

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**(JUDICIAL DEPARTMENT)**  
**Criminal Appeal No.40 of 2015**

Muhammad Akram  
Versus  
The State and others

Appellant by: Mr. Naveed Iqbal Abbasi, Advocate.

Respondents 2 to 5 by: Ch.Muhammad Nasir Advocate

State by: Mr. Zohaib Hassan Gondal & Hammad  
Saeed Dar, State Counsel along with  
Tanvir SI.

Date of Decision: 22.07.2020

---

**GHULAM AZAM QAMBRANI, J.:-** Through the instant appeal under Section 417 of Cr.P.C., the appellant (Muhammad Akram) has assailed judgment, dated 14.11.2014, passed by the learned Judicial Magistrate Ist Class, Islamabad (East) in case F.I.R No.42/2014, dated 28.09.2014 under Sections 380,454,448,34 P.P.C. registered at Police Station Nelore, Islamabad, whereby respondents No. 2 to 5 were acquitted from the charges.

2. Briefly stated facts of the prosecution case are that the appellant got lodged above F.I.R, stating therein that he purchased a plot measuring five marlas vide registered sale deed No.7974 dated: 17.06.2008 against sale consideration of Rs.25,000/-. After this, he constructed a house over the said plot and in January, 2009, the respondents/accused Zulfiqar Ali, Wajid Ali, Gul Nawaz and Qari Gulbaz broke the locks of his house and stole away articles including Iron Rods, 20 bags of cement, a water pump and two cots etc. They also extended life threats to him, hence the above said F.I.R.

3. After registration of the F.I.R, the respondents/accused were arrested, after usual investigations, report under Section 173 of Cr.P.C. was submitted before the learned trial Court. After fulfilling codal

formalities, charge was framed against the accused on 17.10.2010, to which they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined following five witnesses:-

PW-1 Muhammad Akram Complainant,  
PW- 2 Raja Abid,  
PW- 3 Asif Mehmood  
PW-4 Mumtaz Ahmad Sub-Inspector,  
PW.5 Habib-ur-Rehman SI.

5. After closure of the prosecution evidence, the respondents/accused were examined under Section 342 Cr.P.C., wherein they denied the entire allegations leveled against them and did not opt to record their statements on oath as is envisaged under Section 340 (2) Cr.P.C. They also produced certain documents in their defence. The learned trial Court after hearing the arguments of the learned counsel for the parties acquitted the respondents/accused. The appellant being aggrieved of the impugned judgment, has challenged the same through instant appeal.

6. Learned counsel for the appellant contended that the impugned judgment is not entertainable in the eye of law and is not in accordance with the evidence on record. Next contended that the impugned judgment is the result of misreading and non-reading of evidence and the learned Trial Court has not applied its judicious mind while deciding the case. Further submitted that the learned trial Court while passing the impugned Judgment has held that the names of the witnesses have not been disclosed in the application, therefore, the story of the complainant is not believable. Next contended that the prosecution has produced sufficient evidence to prove the charge but the learned trial Court has not appreciated the same in its true perspective. Lastly, prayed for setting aside of the impugned judgment.

7. On the other hand, the learned counsel for the respondents/accused opposed the contentions of learned counsel for the appellant/complainant by contending that the respondents/accused are innocent and have falsely been implicated in this case; that there is an inordinate and un-explained delay of three months in lodging of the FIR which makes the prosecution story doubtful; that the instant appeal is

time-barred; that the case of appellant/complainant is of different versions and the registered sale-deed Ex.DB completely falsifies the claim of appellant/complainant; that the respondents/accused were acquitted in complaint case filed by appellant/complainant under section 3 & 4 of Illegal Dispossession Act, 2005; that acquittal was never challenged by the appellant/complainant before any higher forum; that the parties have many disputes and are also sharing enmity with each other; that the respondents/accused have been implicated in this case falsely. Lastly argued that the prosecution has miserably failed to prove its case beyond the shadow of doubt. The learned State counsel has not supported the impugned judgment passed by the learned trial Court.

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

9. Perusal of the record reveals that the complainant did not mention the names of the PWs in his complaint Ex.PA that in whose presence the respondents/accused entered into his house, but while appearing as PW.1 he tried to improve his stance by disclosing the names of the PWs Abid and Asif stating therein that the said witnesses were looking after the construction work of his house. During cross-examination, he admitted that with regard to the said plot, he had filed a complaint under section 3 & 4 of the Illegal Dispossession Act, 2005 against the respondents/accused which has been dismissed on 30.11.2010 and the accused were acquitted and he has not filed any appeal against that order. He further admitted that no recovery was effected in his presence. During cross-examination, PW.2 Raja Abid admitted that he is running a CNG station where the complainant Muhammad Akram is also a share holder. The appellant/complainant further stated that the accused persons forcibly took possession of his plot, which is still in their possession, whereas the respondents/accused produced copy of sale-deed No.10072, dated 09.09.2009 (Ex.PD) showing that the complainant had sold out the said house to Javed Iqbal. The sale-deed Ex.DB/1-5 shows that the complainant handed over possession of the said plot to Javed Iqbal.

10. It is also evident from the record that the complainant failed to provide description of his property in the complaint and also failed to produce any proof of his ownership with regard to the disputed plot. It is

also proved on record that the complainant made improvements with regard to the occurrence. The complainant/appellant failed to prove the case against the respondents through any cogent and confidence inspiring evidence. There are contradictions in the statements of the PWs. Both the PWs Raja Abid and Asif did not depose in line with each other, they are chance witnesses. Perusal of the FIR Ex.PB shows that the appellant/complainant has not mentioned the name of any witness who allegedly told him regarding the alleged occurrence, but during his statement as PW.1, he mentioned the names of the witnesses namely Raja Abid and Asif Mehmood PW.2 & PW.3. As such the learned Trial Court has rightly held that *“the testimonies of PW.1, PW.2 & PW.3 are absolutely in sharp contrast with each other, therefore, not worthy of credence at all.”* The learned Trial Court by giving benefit of doubt has rightly acquitted the respondents.

11. The prosecution has failed to bring on record any convincing piece of evidence against the respondents to connect them with the commission of the alleged offence. All the facts and circumstances of the case, prima facie, make the prosecution case doubtful.

12. The interference by this Court would be warranted, if the reasoning of the learned trial Court in acquitting an accused is perverse, artificial or ridiculous. It is only in an exceptional case that this Court will interfere by setting aside the acquittal of an accused. In the instant case, the learned trial Court after proper appreciation of the evidence available on record rightly acquitted the accused/ respondents through a well-reasoned judgment. The learned counsel for the appellant has not been able to show that there has been any misreading or non-reading of evidence. Reliance is placed on the cases titled as *“Muhammad Zaman versus The State and others”* [2014 SCMR 749], *“Muhammad Rafique versus Muhabbat Khan and others”* [2008 SCMR 715], *“Jehangir versus Amin Ullah and others”* [2010 SCMR 491], *“Mst. Askar Jan and others versus Muhammad Daud and others”* [2010 SCMR 1604] and *“Mst. Sughra Begum and another versus Qaiser Pervez and others”* [2015 SCMR 1142].

13. In the case of “*Ghulam Akbar and another Vs. The State*” (**2008 SCMR 1064**), it has been held as under:-

*“It is cardinal principle of criminal jurisprudence that the burden of proving the case beyond doubt against the accused securely lied upon the prosecution and it did not shift. Similarly, the presumption and probabilities, however, strong may be, could not take the shape of proof.”*

14. I have been supported by the reported judgment of Hon'ble Apex Court titled as “*Mukhtar Ali v. The State*” (**PLD 1971 SC 725**).

*“It is well settled principle of administration of justice and rule of prudence stipulates that the prosecution has to prove its case beyond the shadow of any doubt. The contention of the learned State counsel does not find any place within the four corners of administration of justice that the petitioner has failed to discharge the onus of innocence. It is a well settled rule of prudence that the accused has not to prove his innocence until and unless proven guilty. The golden principle of administration of criminal law under the Islamic Jurisprudence is that benefit of slightest doubt shall necessary be extended in favour of the accused and not otherwise.”*

15. It is pertinent to mention here that considerations for interference in an appeal against acquittal and in an appeal against conviction are altogether different. The appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from the appeal against acquittal because presumption of double innocence is attached with the latter case. The well settled principles for the appreciation of appeals against acquittal as has been held by the Hon'ble Supreme Court in the judgment report as “*Muhammad Iqbal Vs. Abid Hussain alias Mithu and 6 others*” (**1994 SCMR 1928**), are as under:-

- i. *That with the acquittal, the presumption of innocence of accused becomes double; one initial, that till found guilty he is innocent, and two, that after his Trial a Court below has confirmed the assumption of innocence;*
- ii. *That unless all the grounds on which the High Court had purported to acquit the accused were not supportable from the evidence on record, Supreme Court would be reluctant to interference, even though, upon the same evidence it may be tempted to come to a different conclusion;*
- iii. *That unless the conclusion recorded by a Court below was such that no reasonable person would conceivably reach the same, the Supreme Court would not interfere;*
- iv. *That unless the Judgment of acquittal is perverse and the reasons therefore are artificial and ridiculous, the Supreme Court would not interfere; and*
- v. *The apex Supreme Court, however, would interfere in exceptional cases on overwhelming proof resulting in conclusive and irresistible conclusion, and that too, with a view only to avoid grave miscarriage of justice and for no other purpose. As such, the learned trial Court has rightly acquitted the respondent from the charge giving him benefit of doubt.*

16. I have found no illegality or irregularity in the impugned judgment passed by the learned trial Court, nor the same is suffering from any misreading, non-reading, or misappropriation of material available on record, warranting interference by this Court.

17. Resultantly, the instant appeal, having no force, is **dismissed**.

**(GHULAM AZAM QAMBRANI)**  
**JUDGE**

S.Akhtar