JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Crl. Appeal No. 98/2016

Muhammad Younas Khan & another
Vs
Masood-ur-Rehman Khokhar, etc

Appellant By:	Mr.Muhammad Nauman Chishti, Advocate
Respondents 1 to 6 By:	Mr. Zahid Asif Chaudhary, Advocate
State by:	Mr.Hammad Saeed Dar, State Counsel with M. Rashid, SI.
Date of Hearing:	21.09.2020

GHULAM AZAM QAMBRANI, J. This appeal has been filed against the impugned judgment dated 20.04.2016, passed by the learned Judicial Magistrate Section 30, Islamabad- West, in case F.I.R No.250 dated 17.06.2011 under Sections 324,337-F,337-F (Vi), 337-F (v), 337-F (iv),148/149 PPC P.S Aabpara, Islamabad, whereby respondents No. 1 to 6 were acquitted under Section 249-A Cr.P.C.

2. Briefly the allegation against the accused/ respondents 1 to 6 are that on 17.06.2011 at about 5:30 p.m, Masood Khokhar, Tariq, Raja Sajjad and Raja Riaz alongwith other ten unknown persons duly armed with deadly weapons came to New Aabpara Market for the purpose of taking possession of the washrooms inspite the fact that the same had been sealed by the competent authority under Section 145 Cr.P.C and during the subsistence of status-quo order of competent Court. When the shopkeepers of the market apprised them as to the above situation, they did not pay heed to them and broke the locks and attempted to take possession and in response whereof all the shopkeepers got together. On seeing the situation, they started indiscriminate firing,

in consequence whereof, three shopkeepers namely Tusaddaq Hussain, Yasir and Waqas sustained firearm injury. They rushed to the Poly Clinic Hospital for treatment.

3. After registration of FIR, investigation was carried out and thereafter report under section 173 Cr.P.C was submitted before the learned Trial Court. The accused/respondents moved an application under Section 249-A Cr.P.C which was accepted by the learned Trial Court vide order dated 20.04.2016 and acquitted respondents No.1 to 6/accused from the charges, hence, the instant appeal.

4. Learned counsel for the appellant contended that the impugned order is against the law and facts of the case; that the impugned order is based on misreading and non-reading of the material available on file; that the learned Trial Court while acquitting the respondents/accused did not give any cogent reason; that the learned Trial Court did not give opportunity to the prosecution to prove its allegations levelled in the F.I.R; that the impugned order is perverse and arbitrary without any legal justification; that the impugned order has been passed in a slipshod and hasty manner; that while passing the impugned order, the learned Trial Court has not applied its judicial mind; that the accused/respondents were armed with deadly weapons. Further contended that the learned Trial Court has not exercised its discretion judiciously. Lastly, argued that impugned judgment is not sustainable and is liable to be set aside.

5. On the other hand, learned counsel for the respondents/ accused contended that respondents No.1 to 6/accused were falsely involved by the petitioner; that there was no order from any competent authority for seal of the said washroom; that no specific role was attributed to any of the respondents for causing injury; that no weapon was recovered from the respondents; that a pistol was allegedly recovered from the respondent Muhammad Riaz

which was not sent to the laboratory for knowing its calibre; that no blood was obtained from the place of occurrence, even the alleged blood stained cloths were not produced by the appellants to the police during the course of investigation; that some of the respondents after investigation were discharged and some of them were found innocent who were placed in column No.2 of the challan; that the discharge of those respondents/accused was never challenged by the appellants. Lastly prayed for dismissal of instant appeal.

6. I have heard the arguments of learned counsel for the parties and have perused the material available on record with their able assistance.

7. Perusal of the record depicts that the appellants reported the matter by filing an application to the ASP, Aabpara, Islamabad; that the respondent duly armed with deadly weapons attempted to break the locks of the washroom in the market for taking possession of the same, besides the same were sealed by the competent authority under Section 145 Cr.P.C. During the alleged incident, as per statements of the witnesses, the appellant and other injured tried to resist and restrain them for not doing so, but the respondents opened fires, resultantly Waqas, Tasaddaq and Yasir received injuries. The record also transpires that no specific role has been attributed to any of the respondent with regard to commission of the offence. During the investigation, no weapon of offence was recovered from any of the respondent, except one Riaz from whose possession a pistol was allegedly recovered which has not been sent to the laboratory for knowing its calibre, condition whether it was functional or to match with the crime empties allegedly recovered. In the case in hand, it transpires that both parties alleged aggression upon each other. There is evidence of cross firing in between the parties. I have carefully read over the statements of the injured Tusaddaq

Hussain, Muhammad Waqas and Muhammad Yasir. No specific role has been assigned to any of the accused that who fired at them. That subsequently, Muhammad Younas recorded his another statement dated 20.06.2011, wherein he has made dishonest improvements and has given specific role to the respondent Masood Khokhar and others , which fact cannot be ignored. In such circumstances, the case of prosecution is not free from doubts on the basis whereof the learned Trial Court has rightly concluded that there was no probability of the respondents to be convicted on the basis of such evidence. It was held by the Honourable Supreme Court in the case of "*Tariq Pervez v. The State*" **[1995 SCMR 1345]** that for giving the benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is circumstance, which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right.

8. All the facts and circumstances mentioned above, make the prosecution story highly doubtful and the prosecution has badly failed to bring on record cogent and reliable evidence to connect the respondents with the commission of offence, therefore, the learned Trial Court, after proper appraisal of the evidence available on record, was justified to acquit the accused/respondents from the charge by extending them benefit of doubt. In this regard, I am fortified by the law laid down in the case reported as *Muhammad Imran Vs. The State* (**2020 SCMR 857**), it has been held as under:-

> "*It is by now well settled that benefit of a single circumstance, deducible from the record, intriguing upon the integrity of prosecution case, is to be extended to the accused without reservation; the case is fraught with many. It would be unsafe to maintain the conviction. Criminal Petition is converted into appeal and allowed. The appellant is acquitted from the charge; he shall be*

released forthwith, if not required to be detained in any other case."

9. It is 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, as presumption of double innocence is attached, in the latter case. Reliance in this regard is placed upon the case of "*Inayatullah Butt v. Muhammad Javed and 2 others*" **[PLD 2003 SC 562]**. Until and unless the judgment of the trial Court is perverse, completely illegal and on perusal of evidence, no other decision can be given except that the accused is guilty or there has been complete misreading of evidence leading to miscarriage of justice, the Court will not exercise jurisdiction under Section 417 Cr.P.C.

10. The learned counsel for the appellant has failed to advance any ground to justify the setting aside of the acquittal judgment. There is no misreading or non-reading of evidence nor the findings of the learned trial Court are patently illegal. The findings of acquittal, by no stretch of imagination, can be declared as perverse, shocking, alarming or suffering from errors of jurisdiction and misreading or non-reading of evidence.

11. In view of what has been discussed above, the appellant has failed to establish extra-ordinary reasons and circumstances, whereby the acquittal order recorded by the learned trial Court can be interfered with by this Court. Thus, the learned Trial Court has rightly acquitted the respondents through a well reasoned order. It is worth to mention that the respondents No.1 & 2 were already discharged vide order dated 26.06.2013 passed by Judicial Magistrate-West, Islamabad. The said order was never challenged by the appellant, therefore, to the extent of above mentioned respondents instant appeal is otherwise not maintainable.

12. In view of what has been discussed above, I find no illegality or irregularity in the impugned order warranting interference by this Court. The appeal is dismissed.

(GHULAM AZAM QAMBRANI)
JUDGE

Announced in open Court on this 30th day of September, 2020.

JUDGE

S.Akhtar