**HIGH COURT OF AZAD JAMMU & KASHMIR**
**[Shariat Appellate Bench]**

Criminal Appeal No.40/2020.
Date of Institution 09.09.2020.
Date of Decision 16.07.2022.

1. Abdul Rehman S/o Muhammad Khan, caste Mughal R/o Kartote, Tehsil & District Kotli. (complainant).
2. Tasleem Arif widow of Muhammad Arif caste Mughal, R/o Kartote, Tehsil and District Kotli.

…..Appellants

VERSUS

1. Mazhar Iqbal.
2. Sikandar Hayat.
3. Rameez sons of Muhammad Akbar.
4. Muhammad Akbar alias Punoo S/o Faiz Muhammad, caste Mangral, R/o Kartote, Tehsil & District Kotli.

…..Respondents

APPEAL AGAINST THE JUDGMENT OF DISTRICT COURT OF CRIMINAL JURISDICTION KOTLI DATED 20.12.2006.

**Before:- Justice Sardar Muhammad Habib Zia, J.**
**Justice Syed Shahid Bahar, J.**

PRESENT**:**
Nemo for the appellant.
Ch. Muhammad Manzoor, Additional Advocate General for the State.

***Judgment*:-**

***(Justice Syed Shahid Bahar, J)*** The above titled appeal has been directed against the judgment of District Court of Criminal Jurisdiction Kotli dated 20.12.2006, whereby accused-respondents were acquitted of the charges.

The precise facts of the case are that on the report of complainant, a case bearing FIR No.236/01 under sections 302/34, 109 A.P.C was registered at Police Station Kotli. After completion of investigation, the challan under Section 173 Cr.P.C in offences under Sections 302/ 34 and 109 APC was submitted before District Court of Criminal Jurisdiction Kotli on 22.10.2001 against the accused respondents, and the accused-respondents were sent to face trial. The statements of accused-respondents were examined under Section 242,Cr.P.C on 13.11.2001, who denied the guilt. Thereupon, the prosecution was ordered to produce evidence. The prosecution in support of its version, examined Zulfiqar Mehmood, Abdul Rehman, Muhammad Israr, Muhamamd Farid, Muhammad Raheem Dad, Aftab, Muhammad Yousaf, Muhammad Liaqat, Raja Lal Khan, Muhammad Tanvir SG, Muhammad Raqeeb constable, Dr. Parvez Mehmood CMO, Javaid Anwar Head Constable, Ali Abid constable, Abdul Hameed IHC and Muhammad Jamil SHO. The evidence of P.Ws. 7 and 11 was closed. After recording the evidence, the learned District Court of Criminal Jurisdiction Kotli (trial Court) examined the accused under Section 342,Cr.P.C on 14.04.2006. The accused again pleaded not guilty. On conclusion of the trial and after hearing arguments, the learned trial Court vide impugned judgment dated 14.12.2006 acquitted the accused/respondent from the charges, hence, this appeal. In first

round of litigation, this Court vide order dated 17.02.2016 remanded the case for fresh decision in accordance with law to the trial Court with the observation that the evidence of Zulfiqar Mehmood, P.W who had witnessed the accused Mazhar Iqbal, running from the spot after firing and Raheem Dad, P.W.5 who supported the prosecution story is also relative of one of the accused have been overlooked by the learned trail Court, thus, the judgment dated 20.12.2006 was set-aside. Against the decision of this Court, the accused-respondents filed an appeal before the Hon'ble Supreme Court on 21.03.2016. The Hon'ble Supreme Court after hearing arguments of the learned counsel for the parties set-aside the order of this Court dated 17.02.2016 and directed to decide the appeal within the period of 3 months vide order dated 19.02.2020.

Since long time neither the appellants nor respondents are appearing in this case, whereas, in the instant case the Hon'ble Supreme Court had directed to decide the lis within one month, thus at this juncture we are inclined to decide the appeal in hand on merits.

We have gone through the record of the case with the assistance of the learned Additional Advocate General appearing on behalf of State.

The learned Addl. Advocate General argued the case at some length and prayed that the prosecution has proved its case by producing cogent and convincing evidence but the learned trial Court has reached at wrong conclusion by discharging the accused-respondents from the charges despite the fact that they are involved in a heinous offence of murder. He lastly prayed for acceptance of the appeal by setting aside the acquittal order.

At the very outset, we would like to mention here that now this is a settled principle of criminal law that in an appeal against acquittal the standards for assessing evidence are quite different from those laid down in appeals against conviction. In an appeal against conviction, the appraisal of evidence is done strictly, whereas in an appeal against acquittal, such rigid method of appraisement is not to be applied. An order of acquittal can only be interfered with if the conclusion arrived at is wholly artificial or the judgment is perverse and against the record and law. While examining the defects in the order of acquittal, substantial weight should be given to the findings of the lower Courts, whereby accused were exonerated from the commission of crime because presumption of double innocence of accused is attached to the order of acquittal. Our aforesaid view finds support from case titled ***Muhammad Ijaz Ahmad v. Raja Fahim Afzal (1998 SCMR 1281)***, wherein it was observed that:-

> "Secondly, it may be seen that ordinarily scope of petition or appeal against the acquittal of accused is considerably narrow and limited. This Court in Ghulam Sikandar and another v. Mamaraz Khan and others PLD 1985 SC 11 has authoritatively ruled that while examining defects about order of acquittal, substantial weight should be given to the findings of subordinate Courts whereby accused were exonerated from committing the crime. Obviously approach for dealing with appeal against conviction would be different and distinguishable from appeal against acquittal, because presumption of double innocence is attached in the later."

In the case in hand, a case bearing FIR No.236/2001 dated 14.09.2001 was registered against the accused respondents at Police Station Kotli in offences under sections 302/34, 109 APC. It was alleged by the complainant that daughter of his cousin namely Muhammad Arif S/o Allah Dad was married with Mazhar Iqbal, accused, who after sometime divorced her. It was stated that Muhammad Akbar purchased a piece of land from Muhammad Akbar. A dispute was started between them and the matter was taken to the Court, which was decided in favour of Muhammad Arif. After decision, he started construction of house on the land. It was alleged that on 13.09.2001, the accused trespassed in the land, whereupon, Muhammad Arif reported the matter to the police and a case was registered against the accused. On 14.09.2001 at 1:30 pm, Muhammad Arif was sitting in PCO at Ghazi Bazar-Kartote, Mazhar Iqbal, Sikandar and Rameez came there and raised "lalkara" and asked Muhammad Arif that you had

been told not to come. They shouted that he won't go alive from here, in the meantime, Mazhar Iqbal accused who was armed with Kalashnikov, with the intention to kill him started firing on him, which hit him at his chest, belly and arms, who succumbed to the injuries and died on spot. The complainant, upon this information reached at spot and saw that dead body of deceased was present on spot. The aforesaid occurrence was witnessed by Zulfiqar Mehmood S/o Raja Mehmood, Muhammad Israr S/o Muhammad Afsar, Raheem Dad S/o Allah Dad caste Rajpoot, Muhammad Fareed S/o Muhammad Basheer, caste Pathan. After usual investigation, the Police submitted challan before District Court of Criminal Jurisdiction Kotli on 22.10.2001. The prosecution in support of its version, cited 24 prosecution witnesses in the calendar of challan and got recorded their statements, except P.W.7, before trial Court as well. Record reveals that four eye-witnesses named Zulfiqar, Muhammad Israr, Muhammad Fareed and Rahimdad have been listed in the list of witnesses. Out of these four prosecution's witnesses two witnesses namely Muhammad Israr and Muhammad Farid in their statements have negated their presence at the place of occurrence. As far as, the allegations in the FIR with regard to other accused respondents Sikandar and Rameez are concerned that they raised "lalkara" out of the door and asked Muhammad Arif, they forbade him no to

come in this area and if he does so, then, he cannot go alive. The said allegations/attributions have not been supported from any documentary and oral evidence. Hence, the prosecution has failed to establish the allegations of abetment and common intention to kill the deceased.

The main allegation upon the accused-respondent Mazhar Iqbal is that he killed the deceased who was sitting at PCO in Kartote Bazar by firing bullets/shots of Kalashnikov on 14.09.2001 at 1:30 pm. The important witness of the case is Zulfiqar Mehmood who worked at PCO, who got recorded his statement in the trial Court. In his statement he deposed that he was sitting behind the counter, in the meantime, firing was made, which hit the mirror/glasses and he bent down alongwith Israr P.W who was also sitting in PCO. He stated that he did not see any person while making firing, however, he saw Mazhar Iqbal who was running, but the said witness had been declared as hostile witness by the prosecution. The statements of Zulfiqar witness and investigation officer Muhammad Jamil are contradictory and did not match with each other. The said witness only saw the accused Mazhar Iqbal in running position whereas, he had no knowledge whether he was holding Kalashnikov or not, while, the other two eye-witnesses have refused their presence at the place of occurrence.

The other eye-witness of the occurrence Rahim-Dad, in his statement recorded in the trial Court did not support the version of presence of other two P.W.s on the spot, rather he narrated the name of other witnesses, who had not been included in the witnesses list/challan. From perusal of statement of the aforesaid witness it reflects that the version of the said witness is contradictory with other prosecution witnesses as he narrated the different story as it compared with the statement of Zulfiqar eye-witness.

Another important witness is Muhammad Jamil, Investigation Officer. He stated in his statement that he recovered the empties of bullets inside of the PCO, whereas eye-witness Zulfiqar deposed that the bullets shots were made outside of the PCO.

As far as the matter to the extent of recovery of Kalashnikov (alleged deadly weapon/instrument of murder) is concerned, in this regard it may be mentioned here that the same was recovered from place known as Sarhota “Nala” in presence of many private persons but except one relative of deceased namely Raja Lal Khan, no one from the locality has been made as witness of recovery (گواہ ضبطی), hence, the alleged recovery is also doubtful and creates dent upon the prosecution’s version. Furthermore, the

case under Section 13/20/65 of Arms Act had separately been registered against the alleged accused.

The evidence i.e. oral or documentary produced by the prosecution did not support their version and the prosecution has failed to establish the case against the accused-respondents through cogent and convincing evidence. It is well settled Principle of law that even a single circumstance creating a reasonable doubt is sufficient to entitle an accused to acquittal. Our view finds support from a case reported as ***Riaz v. The State (1996 P Cr.L J 1575)***, wherein it was observed in the following manner:-

> "It is not necessary under the law that there should be several circumstances to create a doubt about the prosecution case. Even one circumstance which creates a reasonable doubt is sufficient to entitle the accused to an acquittal."

In another case reported as ***More v. The State (2013 P Cr.L J 1730)***, it has been enunciated as under:-

> "From the above noted contradictions a reasonable doubt existed regarding guilt of the appellant. It is well-settled law that for the purpose of benefit of doubt to an accused more than one infirmity is not required. A single infirmity, creating reasonable doubt in a prudent mind regarding the truth of the charge, is sufficient to give benefit of doubt to the accused."

It is settled principle of Criminal Jurisprudence that prosecution has to succeed on its own merits and has to prove the

case against the accused beyond reasonable doubt and every doubt is to be resolved in favour of the accused. Moreover, when the acquittal order passed in favour an accused he has double presumption of innocence. In case of acquittal, there is double presumption in favour of accused. Firstly, the presumption of innocence is available to him under the fundamental principle of Criminal Jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent Court and secondly the accused having secured an acquittal, the presumption of innocence is, reinforced and strengthened by the trial Court. It was observed in the case titled Zeenat Sultan v. Mumtaz Khan and 9 others reported as **[PLD 1994 SC 667]** by the revered Supreme Court of Pakistan that:-

> "It cannot be overemphasized that the right to life is the basic right that human beings possess. Once a charge for a capital offence, duly tried, results in acquittal, the accused person acquires a very precious right and he should not therefore be put in jeopardy of his life."

Thus, keeping in view the overall facts and circumstances of the case, we have arrived at the conclusion that the learned trial Court has not committed any illegality while acquitting the accused-respondents from the charges of murder of Muhammad Arif, deceased. In criminal cases it is quality and not the quantity of evidence which would settle the guilt or innocence of accused, that too burden to prove the case against accused

always on the shoulders of prosecution and it would never shift on to accused who is entitled to stand on innocence assigned to him under the law till it is dislodged.

**History of Appeal against acquittal:-**

The Code of Criminal Procedure, when originally enacted in the year 1861, did not provide for any right to appeal against acquittal to anyone including the State. It was in the Code of Criminal Procedure, 1898 that Section 417 was inserted enabling the Government to direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court. Intention of the legislature, behind bestowing the power of reversal of judgment of acquittal only upon the High Court is indicative of the fact that it was considered a matter of great caution and care. Only High Court was trusted to exercise such power to reverse an order of acquittal, that too, in exceptional circumstances.

Originally under section 417 Cr.P.C no right of appeal against acquittal was provided to complainant or an aggrieved person in state case and same was introduced by amending the Code of Criminal Procedure, 1998 through the Act XX of 1994 Code of Criminal Procedure (Second Amendment) Act, 1994, notified on 14th November, 1994. Prior to the insertion of sub-Section (2-A) in

Section 417,Cr.P.C the appeal could only be filed by the Government by issuing directions to the Public Prosecutor or in case an order of acquittal was passed in a case instituted upon a direct complaint the appeal would be filed in the High Court after grant of special leave to appeal from the order of an acquittal. However, aforementioned amendment in the Code was brought whereby the right to file an appeal was extended to any person aggrieved by the judgment of acquittal passed in State case.

In India, prior to 2009 amendments, which the Indian Code of Criminal Procedure underwent, a victim did not have any right to file appeal against order of acquittal and the right to prefer appeal was provided only to State, District Magistrate and a complainant of a complaint case. The Code of Criminal Procedure of India had not provided any right of an appeal to a victim against acquittal. It would appear from a bare perusal and plain reading of Section 372 of the Indian Code that the right to appeal against acquittal, under the proviso thereto, has been provided only to the “victim” and not to the complainant or the informant. The term ‘victim’, for the first time, had been included by way of amendment to Section 372 in the year 2009, whereby a right to file an appeal against acquittal was conferred upon him.

**Fundamental Principles governing the appeal against acquittal**:-

In a celebrated and landmark judgment rendered by the Hon'ble Supreme Court of Pakistan in a case titled Ghulam Sikandar and another vs. Mamaraz Khan and others reported as [**PLD 1985 SC 11**] the august court expounded the guidelines governing the appeal against acquittal. These are as under:-

(i) Parameters to deal with the appeal against conviction and appeal against acquittal are totally different because the acquittal carries double presumption of innocence and same can be reversed only when found blatantly perverse, illegal, arbitrary, capricious, speculative, shocking or rests upon impossibility.

(ii) It is well settled law by now that in criminal cases every accused is innocent unless proven guilty and upon acquittal by a court of competent jurisdiction such presumption doubles. Very strong and cogent reasons are required to dislodge such double presumption of innocence.

(iii) Acquittal recorded by the trial Court based on cogent reasons and not perverse would not be interfered. Appellate Court should not lightly interfere with judgment of acquittal unless it arrives at a definite conclusion that evidence has not been properly analyzed and court below acted on surmises and conjectures.

(iv) Acquittal cannot be reversed merely because a contra view is possible, where the findings of the trial Court are not unreasonable, improbable, perverse or patently illegal. Where on the basis of evidence on record two views are reasonably possible, appellate Court should not substitute its view in the place of that of trial Court.

(v) The presumption of innocence of the accused is further reinforced by his acquittal by the trial Court, and the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.

(vi) Judgment of acquittal can be reversed when trial Court committed glaring misreading or non-

reading of evidence and recorded its findings in a fanciful manner, contrary to the evidence brought on record.

(vii) The appellate Court, while dealing with an appeal against acquittal, must proceed with the matter more cautiously and only if there is absolute certainty qua the gulf of accused considering the evidence on record, acquittal can be interfered with or disturbed.

Same guidelines have been fortified in catena of case law i.e.

i. The State Vs. Abdul Khaliq [PLD 2011 SC 554];
ii. Ammal Shireen v/s The State [PLD 2004 SC 371;
iii. Zeeshan alias Shani and another v/s Muhammad Ayub and others [2021 SCMR 142];
iv. The State through P.G Sindh and others v/s Ahmed Omar Sheikh and others [2021 SCMR 873];
v. Mst. Anwar Begum v/s Akhtar Hussain alias Kaka [2017 SCMR 1710];
vi. The State v/s Abdul Ghaffar [1996 SCMR 678].

Any slightest doubt or dent appearing or created in the prosecution case bestow benefit to the accused, particularly where accused is tried on capital charge there has to be an evidence of un-impeachable character which must lead to the only inference that accused is found guilty beyond all reasonable doubt.

Defense side is not under legal obligation to disprove the case of prosecution, but all that the defence is to do is to make a dent in the case of prosecution. In order to justify the inference of guilt the incriminating facts must be incompatible with the innocence of the accused.

Case of direct evidence and circumstantial evidence are all together on different pedestal, in case of direct evidence conviction can be based upon statement of a single witnesses but in juxta-position in case of circumstantial evidence, all pieces of evidence must be linked in a chain, interlaced, intertwined and interwoven in such a manner that their appraisal may conclusively lead to an in escapable conclusion that accused had committed offence.

It is well settled proposition in criminal administration of justice that each criminal case has to be adjudged in the back ground of its own facts and circumstances and the facts of the two cases seldom coincide.

Philosophy of Criminal Jurisprudence quo treating the accused as favourite child of law is meant for to allow and extent all sort of benefit of doubt to the accused even in case of one circumstance creating doubt in the prosecution story. Conviction can only take place when certainty of guilt is oozing from evidence.

It is useful to mention that weapon of presumptions is a two edge in criminal cases.

The word “presumption” has been defined in the Black law dictionary as under:-

**Presumption**:- Something that is thought to be true because it is highly probable. A legal inference or assumption that a fact exists because of the known or proven existence of some other fact or group of facts.

Most presumptions are rules of evidence. A presumption shifts the burden of production or pursuation to the opposing party who can then attempt to overcome the presumption.

In the instant matter we are dealing with the presumptions arising out from a criminal lis. Justice (Retd.) Z.A. Chana in his book law of presumptions has bifurcated the presumptions in 2 branches.

(i) The presumption in favour of innocence.
(II) The presumption in dis-favour of innocence.

Both juristic approaches are reproduced as infra:-

**THE PRESUMPTION IN FAVOUR OF INNOCENCE**

1. The law presumes the innocence of a person charged with crime until the contrary is proved beyond a reasonable doubt.
2. Fraud is never presumed unless such circumstances are shown as will legally justify such an inference.
3. And good character is presumed.
4. A *prima facie* case does not take away from a defendant a presumption of innocence.
5. Where there are conflicting presumptions, the presumption of innocence will prevail against the presumption of guilt, as also presumptions of the continuance of life, the presumption of the continuance of things generally, the presumption of marriage, and the presumption of chastity. But it is

otherwise as to the presumption of knowledge of the law and the presumption of sanity.

6. The presumption of innocence may be strengthened as by the relation of the parties.
7. But except for the purpose of the trial, a presumption of guilt arises from the findings of an indictment or the commitment of a person for trial.
8. Where a person does an act which is unlawful unless he possesses a certain qualification, the burden is on the prosecution to show that he does not possess the requisite qualification, unless the proof is peculiarly in his possession, and that it may involve him in proving his innocence does not change the rule.
9. A person is presumed to intend the natural and legal consequences of his acts.
10. Where an act is criminal per se, a criminal intent is presumed from the commission of the act.
11. But where a specific intent is required to make an act, an offence, the doing of the act does not raise a presumption that it was done with the specific intent.
12. Possession, knowledge or motive may overthrow the presumption of innocence, and raise in its place the presumption of guild.
13. A person on trial for one crime cannot be presumed guilty because he has at another time committed a similar or different crime, and the latter fact is not admissible in evidence against him.
14. But to prove knowledge of intent or motive a collateral crime may be shown.
15. A separate crime from that charged may be shown where it is necessary to prove that the crime charged was not accidental.
16. A separate crime from that charged may be proved where it forms part of the *res gestae*.

**THE PRESUMPTIONS IN DISFAVOUR' OF INNOCENCE**

1. Where no motive for the commission of a crime is shown, the presumption of the innocence of the suspected person is strengthened. But the commission of the crime being proved and also the facts pointing to the prisoner as the perpetrator,

evidence that a motive existed is relevant, and is a circumstance in the chain or evidence from which guilt may be inferred.

2. A motive is proved by showing the desire of gain, the gratification of passion or the preservation of reputation, accomplished or attempted or able to be accomplished by the perpetration of the crime charged.
3. Proof of opportunity possessed by the accused to commit the crime may raise an inference that he is the criminal. But another may have had a better opportunity than even the accused, and the possibility of such a circumstance should weaken the presumption.
4. A former attempt by the accused to perpetrate the same crime in the same or a different manner is relevant on the question of his guilt as to the later crime.
5. Preparations on the part of the accused to accomplish the crime charged, or to prevent its discovery, or to aid his escape, or to avert suspicion from himself, are likewise relevant on the question of his guilt.
6. But no inference of guilt will arise where the preparation may have been innocent, or for the execution of something different through illegal, or where the crime for the execution of which the preparations were made may have been subsequently frustrated or voluntarily abandoned.
7. Threats or expressions of ill-will on the part of the accused concerning the victim are relevant on the question of his guilt.
8. But threats, though made by the accused, are no evidence of his guilt where a person other than himself may have carried them out.
9. Possession by the accused of the means of committing the crime charged may raise a presumption of his guilt. And this presumption may be strengthened or weakened according to the occupation, character or sex of the accused.
10. Where the evidence against the accused is circumstantial in its character, the possession by the accused of the fruits of the crime is relevant as a circumstance in the chain of evidence from which guilt may be inferred.

11. In prosecutions for larceny, robbery, or burglary, the recent possession of the stolen property raises the presumption that the possessor is the thief, provided the possession be exclusive.
12. But a reasonable explanation by the accused of his possession overthrows the presumption and casts the burden on the prosecution; provided the explanation is not inconsistent with the identity of the property.
13. What is or is not "recent" within rule 12 depends upon the cost, bulk or transferability of the things stolen.
14. And as in Rule 10 proof of a sudden change having taken place in the life and circumstances of the accused subsequent to the crime is relevant.
15. Also the fact that the accused has given false inconsistent or contradictory accounts of the circumstances of the crime or of his relation to the act.
16. Also the fact that the accused has attempted to stifle or thwart the investigation of the crime.
17. Also the fact of fear exhibited by the accused. But no presumption can arise where the fear may be on account of another act or crime.
18. Also the fact of the flight of the accused, or his attempts to escape, raises a presumption of his guilt; unless it appears that the act was for another reason.
19. Also the fact of the destruction, concealment or fabircation of evidence by the accused *omnia praesumuntur contra spoliatorem.*
20. Also the fact of silence on the part of the accused when charges are made against him in his presence and hearing, unless the charges are made in the course of a judicial interrogation.
21. Where the accused has it peculiarly within his power to produce evidence of witnesses whose testimony would explain a transaction, the fact that he does not do so, raises a presumption that the evidence or the testimony, if produced would be unfavourable to him.
22. But Rule 21 does not include every fact in the case which it may be in the power of the defendant to prove as he is not bound to anticipate all the facts which the State may show in the course of the trial, and be ready with evidence to controvert them.

> Nor he is bound to produce evidence which, against the objection of the State, would be incompetent.
>
> It will be noticed that the list of presumptions given by Lawson includes presumptions both of law and fact. Some of these presumptions have been noticed in the Indian Evidence Act in the form of rules of burden of proof in Chapter VII. These rules of burden of proof are in fact statements of presumptions of law, which are drawn, not under section 114 of the Evidence Act, which deals only with presumptions of fact, but in pursuance of some legal direction contained in Chapter VII. Excluding such presumptions, the remaining presumptions mentioned in the list given by Lawson may be described as presumptions of fact, in the sense that the Courts may, if they think fit to do so in the circumstances of particular cases, raise them. It is impossible to describe Lawson's list as exhaustive of the presumptions of fact, for, as already pointed out, presumptions of fact are co-extensive with the whole field of presumptive evidence, which in its turn is co-extensive with the whole field of reasoning and it is impossible to reduce all ratiocination to the form of 116 simple propositions."

Case portrayed by the prosecution in attire of the evidence is full of dents, thus, presumptions of innocence tilts in favour of the accused.

Appeal in hand pertains to acquittal of the accused while as per law the accused in such like situation is equipped with double presumption of innocence. Firstly by fiction of law that every accused person is favourite child of law and secondly on the basis of acquiring acquittal in his favour by a Court of law. Thus, acquittal orders are always being judged by the angle and same

can only be interfered of the order on the face of it appears to be perverse, arbitrary and illegal.

It is also settled principle of law that in the appeal against conviction appraisal of evidence is done strictly and an appeal against acquittal the same rigid method of appraisal is not to be adopted as there is already finding of acquittal given by the trial Court after proper analysis of the evidence. Therefore, the judgment under appeal whereby the accused was exonerated and acquitted from the charge merits no interference by this Court. Dent appearing in the prosecution's case were rightly being resolved by the learned trial Court in favour of the accused. Reliance is being placed on following precedents:-

1. 2011 YLR 1660 (Muhammad Qasam Khan Vs. Muhammad Zafarullah).
2. 2009 P.Cr.LJ 642 (Pesh).
3. 2009 NLR 454.
4. NLR 2008 SD-704.
5. 2022 SCR 560 case titled "Arshad Iqbal Vs. Muhammad Azad Khan and others.
6. 2022 SCR 76 case titled Gulzaib Khan Vs. Azkar Hussain & another.

It has been held in NLR 2008 Criminal BWP-478 "once a judgment is passed by the competent court of jurisdiction after proper and correct appraisal of evidence the same cannot be interfered with merely on ground that reanalysis of evidence

another view can be taken, especially when acquitted accused had earned a double presumption of innocence in their favour.

**Analysis**

Firearm allegedly used by the accused was most important piece of evidence and incriminating material but the same was not put to accused during his statement under Section 342, Cr.P.C. Lot of contradiction is found in prosecution's case. Ocular account of evidence received no corroboration from medical and other connected evidence, evidence brought on record is not sufficient enough to prove the offence against the accused persons without any shadow of doubt. Some of the prosecution witnesses had become hostile, thus, inference drawn by the learned trial Court is endorsed.

Nub of above discussion is that the instant criminal appeal fails which is dismissed, order of acquittal is maintained.

*Muzaffarabad*,
16.07.2022.(A)

-Sd-
**JUDGE**
(H)

-Sd-
**JUDGE**
(S)