

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

Ch. Muhammad Ibrahim Zia, C.J.  
Ghulam Mustafa Mughal, J.

Criminal Appeal No.37 of 2019

(PLA filed on 20.05.2019)

Abdul Razzaq s/o Faqeer Muhammad, caste Gujjar  
r/o Mandi, Tehsil and District Kotli.

.....APPELLANT

VERSUS

1. Muhammad Irfan s/o Muhammad Razzaq,
2. Muhammad Razzaq w/o Wali Muhammad,  
caste Kashmiri r/o Mandi Dharra Keeri, Tehsil  
and District Kotli.

.....RESPONDENTS

3. The State of Azad Jammu and Kashmir through  
Advocate-General.

.... PROFORMA RESPONDENT

[On appeal from the judgment of the of the High  
Court dated 05.03.2019 in Cr. Appeal No.01/2018]

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FOR THE APPELLANT: Ch. Muhammad Ashraf  
Ayaz, Advocate.

FOR RESPONDENT NO.1-2: Mr. Kamran Taj,  
Advocate.

FOR THE STATE:

Mr. Muhammad Zubair  
Raja, Addl. Advocate-  
General.

Date of hearing: 19.02.2020

**JUDGMENT:**

**Ch. Muhammad Ibrahim Zia, C.J.**– The titled appeal has been directed against the judgment of the High Court dated 05.03.2019, whereby the appeal filed by the appellant, herein, has been dismissed.

2. Brief facts forming background of the instant appeal are that the appellant lodged a complaint at Police Station City Kotli on 28.07.2010 that at 9:00 am, he was at home, when he was informed by Mohammad Younas, his neighbour, that somebody is cutting tree close to his house, whereupon he went out of the house and saw that the accused-respondents are cutting tree from his land. He forbade the accused-respondents whereupon both of them abused him and also threatened to do away with his life. Thereafter, the

complainant came towards Courts and the accused-respondents took away the tree to their house. On the aforesaid complaint the Police registered an FIR in the offense under sections 34, 447/427 APC and submitted a challan before the Senior Civil Judge/Magistrate 1<sup>st</sup> Class Kotli, who after necessary proceedings, acquitted the accused-respondents of the charge by extending them the benefit of doubt vide judgment dated 29.12.2017. Feeling dissatisfied, the appellant approached the High Court by filing an appeal, which has been dismissed through the impugned judgment while upholding the judgment of the trial Court, hence this appeal by leave of the Court.

3. Ch. Muhammad Ashraf Ayaz, Advocate, the learned counsel for the appellant after narration of necessary facts submitted that the prosecution has proved the case beyond the shadow of doubt. The commission of offence by the respondents is established through statements of eye witnesses. The trial Court as well as learned High Court has

not properly appreciated the prosecution evidence, thus, acquittal of the accused is against law and facts, therefore, while setting aside the impugned judgments the accused-respondent be convicted according to law.

4. The learned Additional Advocate-General supported the arguments advanced by the learned counsel for the appellant.

5. Conversely, Mr. Kamran Taj, Advocate, the learned counsel for the respondent forcefully defended the impugned judgment and submitted that the prosecution has failed to prove the commission of alleged offence against the accused. The trial Court has passed speaking judgment after minute appreciation of the evidence. The respondents have faced the litigation for more than seven years' period before the trial Court. According to the celebrated principle of law after acquittal the double presumption of innocence of the accused arises and for setting aside the acquittal order very strong extraordinary reasons are required. Mere on

the basis of opinion of any person that in view of evidence a different conclusion can be drawn, the acquittal order cannot be set-aside. He referred to the judgment of the trial Court and submitted that the statement of each and every witness has been discussed. The accused-respondents have been acquitted by extending benefit of doubt due to contradictions in prosecution witnesses and major dents, hence, this appeal is liable to be dismissed.

6. We have heard the learned counsel for the parties and gone through the record. Admittedly, after long trial of seven years the accused-respondent has been acquitted by the trial Court while extending benefit of doubt. The careful examination of the judgment of the trial Court reveals that the evidence of all the seven witnesses has been referred, reproduced and minutely appreciated. The conclusion drawn by the trial Court on the face of it is proper and based upon minute appreciation of evidence and also appears to be consistent with law and facts of the case. The

prosecution counsel could not succeed to prove any major misreading or non-reading of the evidence. The findings of facts recorded by the trial Court have also been upheld by the High Court through the impugned judgment. Both the Courts have concurrently drawn the conclusion that the prosecution could not succeed to establish the guilt of the accused beyond doubt. The accused have been acquitted while extending benefit of doubt and reasons advanced in the judgment of trial Court are consistent with law.

7. It is also celebrated principle of law that the acquittal of accused creates double presumption of innocence and for recalling the acquittal order very strong and legal grounds are required. In this case, the prosecution could not succeed to make out any such ground that the judgments are violative of law or not based upon proper appreciation of evidence. Therefore, in this state of affairs, keeping in view the enunciated principle of

administration of criminal justice, no interference by this Court is justified.

Therefore, finding no force, this appeal is dismissed.

Mirpur,  
19.02.2020

CHIEF JUSTICE

JUDGE