IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Shariat Appellate Jurisdiction)

PRESENT:

MR. JUSTICE KHAWAJA M. NASIM
MR. JUSTICE RAZA ALI KHAN

CRIMINAL APPEAL NO. 23 OF 2024
(On appeal from the judgment of Shariat Appellate Bench of the High Court dated 07.02.2024, passed in Criminal Appeals No. 102 of 2019 & 09 of 2020).

Muhammad Suleman s/o Jammu caste Awan r/o Bijaldar Tehsil Leepa District Jehlum Valley, Azad Jammu and Kashmir.

…Complainant-Appellant

VERSUS

Ghulam Murtaza s/o Muhammad Ayoub & 4 others.

…Accused-Respondents

Appearances:

For the Complainant-Appellant:	Khawaja Shoukat Hussain Ghani, Advocate.
For the State:	Sh. Masood Iqbal, Advocate-General.
For the accused-respondents:	Kh. Gulzar Nasim, Advocate.
Date of hearing:	04.11.2024

JUDGEMENT:

***Raza Ali Khan, J*:-** The captioned appeal has been directed against the judgment of Shariat Appellate

Bench of the High Court (*hereinafter to be referred as High Court*) dated 07.02.2024, whereby, the appeals filed by the appellant, herein, have been dismissed.

2. The brief facts of the case are that the complainant-appellant lodged a written complaint on 19.09.2015 at Police Station Leepa against the accused, namely Murtaza, Hidayat-Ullah, Muhammad Yousaf, and Irshad, alleging a premeditated assault on his wife and son, Babar, when they were returning home after harvesting maize crop in the Bijaldar fields. It is alleged that Murtaza inflicted baton blows (danda) at the head of complainant's wife resulting in to severe injuries. Furthermore, it was reported that during the altercation, an amount of Rs. 18,000 allegedly fell down from Babar's pocket, which was also purportedly taken by Irshad accused. Muhammad Shafique and Zahid, apart others attracted towards the scene on the victim's hue and cry. for help and reportedly witnessed the incident. Based on these allegations, a First Information Report (FIR) was registered on the same day under Sections 337-A(ii), 337-F(ii), 341 and 34 of the Azad Penal Code (APC). After the completion of investigation, a report under section 173, Cr.PC (Challan) was presented before the trial Court on 06.10.2015, and the accused were formally charged on 15.10.2015 under Section 242 of the Code of Criminal Procedure (Cr.P.C.), to which they pleaded not guilty. Consequently, the trial court summoned the prosecution's evidence. The prosecution produced 10 out of 11 witnesses in support of its case. Following the conclusion of the prosecution's case, the trial court, in compliance with Section 342 Cr.P.C., provided the accused an opportunity to respond the allegations; the accused denied the charges and opted to adduce

evidence in defence. Upon evaluating the evidence, the the trial Court acquitted the accused (Hidayat-Ullah, Muhammad Yousaf, and Irshad) by extending the benefit of the doubt, whereas convicted Ghulam Murtaza. Aggrieved by his conviction, he filed an appeal before the District Criminal Court, Jehlum Valley, on 01.11.2019. After hearing the arguments, the District Criminal Court modified the trial court's judgment and acquitted Ghulam Murtaza on 24.01.2020, extending him the benefit of the doubt. Dissatisfied with the acquittal, the complainant-appellant filed separate appeals before the High Court, challenging the acquittal. Following the necessary proceedings, the High Court dismissed both the appeals on 07.02.2024.

3. Kh. Shoukat Hussain Ganai, the learned counsel for the complainant-appellant, argued that the High Court's judgment is inconsistent with both; the law and the established facts of the case. He contended that the Courts below failed to properly consider the evidence, despite the prosecution's clear and comprehensive presentation proving its case beyond any reasonable doubt. He submitted that the trial court's rationale for issuing a reduced sentence was deficient, especially in thelight of the prosecution evidence, which warranted a conviction under the principles of *Qisas* and *Arsh*, along with a term of five years' imprisonment and an additional one-year sentence for the charge under Section 337 F(i) APC. The learned counsel further emphasized that the recovery of the weapon of offence was substantiated through credible testimony, with no contradictions or inconsistencies. He argued that the appellate courts below has not conducted a thorough examination of the evidence and failed to apply the

appropriate legal standards, setting aside the sentence by the appellate court legally untenable. In support of his arguments, the learned counsel relied on the precedents, i.e. *2015 SCR 1487*, *1992 SCR 1* and *2018 SCR 532*, and earnestly prayed for acceptance of appeal.

4. Sh. Masood Iqbal, the learned Advocate-General largely adopted the arguments advanced on behalf of the learned counsel for the complainant-appellant and prayed for acceptance of appeal.

5. Mr. Gulzar Naseem, Advocate representing accused-Respondents No. 1 to 4, contended that the impugned judgment of the High Court is legally sound and firmly rooted in the facts and record of the case. He submitted that the prosecution has failed to substantiate its allegations against the accused beyond a reasonable doubt, pointing to several inconsistencies and discrepancies in the statements of prosecution witnesses. The learned counsel highlighted that in the FIR a specific role was solely attributed to the accused-respondent, Ghulam Murtaza, alleging that he inflicted baton blows on the head of the complainant's wife causing severe injury, whereas, no specific allegations have been levelled against accused-Respondents No. 2 to 4. He argued that the High Court has rightly dismissed the appeals in strict conformity with the law and established rules. Mr. Naseem further argued that an analysis of witnesses' statements and a comprehensive review of material evidence demonstrated that the prosecution did not succeed in proving its case against the acquitted accused-respondents. He underscored the well-established legal principle that even a single circumstance raising reasonable doubt is sufficient to warrant an acquittal. Consequently, he asserted that the

High Court’s decision to dismiss the appeal for lack of evidence was justified and should be upheld by this Court.

6. After hearing the learned counsel for both the parties and thoroughly reviewing the case record, it is evident that the FIR was lodged based on the report presented by the complainant-appellant on 19.09.2015. Following the arrest of the accused, a report under Section 173 Cr.PC was presented in the Court of competent jurisdiction. At the conclusion of the trial, the learned trial court acquitted respondents No. 2 to 4 of the charges, while convicting Respondent No. 1. In response, convict-respondent No. 1 filed an appeal in the District Criminal Court, Jehlum Valley, on 01.11.2019, challenging his conviction; and the appeal was accepted, leading to his acquittal. Dissatisfied with the decision of lower Court, the complainant-appellant filed separate appeals before the High Court against an acquittal of accused, both of which were dismissed, thus affirming the acquittal

7. Upon examining the entire record and available evidence, it is apparent that the prosecution’s testimony contains fraught with significant contradictions. The complainant's statement in the FIR and his judicial testimony reflects marked inconsistent stances. In his initial written application, the complainant explicitly stated that he was not present at the scene of the incident and only became aware of it upon returning home. However, during his judicial testimony, he contradicted this account by claiming that he was indeed present at the scene, and the accused also attempted to assault him, and that he narrowly escaped harm. This material contradiction between the complainant's written report and his testimony, casts serious doubt on his credibility. Moreover, the complainant’s statement under Section 161 CrPC

corroborates his initial report, affirming that he was away from home at the time of the incident and only got knowledge of it later. In further inconsistencies, his initial report asserts that Muhammad Shafiq, Zahid, and others rescued his wife and son, providing immediate medical assistance. Yet, in his court statement, he claimed that he personally took his injured wife to the hospital after submitting the application at the police station. Similarly, in the initial report and statement recorded under section 161 Cr.PC he alleged the theft of Rs. 18,000, whereas his judicial testimony omits any reference to the alleged theft, instead stating that the accused took away fodder, an assertion absent from both the initial report and statement under section 161 Cr.PC. The complainant's contradictory assertions in claiming the truthfulness of both his initial written report and testimony are misleading and inconsistent with the factual record. His efforts to enhance his account in court further undermine his credibility and raise substantial doubts about the prosecution's case

8. Furthermore, the complainant's wife claimed in her statement that she received 22 stitches on her head; however, the medical officer's report noted only one or two stitches, revealing a substantial discrepancy. Her statement under Section 161, CrPC was recorded on September 21, 2015, wherein she alleged that she regained consciousness after eight days of the incident which was occurred on 19th September. If she remained indeed unconscious on the 21st, it raises significant doubt as to how her statement under Section 161, CrPC could have been recorded on such date. Additionally, she implicated the accused-Hidayatullah in assaulting her with a corn stalk, yet no other witnesses corroborated this stance. In view of these inconsistencies, the trial

court's conviction was rightly set aside by District Criminal Court. As to the learned counsel's assertion that no inconsistency exists between the complainant's statements, witness's accounts, and the FIR, this argument is unpersuasive. As discussed, there is a distinct contradiction between the complainant's statements and the FIR. The mere acknowledgment of the incident by witnesses is insufficient for conviction; the prosecution must establish each accused's specific role through clear and unchallenged evidence, a standard which the complainant has not met. It is the prosecution's duty to establish its case beyond a reasonable doubt, and any doubt must be resolved in favor of the accused. The contradictions and lack of corroborative evidence from independent witnesses create substantial doubt, necessitating that the benefit of doubt be extended to the accused

9. It is pertinent to note that, in accordance with well-established principle of law, an acquittal order may only be set aside if there is clear evidence of perversity, departure from legal principles, arbitrariness, or apparent misreading or non-reading of evidence on record. Numerous judgments from superior courts have reiterated that, once an accused has been acquitted by a court of competent jurisdiction, extraordinary and compelling reasons are required to justify overturning of such a decision. This view was reinforced by the judgment in *Ali Muhammad vs. Muhammad Akram & another*[1], wherein this Court observed as follows:

> "It is settled principle of law that until an acquittal order is found perverse, arbitrary and fanciful that cannot be interfered with."

[1] [2014 SCR 351]

In another case reported as *Muhammad Afzal vs. Mst. Riaz Begum & others*[2], it has been held as under:

> "It may be mentioned that in an appeal against the acquittal the Supreme Court would not on principle, ordinarily interfere and shall give due weight and consideration to the findings of Court acquitting the accused and the Court shall avoid re-appraisal of evidence…."

10. Since the High Court has acquitted the accused-respondents, a double presumption of innocence is conferred upon them under the fundamental principle of criminal jurisprudence, which holds that every individual is presumed innocent unless proven guilty by a competent court of law. Furthermore, this presumption of innocence, initially established by the trial court's acquittal, has been reinforced and strengthened by the High Court in its observations within the impugned judgment. This presumption is foundational to our judicial system, upholding fair and just outcomes. The Roman law maxim *"Incumbit Probatio qui dicit, non qui negat"* emphasizes that the burden of proof rests upon the party asserting, not upon the one denying. This ancient doctrine, dating back to Roman law and famously quoted by William Blackstone, underscores both the presumption of innocence and the requirement for proof beyond a reasonable doubt: "it is better that ten guilty persons escape than that one innocent suffer." In other words, the evidence must be so comprehensive and unequivocal as to exclude any reasonable inference of innocence, demonstrating that within the limits of human probability, the act was committed by the accused. Support for this principle can be drawn from the case reported as

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[2] [2004 SCR 140]

Muhammad Sadiq vs. Raja Muhammad Nasim & others[3], wherein it was held as follows:

> "14. After the above discussion the argument of the learned counsel for the respondents that the accused-respondents have been acquitted by the two Courts below which creates a double presumption of innocence in their favour has to be seen in that perspective. Ordinarily, every accused person is presumed to be innocent unless a guilt is proved against him in Court of law. This presumption is further strengthened by his acquittal by two Courts. But it is the duty of the appellate Court to see as to whether the trial Court as well as the first appellate Court has drawn a right conclusion holding the accused to be innocent or the finding of the Court is against the record. The law on the point in the subcontinent is almost settled that the appellate Court, moreso the Supreme Court, has full powers to examine the full evidence to ascertain as to whether the record supports the acquittal or not. Where the appellate Court finds that the Court below has not been reasonable on the evidence on record, it is its duty to interfere and set straight the course of law. Great weight has, no doubt, to be attached to the order of acquittal passed by the Courts below, but that is subject to the evidence on record."

The Apex Court of Pakistan in a case titled *Ghulam Sikandar & another vs. Mamaraz Khan & others*[4], also reinforced this principle of Criminal jurisprudence: -

> "(1) However, in an appeal against acquittal the Supreme Court would not on principle ordinarily interfere and instead would give due weight and consideration to the findings of Court acquitting the accused. This approach is slightly different than that in an appeal against conviction when leave is granted only for the re-appraisement of evidence which then is undertaken so as to see that benefit of every reasonable doubt should be extended to the accused. This difference of approach is mainly conditioned by the fact that the acquittal carries with it the two well-accepted presumptions: one initial, that, till

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[3] [1996 SCR 215]
[4] [PLD 1985 SC 11]

> found guilty, the accused is innocent; and two that again after the trial a Court below confirmed the assumption of innocence.
> (2) The acquitted will not carry the second presumption and will also thus lose the first one if on points having conclusive effect on the end result the Court below: (a) disregarded material evidence; (b) misread such evidence; (c) received such evidence illegally.
> (3) In either case the well-known principles of reappraisement of evidence will have to be kept in view when examining the strength of the views expressed by the Court below. They will not be brushed aside lightly on mere assumptions keeping always in view that a departure from the normal principle must be necessitated by obligatory observances of some higher principle as noted above and for no other reason.
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> (4) The Court would not interfere with acquittal merely because on re-appraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If however, the conclusion reached by that Court was such that no reasonable persons would conceivably reach the same and was impossible then this Court would interfere in exceptional cases on overwhelming proof resulting in conclusion and irresistible conclusion; and that too with a view only to avoid grave miscarriage of justice and for no other purpose. The important test visualized in these cases, in this behalf was that the finding sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous."

11. The prosecution's case is fraught with doubts, which is significant given the universally recognized principle that conviction must rest on unimpeachable evidence and a certainty of guilt. Any doubt arising in the prosecution's case must, therefore, be resolved in favor of the accused. This principle is central to criminal jurisprudence: if a single instance causes reasonable doubt in the court's mind, the accused is entitled to the

benefit of that doubt as a matter of right, not leniency. This "golden rule" of doubt is a prudent measure essential to the fair dispensation of justice. In the present case, the prosecution has failed to prove its allegations beyond a reasonable doubt, underscoring the need for utmost care in convicting an accused. This principle is reinforced by the judgment in *Tasawar Husain vs. The State & others*[5] case, wherein it was observed that doubt must always favor the accused

> "According to the universally settled and accepted principle of law of criminal administration of justice, benefit of doubt always goes to the accused."

This view is further fortified from the judgments of this Court reported as *Ali Muhammad vs. Muhammad Akram and another*[6], wherein it has been held that:

> "After going through the record of this case, we are of the view that this is the case of number of doubts and even a single doubt is sufficient to acquit the accused. Moreover, according to FIR, the occurrence took place on 12.8.1999 at 6:30 p.m. whereas, the report was lodged on 13.8.1999 after a delay of about 18 hours. No plausible explanation has come on the record about this inordinate delay which is fatal for the prosecution"

In another judgment reported as *Abid Hanif vs. Muhammad Afzal & 4 others*[7], on the question of slightest doubt it has been held as under:

> "From the perusal of hereinabove reproduced portion, it appears that the doctor negates the version of the prosecution which creates a doubt and it is settled principle of law that even a slightest doubt must go in favour of the accused. In this scenario when the ocular account is

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[5] [2016 SCR 373]
[6] [2014 SCR 351]
[7] [2014 SCR 983]

> disbelieved by the trial Court being contradictory in nature, the other evidence which are only corroborative in nature cannot be given any weight and no preference can be given over the ocular account.

12. In view of the above detailed discussion, the learned counsel for the complainant-appellant has failed to point out any flaw in the impugned judgment and the precedents cited by him having distinguishable facts, are not attracted to the case in hand, therefore, this appeal stands dismissed.

JUDGE JUDGE

Muzaffarabad,
11.11.2024
Approved for reporting.