

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Acquittal Appeal.No.D-25 of 2020

Before:

***Mr. Justice Amjad Ali Sahito,
Mr. Justice Ali Haider 'Ada'***

Appellant : Ghulam Qadir son of Khuda Bux Mirani,
through Mr. Safdar Ali G. Bhutto, Advocate.

Respondents : 1). Nadeem Shah son of Muhammad Saleem
Shah *through* Mr. Asif Ali Abdul Razzak
Soomro, Advocate.

2). Mst. Najma d/o Muhammad Bux w/o
Abdul Aziz alias Makhno Mirani *through*
Mr. Abdul Rehman A.Bhutto, Advocate.

3). Mst. Reshma d/o Leemo w/o Ghulam
Hyder Mirani (Nemo)

The State *through* Mr. Aitbar Ali Bullo, Deputy
Prosecutor General, Sindh

Date of Hearing : 14.10.2025.

Date of Decision : 14.10.2025.

JUDGMENT

Ali Haider 'Ada'.J:- Being aggrieved and dissatisfied with the judgment dated 13.05.2020, passed by the learned Additional Sessions Judge, Kashmore, (trial Court) in Sessions Case No.29 of 2019, arising out of FIR No.41 of 2018, registered at Police Station Guddu for offences under Sections 302 and 34, P.P.C, whereby Respondents No. 1 to 3 were acquitted under Section 265-H(i), Cr.P.C, the applicant has filed the present acquittal appeal.

2. The concise facts of the case are that on 24.10.2018, complainant Ghulam Qadir Mirani lodged an FIR at Police Station Guddu, stating that Nadeem Shah and Mst. Najma were allegedly maintaining illicit relations, due to which her husband Abdul Aziz alias Makhno was annoyed. It was further alleged that Mst. Najma often expressed that she, along with Nadeem Shah, would ultimately commit the murder of her husband Abdul Aziz. On 22.10.2018, the complainant, along with his relatives Mureed Hussain son of Gul Hassan, Master son of Abdul

Ghafoor, and Abdul Aziz alias Makhno (the deceased), after taking dinner, went to sleep in the courtyard, where the electric bulbs were illuminated. At about 12:30 a.m. (midnight of 23.10.2018), they were awakened by the barking of dogs and a knock at the door. Upon inquiry, they saw and identified, in the light of the electric bulbs, the accused persons, namely Nadeem Shah son of Saleem Shah, armed with a T.T. pistol; Mst. Najma daughter of Muhammad Bakhsh, wife of Abdul Aziz alias Makhno; and Mst. Reshma wife of Ghulam Hyder, daughter of Leemo, all by caste Mirani, standing near the cot of Abdul Aziz. It was alleged that accused Nadeem Shah aimed his weapon at the complainant, warning him to remain silent, while accused Mst. Najma stated that her husband Abdul Aziz had been maltreating her and that she would kill him that night. Thereafter, Mst. Najma held the hands of her husband, Mst. Reshma caught hold of his legs, and Nadeem Shah fired a shot from his T.T. pistol at the left side temple of Abdul Aziz, resulting in his instant death, as the bullet passed through his head. The complainant and witnesses raised cries, whereupon the accused persons fled from the scene. The complainant thereafter informed the police at Police Station Guddu, who arrived at the place of occurrence and shifted the dead body of Abdul Aziz to the hospital for postmortem examination. After completion of funeral rites, the complainant, following consultation with the family members, formally lodged the FIR against the above-named accused persons.

3. The investigation was carried out and upon its completion, the Investigating Officer submitted the challan before the Court of the concerned Judicial Magistrate, who subsequently transmitted the case to the Court of the learned Sessions Judge, Kashmore @ Kandhkot. The matter was then assigned to the learned 1st Additional Sessions Judge, Kandhkot. Later on the matter was transferred to the trial court for its disposal and where formal charge was framed against the respondents/accused, to which they pleaded not guilty and claimed trial.

4. To prove the charge, the prosecution examined nine witnesses. PW-01 Dr. Gul Muhammad produced and exhibited the *Lash Chakas Form* and post-mortem report. PW-02 PC Sher Baz exhibited the receipt of the dead body. PW-03 ASI Abdul Razzak, being the author of the memo of dead body, *Danistnama*, and FIR, exhibited those documents along with relevant *Roznamcha* entries. PW-04 Tapedar Yameen Ali produced the original site plan. PW-05 SIP/Investigating Officer Khan Muhammad exhibited the memos of site inspection, last worn clothes of the deceased, arrest and recovery, as well as relevant entries,

permission letter, R.Cs, and examination reports. PW-06 HC Abdul Rasheed, PW-07 complainant Ghulam Qadir, and PW-08 eye-witness Mureed Hussain were also examined. The witness Master was given up by the learned State Counsel under a statement placed on record. Thereafter, PW-09 Mashir Imam Bux was examined, and the prosecution evidence was formally closed.

5. The respondents/accused, in their statements recorded under Section 342 Cr.P.C., denied the allegations and professed innocence. They examined themselves on oath but did not produce any witness in defence.

6. Upon appraisal of the evidence and after hearing the arguments advanced by both sides, the learned trial Court acquitted the respondents/accused through judgment dated 13.05.2020, which has been impugned before this Court through the present Criminal Acquittal Appeal.

7. Learned counsel for the appellant mainly contended that prosecution had successfully proved its case against the respondents through reliable and confidence-inspiring evidence; however, the learned trial Court ignored material aspects of the case and extended the benefit of doubt. Under such circumstances, he argued, the acquittal of the respondents is not sustainable in law and warrants interference by this Court by allowing the instant Criminal Acquittal Appeal.

8. Conversely, learned counsel appearing on behalf of the respondents submitted that the learned trial Court has properly appreciated the evidence brought on record and has rightly come to the conclusion that the prosecution failed to establish the charge beyond reasonable doubt. He further argued that the ocular account was riddled with material contradictions, inconsistencies, and improvements, which rendered the prosecution case doubtful. He further submitted that the respondents have rightly been acquitted as the presumption of innocence in their favour stands doubled after the acquittal recorded by the competent Court of law, and interference in such findings is not warranted unless the judgment is found to be perverse or based on misreading or non-reading of evidence.

9. Learned Deputy Prosecutor General representing the State adopted the arguments advanced by learned counsel for the respondents and supported the impugned judgment, submitting that the learned trial Court has given sound and cogent reasons for acquitting the respondents, which do not call for any interference by this Court.

10. We have heard the arguments advanced by the learned counsel for the parties at considerable length and have minutely examined the entire evidence and material available on record.

11. The entire evidence, when examined meticulously, was found to be replete with material contradictions and inherent improbabilities, which rightly persuaded the learned trial Court to record its verdict in favour of the respondents/accused. It would be appropriate and expedient to reproduce the relevant portion of the impugned judgment, which is delineated hereunder

"Admittedly mother of complainant was present at the time of incident, but she has not lodged FIR of the incident, but one uncle of deceased had lodged FIR. It is also admitted position that neither the mother of deceased acted as eye witness or mashir of alleged incident. {Reliance can be placed upon 2019 YLR note 49 (Karachi)}. It is also admitted position that another eye witness namely Master has not been examined by the prosecution though he was present at that time. It is also noticed that that alleged fire appears to have been made by accused Nadeem Shah in standing position as depict from the evidence of both witnesses, yet direction of fire as recorded by medical officer does not seem to commensurate to their version. Thus the ocular evidence is in conflict with medical evidence. This too brings doubt in the manner of the occurrence. It is also noticed that according to complainant, wife of deceased had uttered words and also both lady accused caught hold of arms and legs, yet complainant party had not disclosed that as to why during such course the deceased had not woke up. There is also unreasonable delay of registration of FIR though the police also reached and facts of consultation is very much admitted in FIR itself. This aspect cannot be lightly ignored. In view of contradictory version of arrest of lady accused, the recovery of weapon from the accused Nadeem Shah from River bed area alongwith lady accused as deposed by I.O and recovery witness from that of PWs create huge doubt over alleged recovery proceedings. It is also admitted that not only T.T pistol and empty were went together but there were also delayed 06 days in sending the same which too paved way for the further doubt. Furthermore, it is to be noticed that during arguments the counsel of complainant produced the alleged confessional statement of accused Nadeem Shah while in police custody, suffice to say the confessional before police is not admissible under law so also proper procedure was not adopted to produce the same".

12. It is pertinent to observe that Mst. Sehat Khatoon, the mother of the deceased, whose presence at the place of occurrence has been shown by the prosecution, neither acted as the complainant nor was she produced by the prosecution as a witness to depose before the Court. This omission casts serious doubt upon the veracity of the prosecution case. Furthermore, the FIR was lodged by a relative of the deceased after an unexplained delay of about 11 hours and 30 minutes, for which no plausible explanation has been furnished on record. The record further reflects that the police had already obtained knowledge of the incident much earlier, as the dead body was referred for post-

mortem examination at about 02:30 a.m., whereas the occurrence, as alleged, had taken place at around 12:30 a.m. The post-mortem was thus conducted under the police referral during the same night, which clearly suggests that the matter had reached the law enforcement agency, yet no one came forward to record the version of the complainant or eye-witnesses until after considerable delay. Reliance is placed upon the case of **Khizar Hayat vs The State 2025 SCMR 1339**.

13. Moreover, the marginal witnesses of the incident were also not produced by the prosecution during the trial without assigning any valid reason, which omission entitles the Court to draw an adverse inference under Article 129(g) of the Qanun-e-Shahadat Order, 1984, that if such witnesses had been examined, they would not have supported the prosecution version. Support is drawn from the case of **Waqas Ahmed vs The State 2025 SCMR 1087**. Furthermore, the alleged recovery of the pistol was effected on 24.10.2018; however, the same was sent to the Forensic Science Laboratory after an unexplained delay of six days. No plausible reason for such delay has been furnished by the prosecution, which creates further doubt regarding the genuineness of the alleged recovery and its subsequent forensic examination. In this context reliance be made in case of **Khial Muhammad vs The State 2024 SCMR 1490**.

14. It is noteworthy that in the impugned judgment, the learned trial Judge has also pointed out various material contradictions in the prosecution evidence, which are sufficient to hold that the prosecution failed to establish its case against the respondents/accused beyond a reasonable doubt. It is a well-settled principle of criminal jurisprudence that if a single circumstance creates reasonable doubt in the mind of a prudent person regarding the guilt of the accused, such doubt must be resolved in favour of the accused, not as a matter of concession or leniency but as a matter of right. Reliance in this regard is placed upon the case of **Qurban Ali v. The State (2025 SCMR 1344)**.

15. It is a settled principle of law that the scope of interference by an appellate Court in a judgment of acquittal is narrow and limited. A strong presumption of innocence is attached to the accused, which stands further reinforced by an order of acquittal thus amounting to a presumption of double innocence. The burden, therefore, lies heavily upon the prosecution to demonstrate that the findings of the trial Court are perverse, arbitrary, or based on a gross misreading or non-reading of the evidence. In the present case, nothing has been pointed out to persuade this Court that the conclusions drawn by the learned trial Court suffer from any such legal infirmity or perversity warranting interference. It is also

noteworthy that an appeal against acquittal stands on a different footing than an appeal against conviction, as in the former category, the presumption of innocence of the accused is stronger and entitled to greater weight. Reliance is placed upon the case of **Fida Hussain alias Saboo v. The State (2025 SCMR 993)**. Further support is drawn from the case of **Al-Haaj Malik Muhammad Ashraf v. Javed Akhtar and another (2025 SCMR 787)**, wherein it was held that

7. It is a well-settled principle that an acquitted accused enjoys a double presumption of innocence. An appellate court should exercise restraint in overturning an acquittal unless the judgment is manifestly perverse, arbitrary, or suffers from a glaring misreading or non-reading of material evidence, which is not evident in the present case. Reliance is placed on Muhammad Mansha Kausar v. Muhammad Asghar and others (2003 SCMR 477).

16. Based on the foregoing discussion, we are of the considered and unanimous view that the learned trial Court has rightly acquitted respondents No.1 to 3 through the impugned judgment, which is well-reasoned, based on proper appreciation of evidence, and does not suffer from any illegality or perversity warranting interference by this Court. Consequently, the instant Criminal Acquittal Appeal, being devoid of merit, stands dismissed accordingly.

JUDGE

JUDGE