

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

CRL. APPEAL NO. 100/2018

Ch. Ahsan Ali
Vs
Umar Pervez, etc

Appellant by: Raja Rizwan Abbasi, Advocate

Respondents No.1 to 7 by: M/S Sher Afzal Khan Marwat
& Ch. Usama Tariq, Advocate

State by: Mr.Hammad Saeed Dar, State
Counsel with Javaid ASI.

Date of Hearing: 23.09.2020

GHULAM AZAM QAMBRANI, J. This appeal has been filed against the impugned judgment dated 09.05.2018, passed by the learned Judicial Magistrate, Islamabad- West, in case F.I.R No. 115 dated 09.04.2016 under Sections 452/506/148/149/337-F(I)/337-A (II)/337-A (I) PPC P.S Shalimar, Islamabad, whereby respondents 1 to 7 were acquitted under Section 249-A Cr.P.C.

2. Briefly the allegation against the accused/respondents 1 to 7 are that on 09.04.2016 at about 2:00 PM, they being armed with weapons, forcibly entered into the office of appellant and attacked the complainant and caused grievous injuries to the appellant, his nephew Abrar and driver Gulzar and also extended threats of dire consequences. In the meantime, Zahid Iqbal and Maqroob Siddiqui came at the spot and rescued them.

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 09.05.2018 and acquitted respondents No.1 to 7/accused from the charge, hence, the instant appeal.

4. Learned counsel for the appellant contended that the impugned order is result of misreading and non-reading of evidence; that the impugned order is absolutely illegal, unlawful 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 7/accused have been falsely involved in this case; that the time of alleged occurrence is mentioned as 2:00 p.m on 09.04.2016 whereas the accused were arrested on 08.04.2016 from their office, as such malafide involvement of the respondents/accused is borne out from the record and keeping in view the above facts and circumstances, the learned Trial Court has rightly acquitted them from the charge. 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. Bare perusal of the record depicts that the FIR was lodged on 09.04.2016 at about 5:25 in the evening, the alleged occurrence took place on 09.04.2016 at about 2.00 p.m, whereas the respondents were in police custody on 08.04.2016, which is clearly depicted from the report of the bailiff dated 09.04.2016, who was appointed by the order of the learned Additional Sessions Judge dated 09.04.2016. In his report, he has mentioned that the respondents were present at Police Station, Shalimar, Islamabad at about 3.00 p.m. and he got recovered them from the said Police Station. It is further stated in the said report that he got recorded the statement of the accused persons, wherein they stated that they were present at the said police station since last night at 09.00 p.m. In the light of the said report, it cannot be stated that the accused persons participated in the alleged occurrence, as such, their false involvement in the instant case cannot be ruled out, as this fact is totally in contradiction with the story narrated in the FIR. The Medical Board was constituted in writ petition No.1605/2016 and the injured Ibrar Asghar allegedly having tooth injury was examined and the opinion of Medical Board dated 10.06.2016 shows that there is a chipped off left upper central incisor toothTH without associated soft and hard tissue injury. It also says that radiograph shows no periapical lesion or any other injury or pathology. In this way, the opinion of the Medical Board casts shadow on MLC bearing PCN 22465 of Ibrar Asghar.

8. The nutshell of the whole discussion is that the prosecution case is not free from doubts. It is an axiomatic

principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace. It was observed by this 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.

9. All the facts and circumstances mentioned above, make the prosecution story highly doubtful and the prosecution has badly failed to prove the charges against the respondents, 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 "Muhammad Karim Vs. The State" (2009 SCMR 230) wherein it has been held as under:-

"in case of doubt, the benefit thereof must be given to convict as a matter of right and not as a matter of grace, for giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts, single circumstance creating reasonable doubt in a prudent mind about the guilt of convict makes him entitled to benefit, not as matter of grace and concessions, but as matter of right."

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."

10. 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.

11. 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.

12. 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.

13. In view of what has been discussed above, I find no illegality or irregularity in the impugned order warranting interference by this Court. Hence, the instant appeal having no force is hereby **dismissed**.

~~(GHULAM AZAM QAMBRANI)~~
JUDGE

Announced in open Court on this 29th day of September, 2020.

JUDGE /

S.Akhtar