

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

Crl. Appeal No.53/2020  
Basharat Mehmood  
**Versus**  
The State and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	24.02.2020	Mr. Sohail Ahmed Awan, Advocate for the Appellant.

Through the instant criminal appeal under section 417 (2-A) of Cr.P.C., the appellant, Basharat Mehmood, impugns the judgment dated 16.01.2020, passed by the learned Judicial Magistrate Section-30, Islamabad (West), whereby the accused persons/respondents No. 2 to 5 were acquitted from the charge on the basis of F.I.R. No. 60 dated 17.02.2014, under section 506(ii)/148/ 149 P.P.C, which was registered at Police Station Tarnol, Islamabad, on the complaint of the appellant.

2. Learned counsel for the appellant submitted that the impugned judgment was passed without taking into account the applicable law and facts of the case; that the investigation officer joined hands with the accused persons and prepared cancellation report in the case; that the won over investigation officer did not make any recoveries from the accused persons but the learned trial Court attributed absence of recoveries to the appellant; that learned trial Court overlooked the statements of prosecution witnesses and other evidence against the accused persons; and that impugned judgment has been passed in an arbitrary manner and without application of judicial mind. Learned counsel for the appellant prayed for the appeal to be allowed in terms of the relief sought therein.

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

4. The record shows that the F.I.R. (Ex.P-B) was registered on the complaint of the appellant whose version was that he is the owner in possession of land measuring 40 kanals in *khasra* Nos. 10,12 situated at *mouza* Sarai Madhu; that few days ago respondent No.2 along with seven other persons trespassed onto the said land with intention of dispossessing the complainant, assaulted him and took his construction material; that regarding the said incident he lodged F.I.R. No. 469 dated 14.10.2013 under sections 342, 427,440 and 506(ii) P.P.C. at police station Tarnol; that the lodging of the said case infuriated respondent No.2; that on 20.10.2013 in the evening while the complainant's workers namely Tariq Islam, Usman, Ghulam Yazdani and Tahir Mehmood Khan were busy in the installation of barbed wire, pillars and gate on the complainant's land; that respondents 3 to 5 alongwith one Arshad and 25 other unknown security guards of Margalla Town Housing Society, 05 out of whom were wearing uniforms of security guards approached the workers of the complainant; that the armed intruders came to the site on Shahzore Pickup vehicles; that respondent No.3 raised a *lalkara* and threatened to kill everyone as a punishment for lodging case against respondent No.2; that respondent No. 3 ordered his companions to take over the possession of complainant's property; that respondent No.3 then attacked Tahir Mehmood Khan with a shovel but the latter was saved by the complainant's workers; that the other accused persons kept wavering the arms and gave a beating to the

complainant's workers; that the accused persons eventually fled the scene after taking away the complainant's barbed wire, pillars and gate in shahzore vehicles; that the incident was committed at the behest of respondent No.2 with intention to dispossess the complainant from his above said land.

5. After the registration of the F.I.R. the investigation was assigned to sub-inspector Muhammad Iqbal Gujjar who appeared during trial as P.W-5 and stated that after the investigation he found the case to be false and prepared cancellation report. The said cancellation report was disagreed with by the learned Judicial Magistrate. Subsequent to that the Investigation Officer submitted a report under section 173 Cr.P.C. by placing the names of respondents 2 to 5 in column No.2 of the report. The learned trial Court then recorded statements of five prosecution witnesses as well as the statements of accused persons under section 342 Cr.P.C. The trial culminated in the judgment dated 16.01.2020 whereby learned trial Court acquitted respondents Nos. 2 to 5 from the charge by holding that the prosecution had failed to prove charge against the accused persons.

6. In the impugned judgment the learned trial Court reproduced the relevant details of the complainant's cross examination which shows several inconsistencies between the statement of the complainant and those of the prosecution witnesses. So much so that in the complaint accused Arshad was mentioned as one of the assailants but PW-4/ Muhammad Usman, who was said to be eye witness of the incident in the F.I.R., during his cross-examination stated that he does not know Arshad. During his cross-examination as

PW-1, the complainant himself made crucial admissions contrary to prosecution's version contained in the F.I.R. i.e. (i) that he did not witness the occurrence instead Tariq and Tahir told him the details of the incident; (ii) no allegation has been levelled against accused Ch. Shahid/respondent No.2 regarding the occurrence on 20.10.2013; and (iii) that no photographs of the incident as claimed in the F.I.R. were produced during the evidence. Similarly, it was admitted by P.W.-2 Tariq Islam that till the time of the registration of F.I.R. as per revenue record the complainant was not recorded as owner of the land where the occurrence took place. All these factors make the occurrence highly doubtful and the learned trial Court cannot be said to have fallen in error by extending the benefit of doubt and infirmities in the complainant's case to the accused persons.

7. The complainant's version according to the F.I.R. is that thirty armed persons took part in commission of the crime, the said thirty persons are stated to have come to the site while embarked in the Shahzore pickup vehicles and then while decamping the scene of the occurrence they were stated to have taken along with them barbed wire and construction material. Keeping such statement in view the learned trial Court was justified in observing that it is unlikely that no one other than employees of the complainant witnessed the incident.

8. In addition to above 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.

9. The prosecution's case suffers from several ambiguities and as mentioned above the prosecution witnesses did not remain consistent during their cross examination, therefore, no exceptional justification exists to interfere in the impugned judgment dated 16.01.2020. 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 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.”

- (iv) 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.”

10. The upshot of the above discussion is that the Impugned Judgment is based upon correct appreciation of evidence and does not suffer from misreading, non reading of evidence.

11. In the above circumstances, present appeal is without merits, which is thus dismissed in limine.

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

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