

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

Crl. Appeal No.294/2019  
Fahad Ahmed Khan Lodhi  
**Versus**  
The State and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	<b>11.09.2019</b>	<b>Mr. Waseem Ahmed Khan Lodhi, Advocate for the appellant</b>

Through the instant criminal appeal under Section 417 (2-A) of Cr.P.C., the appellant, Fahad Ahmed Khan Lodhi, impugns the judgment dated 26.07.2019, passed by the learned Judicial Magistrate Section-30, Islamabad (West), whereby the accused/respondent No.2 Shehzad Mughal was acquitted from the charge on the basis of F.I.R. No.529, dated 26.07.2019, under Section 392 P.P.C which was registered at Police Station Industrial Area, Islamabad on complaint of the appellant.

2. Learned counsel for the appellant submitted that the impugned acquittal judgment was passed without taking into account the applicable law and facts of the case; that PW-2 Muhammad Ramzan A.S.I. was not competent to record the evidence after transfer of investigation from him; that the said PW-2 produced a fake call data record which was inadmissible in evidence; that the PW-3 Noor Ellahi, A.S.I. admitted in his evidence that he did not investigate the case even though the investigation was transferred to him; that witness of the incident was not mentioned in the report under Section 173 Cr.P.C.; that learned trial Court did not take any action regarding request of the complainant for inclusion of witnesses in report under Section 173 Cr.P.C.; that the accused

during his statement under Section 342 Cr.P.C. falsely attributed the reason of enmity to be accused being witnessed against appellant without any proof; that the application under Section 540 Cr.P.C. moved by the appellant for summoning of witnesses who tendered affidavits in support of defence version while hearing the bail petition was dismissed; that the appellant's ownership of the snatched phone number was falsely denied during investigation; that learned revisional Court did not entertain the revision instead directed the prosecution to argue the case on the next day; and that the learned Trial Court adjourned the application for verification of report for Call Data Record but it was subsequently found that case had been decided.

3. Learned counsel for the appellant prayed for the setting aside of the impugned judgment dated 26.07.2019 and for remanding the case for retrial.

4. I have heard the contentions of the learned counsel for the appellant and have perused the record.

5. The record shows that the F.I.R. (Ex-P-8) was registered on the complaint of the appellant wherein he alleged that on 05.09.2018 at about 11:20 a.m., while he was going to National University of Modern Languages, Islamabad, two persons namely Shehzad Mughal and Zafar Iqbal riding a Honda 125 motorcycle intercepted him. The said persons on gun point extorted from him a Samsung J-7 mobile phone, Rs.6,300/- along with wallet and important documents. The motive for the offence, mentioned in the F.I.R., was a dispute regarding outstanding payment against LED.

6. Investigation was initially assigned to Muhammad Ramzan A.S.I. (PW.2) but the same

was subsequently transferred to Noor Ellahi, A.S.I. (P.W.3). Upon completion of investigation report under Section 173 Cr.P.C., same was submitted before learned Judicial Magistrate Section-30 Cr.P.C. The accused were charged by the learned trial Court. Thereafter, the evidence of prosecution witnesses including the appellant was recorded.

7. During the trial the appellant entered into compromise with the co-accused Zafar Iqbal and consequently he was acquitted. The appellant moved an application under Section 540 Cr.P.C. for summoning of three persons as witnesses, who tendered evidence in support of accused while hearing of his pre-arrest bail petition but the said application was dismissed by learned trial Court vide order dated 12.07.2019 and revision petition thereagainst was also dismissed vide order dated 17.07.2019 passed by learned Sessions Judge, Islamabad (West). The appellant filed an application for transfer of trial which was allowed vide order dated 24.07.2019 passed by the learned Sessions Judge, with direction to the trial Court for recording final arguments on the next day. The learned trial Court, after hearing the arguments on 25.07.2019 acquitted the accused by giving a benefit of doubt vide impugned judgment dated 26.07.2019.

8. The record does not show that the appellant made any attempt to produce any evidence in support of his allegation. The accused did not record his statement under Section 342(2) Cr.P.C. as such application for summoning of the persons (who swore affidavits in support of the respondent's innocence at bail stage) for their cross examination was declined by the learned

trial Court and learned Sessions Judge, concurrently.

9. Admittedly PW-2 Muhammad Ramzan A.S.I. remained investigation officer in the case and he collected material evidence with regard to the case, therefore, his evidence cannot be scored out and the argument that he could not have been produced as witness is without substance. It emerges from the appeal and impugned judgment that the said witness was never declared hostile.

10. The learned trial Court in the impugned judgment assigned three reasons for acquitting the accused/respondent No.2; (i) that no direct role has been assigned to the accused and no recovery was effected from him during physical remand, (ii) the call data record of the accused did not show him to be at the place of occurrence alleged in the F.I.R. and (iii) existing dispute between the parties. The appellant annexed with this appeal a copy of report under Section 173 Cr.P.C. compiled by Police Station Sadiqabad, Rawalpindi in F.I.R. No.626, dated 20.07.2018, under Sections 406 and 506 P.P.C. The same verifies that co-accused in the present case namely Zafar Iqbal got a case lodged against the appellant.

11. Apart from above, the appellant did not produce any evidence to belie the call data record collected during investigation and to rebut the version of PW-2 about the snatched phone number not having been registered in the appellant's name. It is pertinent to mention that there is nothing on record to show that the said witness was declared hostile at any stage.

12. Admittedly, the appellant had a dispute regarding payment with the co-accused Zafar Iqbal which was set up as a motive for the

offence. The role attributed to the respondent No.2 in the F.I.R. is not distinguishable from the co-accused, who was earlier acquitted at the instance of the appellant after compromise. There has been no explanation at any stage as to how the case against the other accused/respondent No.2 was on different pedestal.

13. It is an established principle that when an accused is acquitted by the competent Court, double presumption of innocence arises in favour of the accused and this Court would interfere in such finding of acquittal only in exceptional circumstances where overwhelming proof is made available resulting in conclusive and irresistible conclusion about guilt of the accused. The complainant did not produce any exceptional evidence to prove involvement of the accused/respondents No.2 in the offence charged against him, so much so that no specific role has been attributed to the said accused, therefore, no such exceptional circumstance to dislodge the acquittal is available. In holding so, I place reliance on following case law:-

- (i) In the case of Muhammad Shafi alias Kuddoo Vs. The State (2019 SCMR 1045), It was held that *"It is by now well settled that acquittal carries with it double presumption of innocence; it is reversed only when found blatantly perverse, resting upon fringes of impossibility and resulting into miscarriage of justice. It cannot be set aside merely on the possibility of a contra view."*
- (ii) In the case of Zaheer Sadiq Vs. Muhammad Ijaz (2017 SCMR 2007), It was held that "Even otherwise, it is well settled by now that in criminal cases every accused is innocent unless proven guilty and upon

acquittal by a Court of competent jurisdiction such presumption doubles. Very strong and cogent reasons are required to dislodge such presumption. The reasons given by the learned High Court, in the impugned judgment, have not been found by us to be arbitrary, fanciful or capricious warranting interference by this Court.”

- (iii) In the case of Muhammad Aslam Vs. Sabir Hussain (2009 SCMR 985), It was held that “It needs no reiteration that when an accused person is acquitted from the charge by a Court of competent jurisdiction then, double presumption of innocence is attached to its order, with which the superior Courts do not interfere unless the impugned order is arbitrary, capricious, fanciful and against the record. It was observed by this Court in Muhammad Mansha Kausar Vs. Muhammad Asghar and others (2003 SCMR 477) "that the law relating to reappraisal of evidence in appeals against acquittal is stringent that the presumption of innocence is double and multiplied after a finding of not guilty recorded by a competent Court of law. Such finding cannot be reversed upset and disturbed except when the judgment is found to be perverse, shocking, alarming, artificial and suffering from error of jurisdiction or misreading/non-reading of evidence, law requires that a judgment of acquittal shall not be disturbed even though second opinion may be reasonably possible.”

- (iv) In the case of Muhammad Shafi Vs. Muhammad Raza (2008 SCMR 329), it was held that “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.”
- (v) In the case of The State Vs. Mehmood Khan (2007 SCMR 1390), it was held that “It may also be pertinent to point out that ordinarily an order of acquittal doubles the initial presumption of innocence of an accused which would be stronger in the case of verdict of acquittal recorded by a Court of Record.”
- (vi) In the case of Ghulam Sikandar Vs. Mamraz Khan (PLD 1985 SC 11), It was held that “The Court would not interfere with acquittal merely because on re-appraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If however the conclusion reached by that Court was such that no reasonable person would conceivably reach the same and was impossible then this Court 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.”

14. In the case at hand, the conclusion reached by the learned trial Court in the impugned judgment is reasonable, based upon correct appreciation of evidence and the judgment does not suffer from misreading, non-reading or illegal

receiving of evidence, therefore, interference is not warranted.

15. For the above reasons, instant appeal is without merits, which is thus dismissed in *limine*.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

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