JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Appeal No.276 of 2019

Alam Zaib
Vs
The State, etc

Appellant By:	Muhammad Jahangir Khan, Advocate
Respondents 2 to 9 By:	M/S Haroon Rashid & Aftab Rasheed Advocates
State by:	Mr. Zohaib Hassan Gondal, State Counsel alongwith Aamir Abbasi SI, P.S, Tarnol, Islamabad.
Date of Hearing:	13.01.2020

Ghulam Azam Qambrani, J: This appeal has been directed against the Judgment dated 26.6.2019 passed by the learned Judicial Magistrate Section 30-West, Islamabad, whereby respondents No.2 to 9 were acquitted in case FIR No. 70, dated 25.2.2012 Under Sections 379/427/337-H(II)/148/149/ PPC, P.S Tarnol, Islamabad.

2. Brief facts of the case are that the complainant [Alam Zaib] lodged a complaint against respondents No. 2 to 9 stating therein that he is owner of 2-Kanals of land in khasra No. 428/429/430 in Pind Parain, constructed boundary wall and room upon the said land. The electricity meter was also installed. From previous month, he started construction work. The accused Ghulam Akhtar alongwith his two sons Amjad, Aamir and his son-in-law Raja Muhammad Afsar and his son Amjad attacked there and tried to demolish boundary wall but they did not succeed to do so. Upon this, complainant moved an application to Police Station Tarnol, but no action was taken. Thereafter, on 25.2.2012, when he was not present there, the accused persons came on the land of complainant, made aerial firing, demolished the boundary wall, room and also committed theft of generator, boring material, Garder and T-iron alongwith other articles and loaded these articles on Tractor Trolley and fled away. Hence, the instant FIR was lodged against the accused persons.

3. After completion of investigation, challan of the case was transmitted for trial, charge was framed against the accused persons to which they pleaded not guilty and claimed for trial.

4. In order to prove its case, the prosecution examined as many as six witnesses namely Alam Zeb complainant as PW.1, Muhammad Mumtaz PW.2, Tariq Mehmood PW.3, Ibrar Hussain PW.4, Khuda Dad Khan SI PW.5 and

Farhat Nawaz 503/C as PW.6. Witnesses namely Fazal-ur-Rehman SI & Iqbal 4019/C were given-up by the prosecution being unnecessary. Alam Zeb complainant appeared as PW.1 and deposed the same story as narrated in the complaint. Muhammad Mumtaz appeared as PW.2 and deposed that *" on 25.2.2017 at 11:00 AM they were working on plot,a Mehran car and a Tractor came there from eastern side in which 14/15 persons were riding. First of all they made aerial firing and thereafter started demolishing walls, they fled away from the scene of occurrence while saving their lives. When they came back, the walls were fallen and articles i.e. generator, boring material were missing. The persons came on Mehran car, Akhtar and sons of Baba Gee having pistol and one person having 12-bore gun.* Tariq Mehmood PW.3 deposed the occurrence as narrated by PW.2. Ibrar Hussain SI appeared as Pw.4 and deposed that " *on 25.2.2012 he was posted as Duty Officer in Police Station Tarnol and on the same day, the complainant moved an application on the basis of which FIR No. 70 , dated 25.2.2012 [Ex.PG] under sections 379, 427, 337-H (II),148,149 PPC was lodged, he visited the place of occurrence, prepared site plan, collected empties from the place of occurrence and on 28.2.2012 he arrested three accused persons. On 02.02.2012 he took into possession vehicle LOT-435 Mehran car vide recovery memo Ex.PC. During cleaning of room by the complainant, one empty of 8mm and lock was also found which was taken into possession through recovery memo Ex.PD. On 05.02.2012, during remand the accused Aamir Hussain made disclosure that he can got recovered pistol 30-bore, the accused led to the place of recovery and got recovered pistol 30-bore upon which FIR No. 82/2012 under section 13/20/65 A.O was also registered. During interrogation, the accused persons also made disclosure regarding demolishing of room, boundary wall and aerial firing at the place of occurrence."* Farhat Nawaz 503/C, PW.6 deposed that "*on 25.2.2012 the accused Aamir, in his presence alongwith Ibrar ASI led to the place of recovery and got recovered pistol 30-bore from his bedroom."*

5. After closure of prosecution evidence, statements of accused persons under section 342 Cr.P.C were recorded, whereby they categorically denied the case of prosecution by stating that father of the complainant is owner of 3-marlas only in khasra No.430, whereas the complainant has taken over possession of 2-kanals forcibly, illegally, unlawfully and the instant FIR has been lodged just to blackmail and pressurize them and that all the witnesses are relatives of complainant; that no local witness was associated at any stage. The accused persons did not opt to appear on oath under section 340 (2) Cr.P.C and also refused to produce any defence evidence.

6. The learned Judicial Magistrate Section 30-West, Islamabad, vide judgment dated 26.06.2019 acquitted the accused persons giving them benefit of doubt, hence the instant appeal.

7. Learned counsel for the appellant contended that impugned judgment is arbitrary, fanciful and against the record; that the impugned Judgment is result of mis-reading and non-reading of the evidence on record; that report under section 173 Cr.PC was also submitted against respondent No.9 under Section 512 Cr.P.C after declaring him proclaimed offender, that the charge was also not framed against respondent No.9, but the said accused person has also been acquitted of the charge; that the impugned judgment is not sustainable in the eye of law and is liable to be set aside. Further argued that the respondents could not shake the statements of prosecution witnesses with regard to the commission of crime. Learned counsel next argued that respondent No.9 remained absconder, but at the conclusion of trial he was also given benefit of doubt and was acquitted from the charge.

8. On the other hand, learned counsel for respondents 2 to 9 submitted that a well reasoned judgment has been passed by the learned Trial Court; that there are material discrepancies which had created doubts in the prosecution case. The prosecution has miserably failed to prove the charge against the accused persons and the learned Trial Court has rightly acquitted the accused persons by giving them benefit of doubt. That the statements of eye witnesses i.e PW.2 Muhammad Mumtaz and Tariq Mehmood PW.3 are not trustworthy, being inimical and relatives of complainant.

9. Arguments heard, record perused.

10. Perusal of the record reveals that the prosecution has examined as many as six witnesses. The complainant alleged in the FIR that he is owner of 2-kanals of land at Pind Parian in khasra No. 428/429/430, he has raised a boundary wall and constructed a room and also got installed electricity meter and that the accused persons came there and tried to demolish the boundary wall, but failed to do so. It was further alleged that the accused persons have also stolen away generator, boring articles etc. But during the cross-examination, the complainant/appellant admitted that he was not present at the spot when the occurrence took place. He also failed to produce any documentary evidence during the investigation or during his deposition before the learned Trial Court in support of his claim that he is owner of 2-kanals of the disputed land. The complainant also admitted that he is owner of 1-kanal and he has occupied 2-kanals of land. He also admitted that he did not know in which khasra number his property is located. The I.O also admitted that there are constructed houses all around the place of occurrence, but no private person has ever been produced

before the Court as a witness nor any such evidence has been recorded during the course of investigation to further substantiate the case of the prosecution. No specific role has been attributed to any of the accused persons. PW.3 who is the star witness of the case has categorically stated that accused persons made indiscriminate firing at the place of occurrence, but recovery of empties has been shown only 3/4 which has made the case of prosecution highly doubtful. The recovered pistol as well as recovered empties have never been sent to the Forensic Science Laboratory in order to match the fact that the firing was made by the said pistol recovered from Aamir accused, which has also made a dent in the prosecution case. Further the recovered pistol, empties and the recovered vehicle has never been produced before the learned Trial Court by the prosecution. One of the witness is the uncle, whereas the other is cousin of the complainant, hence the presumption of the interested witnesses cannot be ruled out. The defence has been able to shaken the testimony of all the PWs. The prosecution case is full of doubts and discrepancies and the benefit of doubt goes to the accused. Reliance in this regard has been placed on case titled as *" Muhammad Shahbaz Ali Khalid Vs The State"* **[2019 SCMR 2012].**

11. The prosecution witnesses namely Muhammad Mumtaz, Tariq Mehmood and Ibrar Hussain are not reliable and trust worthy due to the fact that they have stated that accused/respondents committed theft of the articles i.e generator, boring material, Garder and T-iron, but on the other hand, during investigation the investigation officer came to a conclusion that no such act had been committed, therefore, Section 379 PPC was deleted. These witnesses are inter-se relates with the complainant.

12. So far as the allegations of making aerial firing by the respondents is concerned, in this regard, it is stated that it is the case of prosecution that during the course of investigation the respondents made disclosure and on their pointation arms were recovered, but during the trial, no such gun or pistol was produced before the learned Trial Court, thus the allegations of making aerial firing was not proved, therefore, learned Trial Court has rightly held that no such act has been committed by the accused/respondents. It was the duty of prosecution to prove the allegation, but it miserably failed to prove that the accused persons have made indiscriminate firing. It is admitted fact that alleged place of occurrence is thickly populated area, but none of the inhabitants of the vicinity was associated as private witness of the alleged occurrence, thus there is violation of the provisions of Section 103 Cr.P.C. On this point, reliance has been placed on case titled as " *Hakim Khan Vs The State*" **[2013 SCMR 698].**

13. The considerations for interference in an appeal against acquittal and in an appeal against conviction are altogether different. The well settled principles for the appreciation of appeals against acquittal are;-

(i) That with the acquittal, the presumption of innocence of accused becomes double; one initial, that till found guilty he is innocent, and two, that after his trial a Court below has confirmed the assumption of innocence;
(ii) That unless all the grounds on which the High Court had purported to acquit the accused were not supportable from the evidence on record, Supreme Court would be reluctant to interference, even though, upon the same evidence it may be tempted to come to a different conclusion;
(iii) That unless the conclusion recorded by a Court below was such that no reasonable person would conceivably reach the same, the Supreme Court would not interfere;
(iv) That unless the Judgment of acquittal is perverse and the reasons therefore are artificial and ridiculous, the Supreme Court would not interfere; and
(v) That the Supreme Court, however, would interfere in exceptional cases on overwhelming proof resulting in conclusive and irresistible conclusion, and that too, with a view only to avoid grave miscarriage of justice and for no other purpose.

14. So far as the allegation of confession made before the police is concerned, it was not proved in evidence. The said piece of evidence was not tendered in evidence, therefore, stood un-proved. Reliance has been placed on case law titled as *" Sh.Muhammad Amjad Vs The State"* **[PLD 2003 SC 704].**

15. So far as the allegation against respondent No.9 is concerned, in this regard it has been observed that no specific allegation has been assigned to respondent No.9 with regard to commission of alleged offence, even an iota of evidence is not available against him, therefore, he has also rightly been acquitted from the charge.

16. The case property i.e 30-bore pistol, 12-bore gun and a vehicle has not been produced before learned Trial Court at the time of recording of evidence and on the basis of non-production of case property, on this score also, the accused persons were rightly acquitted by the learned Trial Court. In this regard, reliance has been placed on case law titled as *" Gul Dast Khan Vs The State"* **[2009 SCMR 431]**. I have found no mis-reading and non-reading of the evidence by the learned Trial Court.

17. For what has been discussed above, judgment of the learned Trial Court does not suffer from any illegality or irregularity, therefore, does not require any interference by this Court. The instant appeal is, hereby, dismissed.

Ghulam Azam Qambrani
Judge

Announced in Open Court, on this 23rd day of January, 2020.

Ghulam Azam Qambrani
Judge

S.Akhtar

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