

JUDGMENT SHEET
IN THE HIGH COURT OF BALOCHISTAN, QUETTA

Criminal Acquittal Appeal No. 471 of 2024
(CC# 100107704809)

Sher Muhammad
Vs.
Muhammad Qasim and another

Date of hearing: 25-11-2025 Announced on: 08-12-2025

Appellant by: Mr. Muhammad Usman Yousafzai, Advocate.

O R D E R

Sardar Ahmad Haleemi, J.- This Criminal Acquittal Appeal is directed against the judgment dated 08.11.2024 (hereinafter the "impugned judgment") passed by the learned Additional Sessions Judge, Kuchlak (hereinafter the "trial Court"), whereby respondent No.1 was acquitted of the charges.

2. Precise facts of the instant case are that the complainant, Dost Muhammad, lodged FIR No.06/2020 on 24th January 2020 under Sections 324, 337-F(iii), 337-F(iv), 427, 435, 147, 148 and 149 PPC to the effect, he was overseeing cultivation work on a piece of land situated near the Sahizadad Graveyard, which originally belonged to his cousin, Jahangir Khan, which was entrusted to him for supervision. On 24.01.2020 at about 01:30 pm, he had arrived at the said land in his Alto car bearing Registration No. AA-707. Meanwhile, the accused persons, namely Muhammad Qasim, Muhammad Shoaib, Muhammad Jafar, Muhammad Rasool and Hafiz Muhammad Usma, reached there. Accused Sahibzada Qasim was armed with a Kalashnikov, Shoaib was holding a pistol, Hafiz Usman was carrying a bottle of petrol, whereas

Jafar and Ghulam Rasool were armed with sticks; they allegedly started striking and damaging the windows of his vehicle; Hafiz Usman sprinkled petrol on the car and set it ablaze; when he attempted to stop them, the accused Sahibzada Qasim opened fire with his Kalashnikov, causing bullet injuries to his knee and below the armpit, resultantly, he sustained the injuries; people present nearby extinguished the fire and shifted him to the hospital for medical treatment, hence the FIR.

3. After the registration of the FIR, the respondent was arrested, and the investigating officer submitted the challan of the case before the learned trial Court. The trial court framed charge against the respondent, to which he pleaded not guilty and claimed trial. Thereafter, the prosecution produced seven (07) witnesses. Respondent's statement under section 342, Cr.P.C was recorded, wherein he denied the allegations levelled against him. However, he did not opt to record his statement on oath as envisaged under section 340(2), Cr.P.C., nor did he produce evidence in his defence.

4. After hearing the arguments of the parties, the trial Court acquitted respondent No.1 vide impugned judgment, hence this Criminal Acquittal appeal.

5. The learned counsel for the appellant inter alia contended that the impugned judgment is contrary to law, facts, and the settled principles governing criminal trials and appreciation of evidence and the impugned judgment, being perverse and the result of misreading and non-reading of material evidence; that the learned trial court has failed to appreciate the prosecution evidence in its true perspective. The prosecution produced three eyewitnesses, PW-1 to PW-3, who fully

supported the prosecution's case and assigned a specific role of firing to the respondent/accused No.1, who was armed with a Kalashnikov at the time of the occurrence. Even during cross-examination, the defence indirectly admitted the presence of the accused at the spot by putting suggestions regarding the presence of the PWs. Despite such confidence-inspiring ocular evidence, the learned trial court discarded their testimony without any valid legal reasoning, thereby failing to consider the medical evidence that duly supports the consistent ocular account. The complainant, Dost Muhammad (now deceased), was seriously injured due to the firing by the accused/respondent No.1. The medical evidence and ocular account are in complete harmony and free from material contradictions, yet the learned trial court ignored this material aspect altogether; that the learned trial court failed to appreciate that the accused/respondent No.1 had committed a clear attempt to murder. The injuries sustained by the complainant and the role specifically attributed to the accused/respondent No.1 clearly fall within the ambit of Section 324 PPC and other allied offences. The trial court omitted to consider the gravity of the act and the intention involved; the learned trial court did not consider the complainant's statement recorded during the trial, which is admissible under Article 47 of the Qanun-e-Shahadat Order, 1984. The complainant passed away during the pendency of the case due to the prolonged absconson of the accused/respondent. The complainant's statement, having been lawfully recorded, constitutes substantive evidence and supports the prosecution's version. The non-consideration of this evidence amounts to a serious illegality; the forensic report prepared by PW-6 further supports the

prosecution's case, yet the learned trial court brushed aside this scientific evidence without justification, as no material contradictions or inconsistencies were pointed out during the cross-examination of the eyewitnesses. Even the hostile witness, PW-2 Gul Muhammad, in his earlier statement assigned the specific role of firing to the accused/respondent No.1. His being declared hostile does not exonerate the accused or wash away the earlier incriminating evidence. The trial court failed to apply the settled principle that the reliable portion of a hostile witness's testimony can still be relied upon; that the FIR was lodged promptly without any delay, mentioning the name and specific role of the accused/respondent No.1. Prompt lodging of FIR further strengthens the prosecution's case and rules out deliberation or false implication; that the impugned judgment suffers from non-reading and misreading of evidence. The learned trial court has overlooked the ocular account, corroborative medical evidence, forensic report, and the complainant's statement, all of which lead to one and only one conclusion that the accused/respondent No.1 was responsible for the occurrence; that the impugned judgment is devoid of proper reasoning. The learned trial court has not assigned any cogent grounds while acquitting the accused, which is in violation of the fundamental principles governing criminal justice. An acquittal must be based on sound reasoning, not conjecture and surmise; the learned trial court committed several illegalities and irregularities, resulting in a miscarriage of justice. Hence, re-appraisal of evidence by the appellate court is not only justified but necessary in the interest of justice.

6. We have heard the learned counsel for the appellant and perused the record.

7. It is the case of the prosecution that the complainant, Dost Muhammad, was present on the disputed agricultural land near Sahibzada Graveyard when the accused persons, including respondent No.1, armed with lethal weapons, allegedly attacked him, damaged his vehicle, set it ablaze, and caused him firearm injuries with the intention to commit his murder. According to the prosecution, the complainant had been entrusted with supervision of the said land, and during the incident, accused Sahibzada Qasim, armed with a Kalashnikov, opened fire and inflicted multiple injuries on the complainant. At the same time, other co-accused participated in damaging the vehicle and setting it on fire.

8. Perusal of the record reveals that PW-1 Fazal-ur-Rheman, complainant of the case, deposed as under: "The incident occurred in January 2020. Qasim, Shoaib, Muhammad Rasool and Usman were present near Sahibzada graveyard, and he was also there. He heard the sounds of hue and cries, and Dost Muhammad & others were cultivating wheat. Hafiz Usman had a Petrol bottle, and he sprinkled it on the car. Jaffar and Muhammad Rasool, armed with sticks, broke the car window glass; Shoaib, armed with a pistol, and Qasim had a Kalashnikov. Dost Muhammad forbade the accused persons from setting fire to the vehicle and broken window glass; due to this, Muhammad Qasim started firing with the Kalashnikov, consequently Dost Muhammad sustained firearm injuries, and the bullets also hit the car. Later on, he took Dost

Muhammad to the hospital. The complaint during his cross-examination stated that he, along with Gull Muhammad, Ahsan, and Ameer Muhammad, was present near the graveyard, but they did not intervene. They took Dost Muhammad in a passenger vehicle. The Investigating Officer recorded his statement in the hospital at about 02:00 pm. Likewise, PW-2 Gull Muhammad, an eyewitness of the occurrence, did not see the accused person, nor did he disclose the name of any person. Contrary to his statement, his labour informed him of the details of the occurrence; as such, on the prosecution's request, he was declared hostile and cross-examined accordingly.

9. However, the ocular account, when examined in the light of the medical evidence (MLC), reflects material contradictions. PW-1 claimed that multiple shots were fired at him with a Kalashnikov, causing injuries to his knee and under his armpit, but the MLC does not support the presence, nature, or number of firearm entry and exit wounds as alleged, nor does it corroborate the claim of repeated firing from a close range with a lethal automatic weapon. The medical evidence, therefore, fails to substantiate the version narrated by PW-1.

10. Furthermore, PW-2 Gull Muhammad, also cited as an eyewitness, did not support the prosecution. It is noteworthy that PW-1 Fazal-ur-Rehman had earlier claimed that several persons, including Gull Muhammad, were present near the graveyard at the time of the occurrence. Yet none intervened, and PW-2 himself admitted that he neither witnessed the incident nor saw any of the accused, stating that his labourer narrated the details to him. He was consequently declared

hostile. These inconsistencies highlight a materially inconsistent ocular account. While PW-1 attributed the act of firing to Muhammad Qasim, armed with a Kalashnikov, PW-2 stated that Muhammad Shoaib was holding a pistol, thereby creating ambiguity regarding which accused was armed and who actually fired. Such contradictions strike at the root of the prosecution's case, particularly when the medical evidence does not correspond with injuries expected from a Kalashnikov. Collectively, these contradictions render the prosecution's version doubtful and unreliable.

11. A careful perusal of record depicts that the trial court while acquitting the co-accused respondents Muhammad Shoaib, Muhammad Jaffar, Muhammad Rasool, and Hafiz Muhammad Usman vide judgment dated 28.06.2022, wherein the testimony of the prosecution witnesses had been disbelieved, and the benefit of doubt was extended in favor of the accused persons. The alleged eyewitnesses made glaring contradictions in their statements, and the defence has succeeded in casting doubt on their credibility, which also makes the case doubtful.

12. In addition to the above, after gaining acquittal, a double presumption of innocence came into operation in their favour, and only strong, cogent, and exceptional circumstances could justify its displacement. Reliance in this regard is placed on the case of *Muhammad Shafi v. Muhammad Raza and another* (2008 SCMR 329), wherein the honorable Supreme Court held as follows:

"An accused is presumed to be innocent in law and if after regular trial he is acquitted he earns a double presumption of innocence and there is a

heavy onus on the prosecution to rebut the said presumption. In view of the discrepant and inconsistent evidence led, the guilt of accused is not free from doubt; we are, therefore, of the view that the prosecution has failed to discharge the onus and the finding of acquittal is neither arbitrary nor capricious to warrant interference."

13. In view of the above facts and circumstances of the case, we hold that the impugned judgment does not suffer from any legal infirmity warranting interference. The trial Court's acquittal of respondent No. 1 is based on a proper appreciation of the evidence and sound legal principles, thus the prosecution has failed to discharge the burden of proof required for conviction.

For the above reasons, Criminal Acquittal Appeal No.471 of 2024 is dismissed.

Announced in open court:
Quetta, on 8th December 2025

Judge

Judge.