused Pervez Akhtar and Muhammad Kashif, however, we have considered their case in respect of their show cause notice in respect of their case being an appeal against acquittal having noticed that no appeal against acquittal was filed either by the State or the complainant. Learned Deputy Prosecutor General Sindh has made his submissions in respect of the appellants and acquitted accused. The complainant was given notice to appear before this court on many occasions however he was called absent. Appellants Muhammad Ismail and Ghulam Sarwar have both been in jail for 17 years and under these circumstances, we consider that it would be in the interest of justice to dispense with the appearance of the complainant who appears to have no interest in pursuing this case and has in any event been represented by learned D.P.G. Reserved for judgment.

  
JUDGE



IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Rasheed Ahmed Soomro

1. Cr. Spl. ATA No.D-126 of 2004

Muhammad Ismail

Versus

The State

2. Cr. Spl. Jail ATA No.D- 135 of 2004  
(Confirmation Case No.D-04 of 2004)

Ghulam Sarwar

Versus

The State

Appellant : Muhammad Ismail in Cr. Spl. ATA No.D-126 of 2004	Through Mr. Muhammad Sachal R. Awan Advocate
Appellant : Ghulam Sarwar in Cr. Spl. Jail ATA No.D-135 of 2004	Through Syed Tarique Ahmed Shah Advocate
Co-accused Ishtiaq Ahmed, who was acquitted by the trial Court is present in Court pursuant to notice issued by this Court	Through Mr. Abdul Hameed Bajwa, Advocate
Respondent : The State	Through Mr. Shewak Rathore, D.P.G. Sindh
Date of hearing	10.06.2020
Date of judgment	17.06.2020

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J.- By this single judgment we intend to dispose of aforementioned two Criminal Special ATA Appeals and



confirmation reference as well as show cause notices as the same relate to one and the same incident and have been filed against the same judgment passed by the trial court.

2. By means of instant Appeals, both appellants have assailed the Judgment dated 02.08.2004, passed by learned Judge, Anti-Terrorism Court Hyderabad & Mirpurkhas Divisions at Hyderabad, in Special Case No.49 of 2003 (Re: State V Pervez Akhtar alias Muhammad Ali and others), emanating from Crime No.175/2003, registered at Police Station Town Mirpurkhas, under sections 302, 460, 397, 109, 120-B PPC, Section 17(4) Offences Against Property (Enforcement of Hudood) Ordinance, 1979 and Section 7 Anti-Terrorism Act, 1997; whereby they have been convicted and sentenced, as mentioned in Point No.3 of the impugned judgment, in the following terms:-

"Point No.3.

In view of the finding on the Point Nos.1 and 02, it is clear that the prosecution evidence against these above accused persons namely Muhammad Ismail and Ghulam Sarwar has got strong evidentiary value and there is no evidence against the remaining accused persons, therefore, for the proved offence u/s 17(4) of the Offence Against Property (Enforcement of Hudood) Ordinance 1979 r/w S. 6(2) (a) punishable under Section 7(a) of the Anti Terrorism Amendment Ordinance 2001, accused Ghulam Sarwar is punished with death subject to confirmation by the High Court and also with fine of Rs. One Lac. The fine if realized shall be given to the legal heirs of the deceased Allah Bux. In case of default of payment of fine to suffer R.I. for one year more. The second accused Muhammad Ismail is punished for Life Imprisonment also with fine of Rs.1,00,000/-. The fine if realized shall be given to the legal heirs of the deceased Allah Bux in default of payment of fine to suffer R.I. for one year more. The sentences awarded to the convicts shall run concurrently. Both convicts for the proved offence u/s 460 PPC are sentenced and punished for ten years each also with fine of Rs.50,000/- each. The fine if realized shall be given to the aggrieved party. In case of default of payment of fine both convicts shall suffer R.I. for six months more. Benefit of Section 382-B Cr.P.C. will be given to the convicted accused persons from their date of arrest viz. 17.12.2003. The remaining accused persons namely Pervez Akhtar, Muhammad Kashif and Ishtiaq Ahmed are hereby acquitted u/s 265-H(i) Cr.P.C."

3. The prosecution case in brief is that on 16.12.2003 at about 08:15 p.m. present appellant alongwith acquitted co-accused duly armed with deadly weapons / pistols trespassed into the house of complainant Allahdad



Makrani, situated at Pak Colony jointly with their common intention to commit robbery at the instance of acquitted co-accused Ishtiaq Ahmed. At that time complainant party, as per contents of F.I.R., was busy in watching T.V. While seeing accused persons, PW Allah Bux resisted, upon which accused persons opened fire at him, as a result thereof, he fell down at the outer gate of their house and died at the spot. During such scuffle, the complainant party caught hold of one culprit alongwith his weapon / pistol carried by him, whereas other accused persons made their escape good. The complainant party informed the concerned police who came to the scene of the incident. The apprehended accused disclosed his name before the police as Pervez Akhtar alias Muhammad Ali S/o Khushi Muhammad, and the pistol recovered from his possession was found unlicensed. It is further the case of the prosecution that while committing the said act, accused persons had created sense of insecurity, terror and fear among the people of locality. It is also alleged in the F.I.R. that aforesaid conspiracy was managed by acquitted co-accused Ishtiaq Ahmed. Complainant in his said F.I.R. has further stated that at the time of occurrence, all accused persons were with open faces and they can be identified if seen again.

4. After usual investigation, police submitted challan before the concerned court and after completing necessary formalities, learned trial court framed the charge against all accused, to which they pleaded not guilty and claimed trial.

5. The prosecution in order to prove its case examined 12 PWs and exhibited numerous documents and other items. The statements of the accused were recorded under section 342 Cr.P.C whereby they claimed false implication. They did not examine themselves on oath or call any witness in support of their defence case.

6. Learned trial court after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellants as stated earlier in this judgment.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.



8. Initially whilst hearing this case this court vide judgment dated 29.05.09 (over 10 years ago) whilst exercising its reversionary powers was of the view that the acquitted co-accused Pervez Akhtar, Ishtiaq and Muhammed Kashif also had a case to answer and issued show cause notices to them as to why the impugned judgment in respect of them should not be set aside and their case be remanded to the trial court for decision in accordance with law. This court issued such notices and bailable warrants for the production of the aforesaid three acquitted co-accused who by 12.05.2011 all had been produced before this court with counsel. Thereafter this matter was adjourned for one reason or another and today only acquitted co-accused Ishtiaq is before this court. It is noted that acquitted co-accused Pervez Akhtar and Muhammed Kashif have not appeared before this court for a number of years despite notice and BW's being issued. The complainant has also been served but has not put in an appearance. Neither the State nor the complainant has filed any acquittal appeal against the acquitted co-accused nor any criminal revision application against the appellant who was convicted for life. Both the appellants have now been in jail for 17 years **excluding** remission and this court is of the view that it cannot keep this matter pending any longer as it would not be in the interests of justice to do so as the appellants have already been behind bars for 17 years and that this court will also deal with the case of the acquitted co-accused as it was this court which initiated the show cause notices against them on its own motion.

9. Learned counsel for the appellants in both appeals have argued the matter almost on the same footing and have contended that the best witnesses being the women folk who were present at the scene of the alleged incident were not called and therefore the prosecution deliberately did not lead the best evidence, that the correct identification of the appellants as being present at the scene had not been made as the identification parade was completely flawed and not in accordance with law, that the co-accused Pervaz Akhtar and Muhammed Kashif had been acquitted on the same or lesser evidence and as such they were entitled to the same treatment, that there were major contradictions in the evidence of the PWs and as such they could not be safely relied upon, that the weapons were foisted on them, that it had not been proven that any of the appellants fired the fatal shot and for any of the above



reasons the appellants should be acquitted of the charge by extending them the benefit of the doubt. In support of their contentions they placed reliance on the cases of **Usman alias Kaloo V The State** (2017 SCMR 622), **Mansab Ali V The State** (2019 SCMR 1306), **Sardar Bibi and another V Munir Ahmed and others** (2017 SCMR 344), **Muhammad Asif V The State** (2017 SCMR 486), **Zafar V The State** (2018 SCMR 326), **Mian Sohail Ahmed and others V The State and others** (2019 SCMR 956), **Kanwar Anwaar Ali, Special Judicial Magistrate: In the matter of Criminal Miscellaneous Application No.183 of 2019 in Criminal Appeal No.259 of 2018, decided on 22<sup>nd</sup> February, 2019** (PLD 2019 Supreme Court 488), **Azhar Mehmood and others V The State** (2017 SCMR 135), **Nazir Ahmad V Muhammad Iqbal and another** (2011 SCMR 527), **Hakeem and others V The State** (2017 SCMR 1546), **Abdul Jabbar and another V The State** (2019 SCMR 129) and **Lal Pasand V The State** (PLD 1981 Supreme Court 142).

10. With regard to learned counsel for acquitted co-accused Ishtiaq he contended that there was no evidence against him at all except a bare hearsay allegation that he was involved in a conspiracy with the co-accused to commit robbery, there was no evidence that he was present at the scene of the incident and he was not picked out at any identification parade and as such he was rightly acquitted by the trial court and even otherwise his case was in effect an appeal against acquittal for which he was entitled to the double presumption of innocence and that this court had no power to simply remand the case back to the trial court for a decision in accordance with law when the trial court had already given such a decision after its assessment of evidence on record and as such the show cause notice should be withdrawn and his acquittal should remain.

11. On the other hand learned DPG appearing on behalf of the State fully supported the impugned judgment and in particular contended that the FIR was filed with promptitude, that the eye witnesses were reliable, trust worthy and confidence inspiring and that they had correctly identified the appellants as committing the murder at an identification parade which was held in accordance with law, that the medical evidence supported the eye witness evidence, that pistols were recovered from the appellants on their arrest which matched some of the empties recovered at the scene through a positive



FSL report, that there was positive chemical test and as such the appeals against conviction should be dismissed and the impugned judgment should be upheld. With regard to the acquitted co-accused he made no submissions as the state had not deemed it fit to file an appeal against their acquittal and nor had the complainant and as such this issue was for the court to decide since the court had issued the show cause notices to the acquitted co-accused.

12. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by learned counsel for the appellant and the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

13. In our view after our reassessment of the evidence based on the evidence of the PW eye witnesses, PW MLO's, PW police witnesses and IO, recovery of empties at the scene and positive chemical reports we are satisfied that the prosecution has proved beyond a reasonable doubt that on 16.12.2003 at about 8.15pm at the house of Allahdad Makrani at Pak Coloney during the commission of a robbery Allah Bux Makrani was murdered by firearm by 4 persons who entered his house in order to commit robbery.

14. The only issue therefore, in our view, left before us is whether it was the appellants or some other third party who murdered the deceased by causing him a firearm injury.

15. In our view after our reassessment of the evidence we find that the prosecution has NOT proved its case against the appellants beyond a reasonable doubt of the murder of Allah Bux Makrani at the place, date and time as mentioned above for the following reasons and hereby acquit both the appellants of the charge by extending them the benefit of the doubt;

(a) In our view the key to this case is whether the appellants have been correctly identified as the persons who broke into the house and committed the murder of Allah Bux Makrani as none of them were arrested on the spot. Although according to the eye witnesses there was good electricity at the time in order to see the appellants the appellants were not at the house for very long and the eye witnesses had not seen the appellants before and did not know them and no hulia was given of the appellants in the S.161 Cr.PC statements of the eye witnesses which gave a license for the eye witnesses to pick out anyone at the identification parade and as such it was important based on the



particular facts and circumstances of this case for their to have been a reliable identification parade. In this respect reliance is placed on **Javed Khan V State** (2017 SCMR 524). We note from the evidence that the identification parade was a joint identification parade, that no role was assigned to the appellants on their identification, that according to the judicial magistrate who carried out the identification parade only 8 dummies were used in each identification parade (which means that there was 3 accused and only 5 others in each identification parade), that it has come in evidence that the dummies did not all have the same features and thus under these circumstances we find that we cannot safely rely upon the same as ensuring that the appellants have been correctly identified as the persons who fired on the deceased with firearms and caused his murder. In this respect reliance is placed on **Sohail Ahmed's case** (Supra), **Azhar Mehmood's case** (Supra), **Nazir Ahmed's case** (Supra) **Lal Pasand's case** (Supra) and **Kanwar Ali's case** (Supra). As such we find that the appellants have not been correctly identified as the persons who entered the house and murdered the deceased.

(b) The eye witness evidence conflicts with the medical evidence as in effect the eye witnesses state in their evidence that the deceased was shot in the back where as the post mortem report finds that the deceased was shot in the chest. In this respect reliance is placed on **Mansib's case** (Supra). That since the deceased was shot from about 3 feet their ought to have been blackening surrounding his wounds yet there was none. In this respect reliance is placed on **Sohail Ahmed's case** (Supra). This in our view goes against the credibility and reliability of the eye witnesses.

© There are **some material and significant contradictions** in the evidence of the prosecution witnesses. For example, PW 1 Allahdad who was an eye witness states in his evidence that the police removed the dead body whereas PW 5 Muhammed Tariq states in his evidence that he took the dead body to hospital. Again such contradictions cast doubt on the credibility and reliability of the eye witnesses.

(d) That co-accused Kashif was acquitted by the trial court in the impugned judgment on exactly the same evidence as was adduced against the appellants and as such the appellants ought to have been acquitted. In this respect we place reliance on **Zafar's case** (Supra). We shall deal with the case of acquitted co-accused Kashif later in this judgment.

(e) That it is a golden principle of criminal jurisprudence that the prosecution must prove its case beyond a reasonable doubt and that any doubt must go to the benefit of the accused and in this case as mentioned above we find doubts in the prosecution case especially in respect of the crucial aspect of the correctness of the identification of the appellants and as such the benefit must go to the appellants. In this respect reliance is placed on the case of **Tariq Pervez V/s. The State** (1995 SCMR 1345), wherein the Supreme Court has observed as follows:-

⚡



"It is settled law that it is not necessary that there should be many circumstances creating doubts. **If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit** not as a matter of grace and concession but as a matter of right." (bold added)

16. With regard to the cases of acquitted co-accused Ishtiaq, Kashif and Pervez Akhtar we note that all these accused were acquitted by the trial court. Thus, in our view even though this court gave them a show cause notice as to why their case should not be remanded to the trial court for a decision in accordance with law we are of the view that as the trial court had already acquitted the co-accused after appraising the evidence available on record it should be for this court to decide the case of the acquitted co-accused Ishtiaq, Kashif and Pervez Akhtar by treating them as appeals against their acquittal subject to the same legal requirements. Furthermore, based on the particular facts and circumstances of this case where the appellants have already spent 17 years **excluding remission** in jail we do not consider that it would be just or meet the ends of justice to again refer this case back to the trial court for a decision in accordance with law in respect of the co-accused as this would prolong the incarceration of the appellants further especially when we are in a position to decide the matter ourselves based on the show cause notices.

17. It is settled law that judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous as held by the Supreme Court in the case of **The State v. Abdul Khaliq and others** (PLD 2011 Supreme Court 554). Moreover, the scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of the innocence is significantly added to the cardinal rule of criminal jurisprudence as the accused shall be presumed to be innocent until proved guilty. **In other words, the presumption of innocence is doubled** as held by the Supreme Court in the above referred judgment. The relevant para is reproduced hereunder:-

"16. We have heard this case at a considerable length stretching on quite a number of dates, and with the able assistance of the learned counsel for the parties, have thoroughly scanned every material piece of evidence available on the record; an exercise primarily necessitated with reference to the conviction appeal, and also to ascertain if the conclusions of the Courts below are



against the evidence on the record and/or in violation of the law. In any event, before embarking upon scrutiny of the various pleas of law and fact raised from both the sides, it may be mentioned that both the learned counsel agreed that the criteria of interference in the judgment against acquittal is not the same, as against cases involving a conviction. In this behalf, it shall be relevant to mention that the following precedents provide a fair, settled and consistent view of the superior Courts about the rules which should be followed in such cases; the dicta are:

Bashir Ahmed v. Fida Hussain and 3 others (2010 SCMR 495), Noor Mali Khan v. Mir Shah Jehan and another (2005 PCr.LJ 352), Imtiaz Asad v. Zain-ul-Abidin and another (2005 PCr.LJ 393), Rashid Ahmed v. Muhammad Nawaz and others (2006 SCMR 1152), Barkat Ali v. Shaukat Ali and others (2004 SCMR 249), Mulazim Hussain v. The State and another (2010 PCr.LJ 926), Muhammad Tasweer v. Hafiz Zulkarnain and 02 others (PLD 2009 SC 53), Farhat Azeem v. Asmat Ullah and 6 others (2008 SCMR 1285), Rehmat Shah and 2 others v. Amir Gul and 3 others (1995 SCMR 139), The State v. Muhammad Sharif and 3 others (1995 SCMR 635), Ayaz Ahmed and another v. Dr. Nazir Ahmed and another (2003 PCr. LJ 1935), Muhammad Aslam v. Muhammad Zafar and 2 others (PLD 1992 SC 1), Allah Bakhsh and another v. Ghulam Rasool and 4 others (1999 SCMR 223), Najaf Saleem v. Lady Dr. Tasneem and others (2004 YLR 407), Agha Wazir Abbas and others v. The State and others (2005 SCMR 1175), Mukhtar Ahmed v. The State (1994 SCMR 2311), Rahimullah Jan v. Kashif and another (PLD 2008 SC 298), 2004 SCMR 249, Khan v. Sajjad and 2 others (2004 SCMR 215), Shafique Ahmad v. Muhammad Ramzan and another (1995 SCMR 855), The State v. Abdul Ghaffar (1996 SCMR 678) and Mst. Saira Bibi v. Muhammad Asif and others (2009 SCMR 946).

**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 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." (bold and italics added)

18. **With regard to acquitted co-accused Ishtiaq** we find absolutely no evidence of his involvement in the offenses so charged based on the evidence on record and as such he remains acquitted and the show cause notice against him is discharged.

19. **With regard to the acquitted co-accused Kashif** since as mentioned earlier in this judgment we find the identification evidence in respect of him to be unreliable based on the evidence on record he remains acquitted and the show cause notice against him is discharged.

20. **With regard to acquitted co-accused Pervez Akhtar** although there appears to be more evidence against him on record than there is against the other co-accused and the appellants the trial court at typed P.17 made the following finding in respect of Pervez Akhtar;

"I have given my careful consideration to the arguments advanced before me and I have gone through the entire evidence of the P.Ws so far and I have perused the case law referred before me by the learned D.C as quoted above. I find that in this case regarding accused Pervez Akhtar, the P.W Ayoub SHO Ex.11 on record has clearly mentioned in his deposition and in his cross examination that when he reached at the place of occurrence, he found accused Pervez Akhtar was in the custody of comptt. Allahdad, he searched the person of the accused and nothing was secured from his possession. He had further seen that the comptt. was holding pistol in his hand and comptt.



disclosed that pistol was of the property of the accused Pervez Akhtar. This narration of P.W Ayoub SHO very much transpires that the involvement of accused Pervez Akhtar in this case appears to be doubtful. Had the accused been present at the spot something should have been recovered like bullet or any other article in his possession, but the SHO Ayoub Dars says that nothing secured, therefore, the involvement of this accused Pervez Akhtar in this case is very much doubtful and the benefit doubt must go to the accused."

21. Keeping in view the law regarding appeals against acquittal in our view it cannot be said that the findings of the trial court are either whimsical, arbitrary or are a non reading of evidence and as such they do not meet the legal threshold to enable this court to set aside the acquitted co-accused Pervez Akhtar's acquittal by the trial court and as such he remains acquitted and the show cause notice against him is discharged.

**In conclusion.**

1. The appeals against conviction of both Muhammad Ismail and Ghulam Sarwar are allowed. The impugned Judgment is set aside. The confirmation reference is answered in the negative and both the appellants shall be released from custody unless wanted in any other custody case.

2. Acquitted co-accused Ishtiaq, Kashif and Pervez Akhtar's appeal against their acquittals are dismissed, they remain acquitted and the show cause notices issued against them by this court stand discharged. Likewise any outstanding Warrants against them whether bailable or non bailable are withdrawn.

22. The appeals, confirmation reference and show cause notices stand disposed of in the above terms.