

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

**Criminal Appeal No. 104 of 2021**

Gul Nazir

Versus

Riasat alias Saeen and others.

<b>S.No. of order/ proceeding</b>	<b>Date of order/ proceeding</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
(02)	14.09.2021	Ch. Wajid Hussain, Advocate for the appellant.

**TARIQ MEHMOOD JAHANGIRI, J:**

Through this instant appeal filed under Section 417(2) Cr.P.C, the appellant has impugned the judgment dated 04.06.2021, passed by the Court of learned Judicial Magistrate Section-30, Islamabad, to the extent of acquittal of respondents in a case registered vide FIR No. 488/18, dated 01.12.2018, offence under Sections 395, 412, 400, 413 & 75 P.P.C, registered at police station, Bhara Kahu, Islamabad.

02. Brief facts of the case are that the FIR (Ex.P-C) was lodged on the complaint (Ex.P-A) of Gul Nazir s/o Khuda Baksh,

wherein it is alleged that on 29.11.2018, at about 08:15 p.m., some unknown persons armed with deadly weapons entered in the house, made the complainant and his family hostage and on gun point robbed Gold ornaments weighing 17-Tola's and cash amounting to Rs. 2,70,000/- from his house. The accused remained present in his house for about 45 to 55 minutes; assaulted sons of the complainant and while leaving the house took mobile phones with them.

03. After the registration of F.I.R, investigation was conducted. The accused were already arrested in a case FIR No. 514/18 dated 15.11.2018, offence under Sections 394, 412, 337-A(i) and 337-A(ii) P.P.C, registered at police station Koral, Islamabad. During the interrogation they made confession before the police regarding the present occurrence / crime, so they were arrested in the present case, investigation was completed; challan was submitted and the trial was conducted.

04. Learned trial Court vide impugned judgment dated 04.06.2021, has convicted three accused namely (1) Muhammad Fatir alias Shani s/o Naseer Ahmed, (2) Usama s/o Ahmed Sarfraz and (3) Aamar Adeel s/o Muhammad Khan, whereas acquitted the respondents.

05. During the course of trial, the prosecution has produced the complainant as PW-1, who identified three convicted accused, recovery of snatched amount has also been effected from possession of the convicted accused, finger prints of Aamar Adeel, accused have been matched with the finger prints obtained from the crime scene / house. On the basis of said evidence, above mentioned three accused were convicted under Section 392 P.P.C and sentenced to undergo 03 years Rigorous imprisonment with a fine of Rs. 10,000/-. In default of payment of fine to undergo 03 months simple imprisonment.

06. Learned trial Court has acquitted the respondents vide impugned judgment

dated 04.06.2021.

07. Learned counsel for the petitioner / complainant *inter alia* contends that sufficient evidence is available against the respondents; snatched amount have been recovered from the accused during the course of investigation; respondents have made confession before the police that they have committed the instant crime, hence the impugned judgment to the extent of acquittal of the respondents is liable to be set aside by awarding full punishment provided in the Sections mentioned in F.I.R.

08. Arguments heard, record perused.

09. Following evidence has been collected by the police against acquitted respondents / accused, during the course of investigation and has been produced in the learned trial Court by the prosecution;

- i. Confession before the police.*
- ii. Joint recovery of Rs. 30,000/- from the respondent No. 1 to 5.*
- iii. No recovery has been effected from respondent No. 6 / Mst.*

*Seemab Riaz alias Seemi.*

10. Learned counsel for the petitioner has admitted during the course of arguments that there is no other evidence available against the respondents except the confession before the police and joint recovery of Rs. 30,000/-.

11. Accused / respondents are not named in this F.I.R, no identification parade of the respondents has been conducted, there is no evidence / report of matching the finger prints etc. of the respondents / accused.

12. In this regard, reliance is placed upon the following reported case laws:

i. In a case titled as **"Saeed Ahmad Vs. The State and others"** **(2011 SCMR 1686)**, it has been held by the Hon'ble Supreme Court of Pakistan that:

***"It is settled law that a confession made by an accused person before the police in its custody is inadmissible in evidence".***

Reliance is also placed on a case titled as "**Muhammad Ismail and others Vs. The State**" **(2017 SCMR 898)**.

ii. In a case titled as "**Sajjan Solangi Vs. The State**" **(2019 SCMR 872)**, it has been held by the Hon'ble Supreme Court of Pakistan that:

***"Disclosure under the custody before the police is inadmissible".***

iii. In a case titled as "**Gul Muhammad and another Vs. The State through Prosecutor General Balochistan**" **(2021 SCMR 381)**, it has been held by the Hon'ble Supreme Court of Pakistan that:

***"Practice of recording extra judicial confession by the police officials in presence of police officers was nullity in the eye of law and no credence could be extended to such piece of evidence".***

13. As far as joint recovery of Rs. 30,000/- from the five respondents /

accused and non conducting of Identification Parade is concerned, it has been held in the following reported cases:

i. In a case titled as **"Muhammad Mushtaq Vs. Mustansar Hussain and others"** **(2016 SCMR 2123)**, it has been held by the Hon'ble Supreme Court of Pakistan that:

***"The alleged recovery of the dead body was admittedly a joint recovery which is inadmissible in evidence".***

ii. In a case titled as **"Shabbir Ahmed Vs. The State" (2011 SCMR 1142)**, it has been held by the Hon'ble Supreme Court of Pakistan that:

***"After perusal of the impugned judgment and the evidence of the prosecution, we find that in this case no regular test identification parade was held. The alleged recovery of motorcycle was made on the joint pointation of the two accused" (Emphasis added).*** It has further been mentioned that:

***"In view of the evidence which is no manner connect***

***the present petitioner as well as his co-accused Bismillah, we find that this is a case of no evidence”, and the conviction awarded to the accused was set aside.***

iii. In a case titled as **"Ghulam Akbar and another Vs. The State" (2008 SCMR 1064)**, it has been held by the Hon'ble Supreme Court of Pakistan that:

***"Recovery of stolen motorcycle on joint pointation of two accused from Sugar Cane field was inadmissible in evidence".***

iv. In a case titled as **"Sajjad Bhatti and others Vs. The State" (2017 PCr.L.J 114)**, it has been held that :

***"Joint recoveries were effected at the instance of accused were inconsequential".***

v. In a case titled as **"Raheel Anwar and another Vs. The State and others" (2019 YLR 1385)**, it has been held that:

***"The law is settled by know that joint recovery is not admissible in evidence".***



14. The scope of setting aside the benefit of acquittal from the Court of competent jurisdiction is very much limited. Reliance in this regard is placed on a case titled as **"The State through P.G. Sindh and others Vs. Ahmed Omer Sheikh and others" (2021 SCMR 873)**, wherein it has been held by the Hon'ble Supreme Court of Pakistan that:

***"Admittedly the parameters to deal with the appeal against conviction and appeal against acquittal are totally different because the acquittal carries double presumption of innocence and same could be reversed only when found blatantly perverse, illegal, arbitrary, capricious or speculative, shocking or rests upon impossibility. If there is a possibility of a contrary view even then acquittal could not be set aside."***

It has also been held by the Hon'ble Supreme Court of Pakistan in a case titled as **"Zeeshan alias Shani and another Vs. Muhammad Ayub and others" (2021 SCMR 142)** that:

***"It is by now well settled that***

***reversal of acquittal requires strong grounds and cannot be interfered with merely on the possibility of contra view”.***

15. As neither any incriminating, legal and cogent evidence was collected by the police against the respondents nor produced in the trial Court by the prosecution, hence the respondents were rightly acquitted by the learned trial Court vide impugned judgment dated 04.06.2021.

16. In view of forgoing observation / discussion, instant criminal appeal against acquittal of respondents under Section 417(2) Cr.P.C stands **dismissed in limine.**

**(MIANGUL HASSAN AURANGZEB) (TARIQ MEHMOOD JAHANGIRI)**  
**JUDGE JUDGE**

***Approved for reporting.***

Bilal /-