

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

Crl. Appeal No. 08 of 2020

The State
Versus
Aftab Hussain & Another

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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09.03.2022 Mr. Shahbaz Shah, State Counsel.

The instant criminal appeal in terms of Section 417 Cr.P.C. emanates from the judgment dated 21.11.2019 passed by the Judicial Magistrate Section 30, Islamabad (East) whereby respondents (*Aftab Hussain & Amraiz*) were acquitted of the charge in case FIR No.348, dated 23.12.2010, under Section-13 of the Pakistan Arms Ordinance 1965, Police Station Bhara Kahu, Islamabad.

2. Precisely, the case registered through the referred FIR is offshoot of FIR No.342, dated 11.12.2010, under Section 302/109/34 PPC against the petitioner, wherein according to the learned State Counsel, accused persons have since been acquitted.

3. Learned State Counsel argues that in presence of ample evidence in the shape of statements of PW-1, P-2 & PW-3, the recovery witnesses, there was no justification to acquit the respondents particularly when the official witnesses have no personal animosity to implicate the respondents falsely.

4. Heard, record perused.

5. According to the allegations, respondents were intercepted on 23.12.2010 at about 10:30 p.m. by the police officials from the area of picket Murree Road near Dongi Kassi Bhara Kahu Islamabad with illicit arms i.e. .30 bore pistol with five live rounds besides a single barrel gun with three live cartridges. At the trial, in order to substantiate the charge, prosecution examined three witnesses in-all that includes Munawar Abbas HC, Gulzar Ahmad Inspector and Constable Nisar Ahmad.

6. The reasons prevailed with the learned Trial Court for acquitting the respondents were as under:-

i- As regards the alleged recoveries effected from the accused persons, PW-1 stated that the accused were trying to escape the spot when they stopped 100 yards away from the police party and left the cab which they were riding whereas PW-2 stated that the accused left the cab at a distance of 10-15 feet. The said difference in description of distance is to be taken as a doubt for the reason that there is a huge difference between 10-15 feet and 100-yards i.e. almost 300 feet.

ii. The witnesses admitted that neither the taxi driver was arrested nor interrogated during whole of the proceedings.

iii. PW-1 during cross examination stated that at the time of arrest and recovery many private persons were stopped, however, none of them agreed to become a witness whereas PW-2/I.O. in cross examination stated that at the time of arrest of the accused no private person was present at the spot.

iv. That to escape the compulsion of section 103 Cr PC, I.O. was supposed to mention that no private person was ready to become a witness, however, same has not been done despite the fact that the spot of alleged occurrence is a rush place.

v. PW-3 in examination in chief deposed that accused Aftab Hussain was arrested and his personal search was made, however in cross examination stated that he does not remember whether personal search of the accused was made.

vi. PW-3 further stated during cross examination that he does not remember as to who had arrested the other accused namely Amraiz and in who's presence the recovery was effected.

7. It is necessary to mention that it is an appeal against acquittal in terms of Section 417 Cr.P.C and the acquittal earned by the respondents had been after due trial and was not acquittal *simpliciter* in terms of Section 249-A or 265-K Cr.P.C., therefore, double presence of innocence is attached to the impugned order.

8. The Hon'ble apex Court in the case of "Ghulam Sikandar v. Mamaraz Khan" (PLD 1985 SC 11) while hearing appeal against acquittal has held that "the acquittal carries with it the two well-accepted presumptions: One initial, that, till found guilty, the

accused is innocent ; and two that again after the trial a court below confirmed the assumption of innocence”.

9. The powers of the appellate Court in an appeal against acquittal are no less than in an appeal against conviction. But where on the basis of evidence on record two views are reasonably possible the appellate Court cannot substitute its view in the place of that of the trial Court. It is only when the approach of the trial Court in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate Court can interfere with the order of acquittal. Reliance is placed upon latest pronouncement of the Hon’ble apex Court in the case of “Utility Store Corporation of Pakistan through Managing Director Islamabad and another v. The State and others (2021 SCMR 408) and Sadhu Saran Singh Vs. State of U.P (AIR 2016 SC 1160).

10. The discrepancies mentioned above, can safely be termed as fatal for the prosecution case and cannot be overlooked being minor as by excluding the same, the chain of events, made basis to indict the respondent for the alleged offence cannot be considered complete. The findings sought to be interfered with, cannot be termed artificial, shocking or ridiculous because the reasons prevailed with the learned Trial Court would be considered sufficient to discard the testimony of the recovery witnesses as the same touches the very roots of the alleged recovery.

11. Having examined the case from every angle, there exists no justification to put the respondents under notice and to proceed further with the instant appeal as the same would be a futile exercise as ultimately there would be no change in the outcome. Consequently, instant criminal appeal fails and accordingly **dismissed.**

(ARBAB MUHAMMAD TAHIR)
JUDGE