

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

Criminal Appeal No. 108/2016

Muhammad Mehmood
Versus
Asghar Ali & others

Appellant by:	Abdul Wahid Qureshi Advocate
Respondents 1 & 2 by:	Qazi Rehan Shabbir Advocate alongwith respondents 1 & 2.
State by:	Mr. Hammad Saeed Dar, State Counsel alongwith Daud Sabir SI.
Date of Hearing:	21.08.2020

Ghulam Azam Qambrani, J.: This appeal has been filed against the impugned judgment dated 29.04.2016.2016, passed by the learned Judicial Magistrate, Section 30, Islamabad- West, in case F.I.R 356 dated 20.09.2011, under Sections 324,452,506,148,149 PPC registered at Police Station Aabpara, Islamabad, whereby respondents No. 1 & 2 were acquitted.

2. Briefly stated facts of the case as narrated by the complainant, Muhammad Mahmood are that at about 07:20 am morning time he alongwith his brothers Hammad and Muhammad Ahmad were present in House No. 652-E, Luqman Hakeem Road, G-6/2, Islamabad alongwith family. In the meanwhile, 15/20 persons after pushing the main door entered into the house. His brother Muhammad Ahmad attempted to talk to them, nevertheless they put him in a vehicle and shifted to an unknown place. They then headed towards the complainant, however they were tried to stop through stick/danda by the complainant. Asghar Ali A.S.I and Estate Officer Nazar Naswana alongwith other officials were present there. They tried to vacate the house by force which was resisted through stick. Asghar A.S.I took out his pistol and made two aerial fires, upon which the complainant requested them to be

restrained as the complainant has been given one week time. The Estate Officer, however directed the Asghar A.S.I to done them to death and take the possession of the house. At that time another person namely Safdar who was present there, was also extending threats of life if the house is not vacated. On his insistence, Asghar A.S.I opened two fires on the leg. Another person having specific features was standing with Asghar SI who either made one fire or two fire or both of them made 1/1 fire single shot, out of which one hit his leg and the other crossed only touching his body, resulting into abrasion and clot. He fell on the ground and then was taken to the hospital. Hence, the above said F.I.R was lodged.

3. After registration of F.I.R, the investigation was completed and report under Section 173 Cr.P.C was submitted. During this the respondents moved an application under Section 249-A, Cr.P.C. for thier acquittal on the ground that they have been involved in a false and frivolous case. The learned Trial Court vide order dated 29.04.2016, acquitted the accused/respondents from the instant case under Section 249-A Cr.P.C. Hence, the instant appeal.

4. The learned counsel for the appellant has contended that the impugned order passed by the learned Trial Court is not in accordance with law; that the learned Trial Court has not framed the charge against the accused/respondents; that the learned Trial Court has violated the principal of law while accepting the application under Section 249-A Cr.P.C and acquitting respondents No.1 & 2; that the order passed by the learned Trial Court is illegal, perverse and arbitrary. Further contended that the findings of learned Trial Court are contrary to record and the learned Trial Court has also ignored the report submitted by the Estate Officer. Lastly prayed for setting aside of order dated 29.04.2016.

5. Conversely, learned counsel for respondents 1 & 2 has opposed the contention of learned counsel for the appellant and contended that the complainant/appellant is residing in a

government accommodation, which was previously allotted to his father. Raid was conducted in order to implement the orders passed by the Hon'ble Supreme Court of Pakistan; that the Estate Officer issued prior notice to the appellant/complainant before entering into house; that prior to entering into the said house, a rappat was registered at the concerned police station for initiation of the proceedings ; that the respondent No.1 is serving at Police Station, Aabpara, Islamabad. Further contended that the occurrence is self made and concocted. The alleged occurrence took place on 20.09.2011 while challan was submitted on 07.10.2013 with inordinate delay of more than two years in sheer violation of the provision of law and procedure. Next contended that the accused/respondents are innocent and have been falsely involved in the instant case; that the accused/respondents have not committed any offence and the learned Trial Court has rightly acquitted the accused/ respondents.

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

7. Perusal of the record reveals that F.I.R was registered by the complainant with the allegation that the accused/respondent Asghar A.S.I and Estate Officer Nazar Naswana, and other police officials tried to vacate the house from the appellant which was estate property and was illegally occupied by the complainant and for implementation of the orders of the Hon'ble Supreme Court of Pakistan to vacate the said house, the officials of Estate Office alongwith police officials visited the above said house for its vacation. It was alleged that the A.S.I Asghar took out his pistol and made aerial fires and again opened two fires which touched his foot and crossed it. It has also been alleged that one of their companion also made fire shots which also hit at his foot resulting abrasion and clot.

8. Minute perusal of the record further reveals that there is allegation of making fire shots by two different persons but during

the course of investigation, four empty shells of 30-bore were recovered from the alleged crime scene while an official 9 MM Glock pistol was also recovered from the possession of respondent/accused Asghar Ali A.S.I. It is also an admitted fact of the case that the recovered empty shells and the recovered pistol have not been sent to the Forensic Science Laboratory for examination.

9. On the other hand, it is also an admitted fact that the alleged recovered empty shells were of 30-bore pistol, which even otherwise are not matching with the alleged recovered 9 MM Glock pistol, which does not corresponds to the empties of 30 bore pistol, allegedly recovered from the scene of the occurrence. Furthermore, blood stained clothes were also not taken into possession. The site plan having been prepared on the date of occurrence, reflects totally different scenario, which does not attracts that from that point any fire has been made as the point from where allegedly fire was made, is opposite to the side from where the empties have been recovered, which fully negates the version of prosecution.

10. Provision of Section 249-A Cr.P.C is meant to decide criminal case without completion of trial and in order to invoke powers under section 249-A Cr.P.C or 265-K Cr.P.C as the case may be, the Court has to fulfill the following three conditions:-

- (i) The Court shall hear the prosecutor;
- (ii) The Court shall hear the accused; and
- (iii) The Court shall take into consideration overall facts and circumstances and the evidence.

No other embargo exist upon the Court to exercise powers under Section 249-A Cr.P.C. The said provision is meant to prevent rigours of prolonged trial. Moreover, the use of expression at "*any stage of the case*" is indicative enough of the intention of the legislature that to exercise powers under Section 249-A, Cr.P.C or 265-K Cr.P.C, an application in each and every case is not

mandatory and any such stage could be the very initial stage, after taking cognizance or it would be a middle stage after recording some proceedings, or even, it could be latter stage as well. Reliance in this regard is placed upon the case reported as *Chairman Agricultural Development Bank of Pakistan & another Vs Mumtaz Khan* [PLD 2010 SC 665] wherein the Hon'ble Supreme Court of Pakistan has held as under:-

“ We may observe that prior to introduction of the Islamic provisions in the Pakistan Penal Code, 1860 an acquittal of an accused person could be recorded when the prosecution failed to prove its case against him beyond reasonable doubt or when faced with two possibilities, one favouring the prosecution and the other favouring the, defence, the Court decided to extend the benefit of doubt to the accused person and an acquittal could also be recorded under section 249-A, Cr. P. C. or section 265-K, Cr. P. C. when the charge against the accused person was found to be groundless or there appeared to be no probability of his being convicted of any offence.”

11. The interference by this Court would be warranted, if the reasoning of the trial Court, in acquitting the 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 has properly appreciated the evidence available on record and acquitted the accused/ respondent No.1 through a well-reasoned judgment, by giving him benefit of doubt. The learned counsel for the appellant has also 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].

12. In the case reported as “Sanaullah Vs. The State through Prosecutor General” (2015 P.Cr.L.J. 382 (Balochistan), it has been held as under:-

“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. 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.”

13. Keeping in view the above facts and circumstances, it transpires from the record that no material was available on record against respondents 1 & 2. The record further reflects that during the investigation Asghar Ali ASI was exonerated whereas no weapon of offence was recovered from respondent No.2, Rai Safdar Kharral. If a full dressed trial would have been held, even then, in such circumstances, there was no probability of the conviction against the respondents, therefore, the learned trial Court, after proper appraisal of material available on record, has rightly acquitted the respondents/accused.

14. 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.

15. 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 the imagination, can be declared as perverse, shocking, alarming or suffering from errors of jurisdiction and misreading or non-reading of evidence.

16. For what has been discussed above, there is no merit in the instant appeal; therefore, the same is hereby **dismissed**.

(GHULAM AZAM QAMBRANI)
JUDGE

Announced in open Court on this 26th day of August, 2020.

JUDGE

S.Akhtar