

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

**Criminal Appeal No. 50 /2017**

Khurshid Akhtar

*Versus*

Raja Azhar

Appellant by:	M.Asam Chishti, Advocate.
Respondent by:	In person.
State by:	Mr. Zohaib Hassan Gondal, State Counsel with M. Ishaq Sub-Inspector.
Date of Hearing:	08.07.2020

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**Ghulam Azam Qambrani, J.:** This appeal has been filed against the impugned judgment dated 11.01.2017 passed by the learned Judicial Magistrate, Section-30, West, Islamabad, whereby the respondent/ accused was acquitted from the charge, in case F.I.R No.237 dated 16.10.2006, under Sections 394, 411, 109 P.P.C, registered at Police Station Sabzi Mandi, Islamabad.

2. Briefly stated facts of the prosecution case are that the complainant is serving as salesman at Utility Stores Corporation, Sector I-10 Markaz, Islamabad. It is further stated that on 16.10.2006, at about 11.20 a.m., the Manager of the Utility Stores handed over him an amount of Rs.6,51,690/- to deposit the same in the bank and when he reached at bus stop, he was intercepted by a Suzuki Car No.LHZ-2590, three unknown persons, alighted from the said car duly armed with pistols, they tried to snatch the said amount, upon resistance of appellant one of the accused persons

inflicted a butt blow of pistol on his head, he was badly injured, the accused persons snatched the said amount from him and fled away from the spot. Thereafter, the accused was arrested and the complainant identified him during the identification parade.

3. After completion of the formal investigation, report under Section 173 of Cr.P.C. was submitted before the learned trial Court. The learned trial Court after fulfilling codal formalities, framed the charge against the respondent/ accused, to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined the following witnesses:-

- i. PW-1 Khurshid Akhtar, (Complainant)
- ii. PW-2 Bashir Ahmad Gill,
- iii. PW-3 Azhar Mehmood (C/ No.6176),
- iv. PW-4 Syed Asif Hussain, A.S.I,
- v. PW-5 Shahid Rizwan, (C/ No.7241)

5. Out of total witnesses, the above-mentioned five witnesses except the investigation officer had been examined. Meanwhile, the respondent/ accused filed an application under Section 249-A Cr.P.C, which was accepted vide the impugned order dated 11.01.2017 and the accused/ respondent was acquitted of the charge. The appellant being aggrieved of the impugned order has challenged the same through the instant appeal.

6. The learned counsel for the appellant has contended that the impugned order is against the law, facts and circumstances of the case; that the prosecution produced reliable evidence against the respondent, even then, the learned trial Court, without considering the facts and evidence, passed the impugned order, which is not

sustainable; that the prosecution established the guilt of the accused persons beyond any reasonable doubt through reliable evidence; therefore, the order of acquittal of the respondent is illegal, and lacks legal reasons; and is liable to be set-aside.

7. On the other hand, learned State Counsel supported the impugned order dated 11.01.2017 and submitted that no recovery has been effected from the respondent, as such, the learned trial Court has rightly acquitted the respondent from the charge.

8. Arguments heard, record perused.

9. Minute perusal of the record reveals that initially the above said case was lodged against unknown accused persons. The respondent/ accused was not nominated in the case, rather he was arrested in some other case. Nothing was recovered from the possession of the respondent/ accused. In their statements, PW-1 and PW-2 stated that Raja Azhar and Raja Munir were bank employees and were known to them. If the respondent/ accused was already known to the complainant, then why did he not specifically nominate the accused/ respondent in the F.I.R at the first instance; which fact has seriously made the case doubtful. PW-2, Bashir Ahmed Gill, during cross-examination stated that he has not seen the occurrence. Further has stated during cross-examination that he had seen two accused persons namely Naamdaar and Mujahid Khan, while sitting in the car and that he knew them, as both of them were his customers. Further, in his cross- examination, PW-1 showed his complete ignorance that who

had given butt blow of the pistol on his head and that who had snatched the amount from him. Perusal of the record further depicts that the complainant further stated that he met the accused persons and identified them in the presence of the police at the Police Station. It is important to mention here that no recovery has been effected from the accused/ respondent during the investigation and police custody, which also has made the case of prosecution highly doubtful against the respondent.

10. The interference of this Court would be warranted, if the reasoning of the trial Court in acquitting an 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 through a well-reasoned order. 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].

11. In the case of Ghulam Akbar and another Vs. The State (2008 SCMR 1064), it has been held as under:-

*"It is cardinal principle of criminal jurisprudence that the burden of proving the case beyond doubt against the accused securely lied upon the prosecution and it did not shift. Similarly, the presumption and probabilities, however, strong may be, could not take the shape of proof."*

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

*"Rule of prudence, stipulated that prosecution had to prove its case beyond the shadow of doubt. Accused had not to prove his innocence, until and unless proved guilty. Benefit of slightest doubt would necessarily be extended in favour of accused and not otherwise."*

12. Keeping in view the above facts and circumstances, it transpires from the record that no material was available on record against the accused/ respondent, as such, the learned trial Court has rightly acquitted the respondent/accused through the impugned order.

13. 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 is placed on 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.

14. The learned counsel for the appellant has not advanced any argument to justify the setting aside of the acquittal order. 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. The learned trial Court, after proper appraisal of evidence available on record, has rightly concluded that there is no probability of the accused being convicted, as such, acquitted him.

15. In the circumstances, there is no merit in the instant acquittal appeal; therefore, the same is hereby dismissed.

~~(GHULAM AZAM QAMBRANI)~~  
JUDGE ✓

Announced in open Court on this 9<sup>th</sup> day of July, 2020.

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~~JUDGE~~

M. 9/8\*