

**PESHAWAR HIGH COURT ABBOTTABAD**  
**BENCH**

JUDICIAL DEPARTMENT

**JUDGMENT SHEET**

**Cr. A No. 140-A/2010.**

***Date of hearing 28.05.2020.***

***Petitioner/s (The State) by Sardar Muhammad Asif, AAG.***

***Respondent/s (Zaheer Gul & others) by Mr. Zulfiqar Ahmed, Advocate.***

**AHMAD ALI, J.** This criminal appeal under section 417 (2-A) Cr.P.C is directed against the judgment dated: 18.02.2010 passed by the learned Additional Sessions Judge-IV, *Abbottabad*, whereby, learned Court while invoking jurisdiction under section 265-K Cr. P.C, acquitted the respondents from the charges levelled against them.

2. Brief but relevant facts of the case are that complainant Muhammad Nisar on 25.12.2007 at about 3:00 hours had parked his vehicle (*bearing registration No. B-5067*) outside Lady Garden Park and went into park with his family. At about 5:00 hours, when he returned, the said motorcar was not there,

which was stolen by someone, therefore, the complainant submitted an application, which was incorporated into FIR No. 1404 dated: 25.12.2007 u/s- 381-A/411 PPC read with Article 14 of Hadood Ordinance and investigation was started. In the meanwhile, accused Naseeb Gul, Zaheer Gul and Muhammad Shoaib were intercepted at Muslim Abad Barrier, while they were travelling in the above motorcar, hence, they were booked into present case. After completion of investigation, complete challan was submitted against the accused but during the course of trial, an application under section 265-K Cr. P.C was submitted for acquittal of accused/respondents. Learned trial Court after hearing learned counsel for parties and learned APP, through impugned order acquitted the accused/respondents. As far as the accused/Naseeb Gul is concerned, he did not face trial and avoided his attendance before the Court, thereafter, proceedings under section 512 Cr.P.C were initiated against him and through the impugned order he was declared as proclaimed offender and perpetual warrant of arrest issued against him.

3. It is one of the contention of learned AAG that the accused/respondents are directly involved in commission of offence as they were arrested red handed while they were transporting the stolen vehicle.

4. Meticulous sifting of record reveals that the complainant on 25.12.2007 had lodged report regarding theft of his vehicle from Lady Garden Park, which was shown to be recovered on 28.12.2007 by the local police of Police Station Cantt, Abbottabad from Muslim Abad barrier vide recovery memo Ex PW-2/1. Accused Zaheer Gul, Shoaib and Naseeb Gul were also shown arrested on the same day, however, it is very important to mention here that a local newspaper named as *Naway-e-Hazara*, before two days of said recovery and arrest of accused Naseeb Gul, Zaheer Gul and Shoaib i.e on 26.12.2007 had published a news on front page, wherein, it has been clearly mentioned that the above Naseeb Gul was arrested by the local police of Police Station Kot Najibullah District, Haripur and the above stolen vehicle was also recovered from his possession on 26.12.2007 and then accused Naseeb Gul alongwith

stolen car were handed over to the local police of Police Station, Cantt, Abbottabad. These two versions regarding mode and manner of arrest of accused and recovery of vehicle make the case of the accused/respondents highly doubtful. As, if the above news was not correct, then the police concerned might had denied the same or any other action might had been taken against the said newspaper for publishing false news and if the said news was correctly published in the newspaper, which is obviously correct, then recovery memo dated: 28.12.2007 was fake as accused Naseeb Gul was already arrested by District Police of Haripur on 26.12.2007 or 25.12.2007 and except recovery of stolen vehicle there is nothing with prosecution to connect the accused with commission of offence.

5. PW-2 Khan Baz Khan is the important witness of the case, as he is the witness of recovery as well as of pointation of place of occurrence. He in his examination-in-chief stated that on 28.12.2007 accused Naseeb Gul was driving the stolen vehicle, who was arrested and vehicle was taken into possession

vide recovery memo Ex PW-2/1 dated: 28.12.2007. He in his cross-examination admitted it correct that accused Naseeb Gul as per head lines of local police dated: 26.12.2007 was arrested alongwith vehicle No. B-5067/AD from Kot Najibullah, District Haripur. He in his whole statement nowhere mentioned that two other accused were also arrested from place of recovery.

6. As far as pointation of place of occurrence by the accused is concerned, same cannot solely be relied upon, when real facts of the case speak otherwise as in the instant case, especially when the pointation was joint and place of occurrence was already in the knowledge of police.

7. It has been held, time and again by the superior courts, that a slightest doubt occurs in the prosecution case is sufficient to acquit an accused. For extending the benefit of doubt, it is not necessary that there should be many circumstances creating doubts, single circumstance, creating reasonable doubt in the prudent mind about the guilt of accused, makes him entitled to its benefit, not as a matter of grace or concession, but as a matter

of right. Reliance could be placed on 2009 SCMR 230, 2011 SCMR 664, 2011 SCMR 646, 1984 PLD SC 433, 2012 MLD 1358, 2007 SCMR 1825, 2008 P.Cr.L.J 376, 1994 PLD Peshawar 114, 2012 PLD Peshawar 01, 1999 P.Cr.L.J 1087, 1997 SCMR 449, 2011 SCMR 820 & 2006 P.Cr.L.J SC 1002.

8. Perusal of entire record in the light of arguments has led this Court to believe that the learned trial court has properly appreciated the entire record available on file in its true perspective and rightly returned verdict of acquittal of accused/respondents, as from the very beginning, the prosecution has left flaws in the case and failed to built-up the case against the respondents.

9. In addition, before us is an appeal against acquittal where standard for appreciation of evidence is different than the one in appeal against conviction, as once an accused is acquitted, then he earns double presumption of his innocence, which cannot be taken away from him unless it is shown that the judgment of acquittal is based on surmises or presumptions, which is not the case here.

10. Thus, this Court reached to the conclusion that the learned trial Court has rightly acquitted the respondents by accepting their application under section 265-K Cr. P.C by scrutinizing all the record and keeping in view the facts of the case, warranting no interference by this Court, therefore, the instant appeal is dismissed.

***Announced.***

***28.05.2020.***

*Tahir P/Secretary.*

***J U D G E***