JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Appeal No.445 of 2023

Dr. Zaheer Ahmed

Versus

Abdul Samad Ashiq and others

Appellant by:	Mian Muhammad Arshad Javed, Advocate.
Respondents No.1 & 2:	Nemo.
Respondent No.3/State by:	Mr. Muhammad Nawaz, SPP along with Mehr Ullah, S.I.
Date of Hearing:	**29.09.2025.**

INAAM AMEEN MINHAS, J:- This appeal has been directed against the judgment dated 24.10.2023 **("Impugned Judgment")**, passed by the learned Judicial Magistrate Section-30, Islamabad (East) **("Trial Court")**, whereby respondents No.1 & 2 have been acquitted from case FIR No.858, dated 03.10.2021, under sections 392/411 PPC, registered at Police Station Koral, Islamabad.

2. Summary of the facts as stated in the FIR/Exh.PC is that the appellant moved an application Exh.PA to the police on 03.10.2021 alleging therein that three boys one of them armed with pistol committed a robbery at his under construction farmhouse in Gulberg Green, Islamabad and took a mobile phone, motorcar, laptop bag, charger, petrol receipts and documents, therefore, FIR/Exh.PC was registered. After registration of the FIR respondents No.1 & 2 were arrested. During investigation they were found involved in the commission of the alleged offence, therefore, report u/s 173 Cr. P.C was submitted before the learned Trial Court. The charge was framed to

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which respondents No.1 & 2 did not plead guilty, therefore, prosecution evidence was summoned. The prosecution produced as many as seven (07) witnesses to substantiate the allegations. Respondents No.1 & 2 in their statements u/s 342 Cr.P.C denied the prosecution's evidence and claimed innocence. They neither opted to examine themselves on oath as envisaged u/s 340 (2) Cr.P.C nor produced evidence in their defence. The learned Trial Court after hearing the arguments acquitted respondents No.1 & 2 vide the Impugned Judgment, hence, this appeal.

3. The learned counsel for the appellant contended that the Impugned Judgment is against the law and facts of the case; that the appellant identified respondents No.1 & 2 during the identification parade, leaving no room for false implication; that the learned Trial Court did not appreciate the evidence in its true perspective; that the prosecution proved its case beyond any shadow of doubt but the learned Trial Court acquitted respondents No.1 & 2. The learned counsel for the appellant prayed for acceptance of the instant appeal and setting aside the Impugned Judgment.

4. Since the state did not file an appeal against acquittal of respondents No.1 & 2, the learned SPP half-heartedly opposed the instant appeal.

5. I have heard the arguments of the learned counsel for the parties and perused the record.

6. According to the contents of complaint Exh-PA, three unknown persons were initially nominated by the appellant on 03.10.2021. Later, on 15.11.2021, co-accused of respondents No.1 & 2 namely Muhammad Nasir Khan was nominated by the appellant, who was arrested, interrogated by the police and subsequently discharged by the Illaqa Magistrate, Islamabad vide order dated 06.12.2021, which order was neither challenged by the prosecution nor the appellant, thus attained finality. It is important to note how the prosecution implicated and involved respondents No.1 & 2 namely Abdul Samad and

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Sheharyar Baber in the present case. There are different versions of the prosecution regarding involvement of respondents No.1 & 2 in the present case.

7. According to the prosecution, respondent No.1 Abdul Samad was implicated in the case on the basis of the statement of co-accused respondent No.2 Sheharyar Baber and was later identified during an identification parade held on 29.07.2022. However, the prosecution's version reveals that respondent No.1 had already been identified through CCTV footage installed at the appellant's residence indicating that the pictures and identity of respondent No.1 were already known to the police as well as the appellant before his arrest. In such circumstances, the evidentiary value of the identification parade is significantly diminished, as it no longer serves the purpose of an independent or neutral identification process. Consequently, the sanctity and legal weight of the identification parade lose their significance in the eyes of the law, since respondent No.1 was not an unknown person to the prosecution.

8. Name of respondent No.2 Sheharyar Baber was first introduced on 26.10.2021 based on fingerprint evidence and later the appellant nominated him in his supplementary statement on 15.11.2021 on the basis of personal identification. Additionally, during the investigation, it was noted that a vehicle was recovered from his possession on 29.11.2021 leading to his implication in the case. Lastly, the prosecution stated that he was identified in two identification parades held on 17.12.2021 and 24.12.2021. It is important to note that the prosecution presented four separate versions to link respondent No.2 with the offence i.e. fingerprint evidence, personal identification, vehicle recovery and identification parades, which are contradictory to each other and raise serious doubt on the consistency and reliability of the prosecution's case against him.

9. The record further shows that the prosecution's case is primarily based on the recovery of a vehicle bearing Registration No. AFZ-262,

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from which the fingerprints of respondents No. 1 and 2 were picked, thereby linking them to the case. However, the prosecution failed to produce the vehicle in evidence, a crucial omission. Under Article 129(g) of the Qanoon-e-Shahadat Order, 1984, when a party withholds the best available evidence, the Court may presume that such evidence, if produced, would have gone against that party's case. In this situation, the non-production of the vehicle, which was the central evidence linking respondents No.1 & 2 with the offence, raises serious doubts about the credibility and reliability of the prosecution's case. This single lapse is sufficient and weakens the entire prosecution story.

10. It is a well-established principle of criminal jurisprudence that the Court is not required to identify multiple or serious doubts to justify an acquittal. The law is firmly settled that even a single reasonable doubt arising in the prosecution's case is sufficient to acquit an accused. This principle is rooted in the fundamental concept that the burden of proof lies entirely on the prosecution and the accused is to be considered innocent unless proven guilty beyond a reasonable doubt. If any part of the prosecution's evidence gives rise to a reasonable doubt regarding the guilt of the accused that doubt must always be resolved in favour of the accused.

11. The approach to reappraising evidence in an appeal against acquittal differs from that in an appeal against conviction. This difference of approach is mainly conditioned by the fact that the acquittal carries double presumption of innocence. Reliance is placed upon ***Ghulam Sikandar and another vs. Mamaraz Khan and others*****, (PLD 1985 SC 11)**.

12. It is also settled principle of law that after acquittal an accused carries double presumption of innocence and an acquittal order cannot be interfered with until and unless the non-reading of evidence, perversity or miscarriage of justice is pointed out. The learned counsel for the appellant has failed to point out any non-reading of evidence, illegality or perversity.

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13. In view of the above discussion, the Impugned Judgment has been passed in accordance with law, which does not warrant interference by this Court. Consequently, the instant appeal is **dismissed** and the Impugned Judgment is **upheld**.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 15.10.2025.

JUDGE

R.Anjam

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