

Appeal Against Acquittal in Pakistan

Double Presumption of Innocence, the Two-View Rule, Material Record Error, and the Distinction for Sections 249-A and 265-K Cr.P.C.

PLD 1985 SC 11	PLD 2009 SC 53	PLD 2011 SC 554
2022 SCMR 1861	2024 SCMR 51	Five judgments read together

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Research note: the accompanying website page provides the complete 52-page five-judgment bundle. The 2011 and 2022 items reproduce the original PDFs supplied for publication. The 1985, 2009 and 2024 items are labelled reconstructed reading copies and are not official scanned law-report pages.

Authority map

Judgment	What it contributes	Result
Ghulam Sikandar PLD 1985 SC 11	Foundational four-part test, two possible views, conclusive-effect exception	Acquittals maintained
Muhammad Tasaweer PLD 2009 SC 53	Appellate acquittal, second opinion insufficient, medical evidence and abscondence	Leave refused
State v. Abdul Khaliq PLD 2011 SC 554	Most narrow scope, triple presumption, materiality of error	Acquittal appeals dismissed
Model Customs 2022 SCMR 1861	Sections 249-A and 265-K; intermediary acquittal lacks full-trial sanctity	Orders set aside; remand
Muhammad Riaz 2024 SCMR 51	Broad reappraisal power, strict restraint, fair-trial rationale	Leave refused

This authority map is a reading aid. The analysis that follows explains the procedural setting, precise standard, application, and advocacy consequence of each decision.

The controlling question

An appeal against acquittal is not a second trial on paper. It is not enough to repeat the prosecution story, count the witnesses, describe the allegation as serious, or submit that the appellate court could have convicted on the same record.

The controlling question is narrower:

Is the acquittal a reasonably possible judicial view of the evidence and law, or is it so materially defective that appellate restraint must give way to prevent grave miscarriage of justice?

Five Supreme Court judgments answer that question from different angles: Ghulam Sikandar and another v. Mamaraz Khan and others, PLD 1985 Supreme Court 11; Muhammad Tasaweer v. Hafiz Zulkarnain and 2 others, PLD 2009 Supreme Court 53; The State and others v. Abdul Khaliq and others, PLD 2011 Supreme Court 554; Model Customs Collectorate, Islamabad v. Aamir Mumtaz Qureshi, 2022 SCMR 1861; and Muhammad Riaz v. Khurram Shehzad and another, 2024 SCMR 51.

Read together, they establish a disciplined method. Counsel must first identify what kind of acquittal is under challenge. Counsel must then separate lawful reappraisal from mere substitution of another possible view, identify any precise record or legal error, and prove that the error materially affected the result.

The rule in one sentence

An acquittal on merits ordinarily strengthens the accused's original presumption of innocence, and an appellate court will not reverse it merely because another conclusion is possible; interference is reserved for a judgment shown through the record to be perverse, arbitrary, legally unlawful, or founded on grave and outcome-changing misreading, non-reading, or illegal use of evidence.

That sentence contains both the protection and its limit. Double presumption is powerful, but it is not a licence for an impossible or materially unlawful judgment to survive.

First classify the acquittal

The most important improvement to the original article is to begin with classification. The governing standard changes with the procedural character of the acquittal.

Acquittal after evidence and a merits determination

Where the accused is acquitted after a full trial and appraisal of evidence, the ordinary presumption of innocence is fortified by the judicial finding of not guilty. Ghulam Sikandar, Abdul Khaliq and Muhammad Riaz explain the strict restraint that follows.

Appellate acquittal after a trial conviction

Double presumption is not confined to an acquittal first recorded by the trial court. In Muhammad Tasaweer and Muhammad Riaz, the trial court had convicted the accused, but the High Court acquitted after considering the trial record. The Supreme Court treated the competent appellate acquittal as carrying the strengthened presumption and refused to interfere without the required exceptional defect.

This point matters in advocacy. An appellant cannot answer double presumption merely by saying that the trial court originally convicted. The High Court's later acquittal must itself be tested under the strict appellate standard.

Trial acquittal affirmed by the High Court

In Abdul Khaliq, eight accused had been acquitted by the trial court and that acquittal had been affirmed by the High Court. The Supreme Court described them as having acquired a triple presumption of innocence. The expression was used in that specific procedural setting. It reflects the additional difficulty of disturbing an acquittal that has survived two judicial levels; it should not be repeated without explaining whose acquittal was affirmed and by which courts.

Intermediary acquittal under Section 249-A or 265-K

Model Customs creates the essential exception. An acquittal at an intermediary stage under Section 249-A or Section 265-K Cr.P.C. does not carry the same sanctity as an acquittal based on a full-fledged trial after evidence. The special full-trial rule of double innocence does not automatically apply.

The first question in every appeal should therefore be written at the top of counsel's brief: was this a merits acquittal after evidence, an appellate merits acquittal, an affirmed trial acquittal, or a premature statutory acquittal?

What double presumption actually means

Ghulam Sikandar explains the two presumptions. First, every accused is presumed innocent until proved guilty. Second, after a competent court has tried the case and acquitted him, that judicial determination confirms and strengthens the original assumption of innocence.

Muhammad Riaz restates the doctrine in modern terms. The presumption is reinvigorated, fortified and strengthened by acquittal. Where two sensible and judicious conclusions can be drawn from the evidence, the conclusion supporting acquittal must be accepted.

The doctrine changes the standard of interference, not the legal power of the appellate court. Muhammad Riaz expressly states that the law places no fetters on appellate jurisdiction to reconsider or reappraise the evidence underlying a conviction or acquittal. The appellate court may examine the entire record. After examining it, however, the court cannot reverse merely because it personally prefers another reasonable view.

This distinction is the centre of the doctrine:

- Power to reappraise asks what the appellate court is legally permitted to examine.
- Appellate restraint asks what defect must be proved before the court may disturb an acquittal.
- The two-view rule prevents a preferred conclusion from being substituted for an acquitting conclusion that remains reasonably possible.

What double presumption does not protect

Ghulam Sikandar is often cited for double presumption but its exception is equally important. On a point having a conclusive effect on the result, the acquitted accused may lose the added protection where the court below disregarded material evidence, misread material evidence, or received evidence illegally.

The judgment then states the higher threshold for exceptional interference. The conclusion must be one no reasonable person could conceivably reach; the proof

against it must be overwhelming and lead to a conclusive and irresistible result; interference must be necessary to avoid grave miscarriage of justice; and the finding under attack must be wholly artificial, shocking or ridiculous.

Abdul Khaliq adds the modern vocabulary: perversity, gross violation of law, grave misreading or non-reading, glaring errors of law or fact, a perfunctory or wholly artificial judgment, and findings that are arbitrary, foolish, speculative or ridiculous. Those words are tests to be demonstrated, not decorations to be copied into grounds of appeal.

A ground stating that the judgment is perverse and based on misreading and non-reading is incomplete. It must identify the exact finding, the exact record, the exact error, and the exact effect on the final conclusion.

Ghulam Sikandar: the four-part foundation

PLD 1985 Supreme Court 11 remains the starting point because it collects the governing rules and applies them to the record.

First, the Supreme Court ordinarily will not interfere with an acquittal and will give due weight to the findings of the acquitting court.

Second, the strengthened presumption may be displaced when a conclusive point rests on disregard or misreading of material evidence or the illegal receipt of evidence.

Third, the ordinary rules of reappraisal remain relevant, but findings cannot be brushed aside on assumptions. Departure from restraint must be required by a higher principle of justice.

Fourth, a different conclusion on reappraisal is insufficient where both conclusions are reasonably possible. Interference becomes exceptional where the acquitting conclusion is impossible for a reasonable person, overwhelming proof produces a conclusive and irresistible result, and reversal is necessary to prevent grave miscarriage of justice.

The application is as useful as the formula. The prosecution could not show that the acquittals of Khan Beg and Maqbul Ilahi ignored or misread decisive material. Medical opinion allowed the reasonable possibility that the injuries were inflicted by one weapon and one assailant. Selecting a second accused from two candidates without independent corroboration would have rested on conjecture. The only material eyewitness was injured, interested and inimical; her injuries confirmed her presence but did not by themselves independently prove the participation of every accused.

The Supreme Court therefore maintained those acquittals. Mamaraz Khan's conviction remained in place and the Court enhanced the fine and compensation, but it did not convert the evidentiary possibility against the acquitted co-accused into proof beyond reasonable doubt.

The practical lesson is direct: a reasonable alternative supported by medical opinion, sequence of events, lack of corroboration or witness credibility is enough to preserve

acquittal even where another prosecutorial theory also appears possible.

Muhammad Tasaweer: a second opinion is not a ground of reversal

PLD 2009 Supreme Court 53 concerned an appellate acquittal. The trial court had convicted two respondents under Section 302(b) PPC and sentenced them to imprisonment for life. The Lahore High Court set aside their convictions and dismissed the complainant's revision for enhancement. The complainant then sought leave from the Supreme Court.

The petitioner relied on circumstances including Waj Takar evidence, recovery of the body from a house, recovery of a 12-bore gun, motive and alleged abscondence. The Supreme Court found that counsel could not identify evidence showing the High Court's conclusion to be against the record. The High Court had supplied cogent reasons for extending benefit of doubt.

The Court repeated that double presumption attaches after acquittal by a competent court and that interference requires a judgment that is arbitrary, capricious, fanciful, against the record, perverse, shocking, alarming, artificial, jurisdictionally erroneous, or affected by misreading or non-reading. A judgment of acquittal is not disturbed merely because a second opinion may reasonably be possible.

Two evidentiary rules from the judgment deserve separate attention.

- Medical evidence may support the seat and nature of an injury and the kind of weapon, but it does not connect a particular accused with the crime.
- Abscondence is not conclusive proof of guilt. It is only a suspicious circumstance whose value depends on the whole case, and suspicion cannot replace proof.

The respondents had appeared before the investigating officer voluntarily. The Supreme Court dismissed the petition and maintained the High Court acquittal.

For defence counsel, Muhammad Tasaweer is a strong answer where the appellant merely rearranges the same circumstances and calls the rearrangement misreading. For the appellant, it is a warning that recovery, motive, medical material and conduct must still be connected through lawful and reliable proof to the identity and participation of the accused.

Abdul Khaliq: the narrowest scope and the materiality test

PLD 2011 Supreme Court 554 gives the clearest consolidated description of appellate restraint. It says the scope of interference is most narrow and limited. The prosecution bears a heavy burden to displace the innocence earned through acquittal. A different possible conclusion on reappraisal is not enough; factual findings are not upset unless they are palpably perverse or suffer from serious and material factual infirmities.

The judgment also supplies two important advocacy lessons.

First, the eight accused acquitted at trial and again before the High Court had acquired what the Supreme Court called a triple presumption of innocence. Their names were absent from the FIR and most statements, no specific role was assigned, and presence among a large gathering could not prove shared criminal intention. The Supreme Court held that the reinforced protection could not be displaced.

Second, not every demonstrated legal error is outcome-changing. The Supreme Court agreed that some previous statements used against prosecution witnesses should have been formally proved after the witnesses denied them. It nevertheless held that even after excluding those disputed portions, the High Court's factual conclusion could independently survive.

That is a practical materiality test. Counsel should ask:

- If the disputed material is removed, does the acquittal still stand on independent reasons?
- If the ignored evidence is inserted, does a reasonable doubt still survive?
- If the legal test is corrected, is the same conclusion still reasonably possible?

Unless the answer shows an effect on the result, an error may remain insufficient for reversal. The Supreme Court ultimately dismissed the acquittal appeals.

Model Customs: the decisive exception for Sections 249-A and 265-K

2022 SCMR 1861 involved approximately 400,000 Saudi Riyals recovered from the respondent at Islamabad airport. The Special Court acquitted him under Section 265-K before the prosecution evidence was recorded, and the Islamabad High Court affirmed the order. The Supreme Court held that the available material required evidence to be recorded and that both courts had acted unlawfully in terminating the case prematurely.

The statutory distinction must be stated exactly.

- Section 249-A empowers a Magistrate to acquit after hearing the prosecutor and the accused and recording reasons if the charge is groundless or there is no probability

of conviction.

- Section 265-K empowers the trial court to acquit after hearing both sides and recording reasons where there is no probability of conviction. Its text does not separately provide groundlessness of the charge as an additional limb.

The power may be considered at any stage, including before evidence, during evidence, or after the prosecution evidence has been recorded. Timing alone is not the legal test. The court must examine the prosecution case and the material available or proposed. If even a slight or remote probability of conviction exists on identifiable evidence, the normal course is to record the evidence and decide the case on merits.

The Supreme Court held that an intermediary acquittal under Section 249-A or 265-K does not have the same sanctity as an acquittal recorded after a full-fledged trial. The principles governing concurrent merits acquittals and the special presumption of double innocence do not automatically apply.

The remedy is equally important. The Supreme Court did not convict the respondent on the preliminary material. It set aside the two acquittal orders and remanded the matter for the trial court to record evidence and decide the case without being influenced by the appellate observations. The prosecution material remained subject to cross-examination.

This prevents two opposite errors: a court should not terminate a triable case in a slipshod manner, but an appellate court should not convert untested preliminary allegations into guilt.

Muhammad Riaz: power to reappraise, duty to restrain

2024 SCMR 51 concerned another appellate acquittal after a trial conviction and death sentence. The High Court found the prosecution case doubtful and acquitted Khurram Shehzad. The complainant sought leave; the State did not challenge the acquittal.

The weaknesses sustained by the Supreme Court included a night occurrence without a proved source of light, delayed implication after two and a half months, no identification parade, earlier implication of another suspect, defects in the site plan, lack of supporting information from people at the place of occurrence, and a material conflict between the ocular account of two shots and medical evidence showing one firearm injury.

The Supreme Court held that even one circumstance creating reasonable doubt is sufficient for the accused to receive its benefit. It then reconciled broad appellate power with strict appellate restraint: the appellate court may reappraise, but where two sensible and judicious conclusions remain possible, the one supporting acquittal must be adopted.

The judgment also explains the expression that the accused is the favourite child of law. It does not authorize indulgence, favour or preferential treatment. It is a safety mechanism for a fair trial and even-handed defence, designed to prevent an innocent person from being condemned because police investigation or prosecution was defective.

The petition was dismissed because no illegality or perversity was shown in the High Court judgment.

The five decisions compared

Each judgment performs a different function in argument.

- Ghulam Sikandar supplies the foundational four-part test, the two-view rule, and the conclusive-effect exception.
- Muhammad Tasaweer applies double presumption to an appellate acquittal and explains the limited value of medical evidence and abscondence.
- Abdul Khaliq gives the strongest modern language of restraint, uses triple presumption for a trial acquittal affirmed by the High Court, and illustrates why an immaterial error is insufficient.
- Model Customs separates full-trial acquittals from intermediary orders under Sections 249-A and 265-K and shows that the proper relief may be remand for evidence rather than conviction.
- Muhammad Riaz confirms that appellate power to reappraise is broad while the standard for reversing acquittal remains strict, and it explains double innocence as a fair-trial safeguard rather than a favour.

These propositions should be used together. Citing only the protective phrases can conceal a perverse judgment. Citing only the exceptions can turn the appeal into a prohibited substitution of another reasonable view.

How an appellant should build the appeal

A weak appeal attacks the result. A strong appeal audits the reasoning that produced the result.

Accept the strict standard at the beginning

Do not argue as though double presumption does not exist. State the rule fairly, then demonstrate why the impugned judgment falls within its recognised exception. This increases credibility and keeps the court focused on the real gateway to interference.

Prepare a finding-record-error-impact schedule

For every proposed ground, identify six matters:

- Finding: the exact paragraph and conclusion in the acquittal judgment.

- Record: the precise witness, exhibit, admission, document or legal provision bearing on it.
- Error: misreading, non-reading, illegal reliance, wrong legal test, jurisdictional excess, or an inference with no record foundation.
- Materiality: how that error affected identity, participation, an essential ingredient, credibility, admissibility, reasonable doubt or the final result.
- Alternative: why the acquitting view is not merely debatable but no longer reasonably possible after correction.
- Relief: the order legally justified by the procedural stage and state of the evidence.

Without the last three steps, counsel has usually shown disagreement, not perversity.

Lead with the few errors that control the result

The strongest grounds usually concern identity, an essential ingredient, complete omission of decisive evidence, reliance on inadmissible material, application of the wrong burden, or a finding directly contradicted by the record. A catalogue of harmless discrepancies can weaken the appeal by obscuring the errors that matter.

Confront the two-view rule directly

The appellant should not leave the court to ask whether the acquitting view remains possible. Explain why the identified error destroys the factual foundation of that view. If reasonable doubt survives through an independent route, reversal remains difficult.

Frame the ground in record-based language

The appellant does not invite substitution of another possible view. The impugned finding rests on an identified non-reading of material evidence and a finding contradicted by the record. The omitted material bears directly on an essential issue, and once it is considered the stated basis of acquittal cannot reasonably survive. The defect is therefore outcome-changing and falls within the exception recognised in PLD 1985 Supreme Court 11, PLD 2011 Supreme Court 554 and 2024 SCMR 51.

That submission still requires exact references. The formula cannot replace the record.

How to answer double presumption for the appellant

The correct answer is not that double presumption is irrelevant. It is that the doctrine protects a reasonably possible acquittal, not a judgment whose decisive foundation is materially disconnected from the evidence or law.

The appellant should establish a chain:

- The impugned court made a specific record or legal error.

- The error concerns a matter with conclusive or material effect.
- Correcting the error removes the rational basis of the acquittal.
- The judgment then crosses from another possible view into perversity or grave miscarriage of justice.

If the appeal stops after the first link, the accused's response that another reasonable view remains possible will ordinarily prevail.

How counsel should defend an acquittal

Defence counsel does not need to prove that every sentence in the acquittal judgment is perfect. The objective is to show that its ultimate view remains reasonably possible on the complete record and that no alleged error materially destroys the independent doubts supporting it.

The defence should proceed in the following order:

- Identify the procedural kind of acquittal and the corresponding standard.
- Show that the court considered the material evidence bearing on the decisive issues.
- Link each doubt identified by the court to the record rather than to speculation.
- Demonstrate that the appellant offers a competing assessment, not proof that the acquitting assessment is impossible.
- Treat every alleged error separately and show whether it is factually incorrect, legally irrelevant, or harmless to the result.
- Identify independent reasons that sustain reasonable doubt even if one reason is removed.
- Resist reliance on medical evidence, recovery, conduct or suspicion as a substitute for lawful proof of identity and participation.

A focused defence submission may be framed as follows:

The appellant has identified no grave, outcome-changing misreading or non-reading. At most the proposed grounds invite a second appraisal of credibility and circumstances. The acquitting court's doubts arise from the record, remain independently sufficient, and constitute a reasonably possible view. The strengthened presumption of innocence therefore remains intact.

How to argue a Section 249-A or 265-K acquittal

The advocacy changes when the order is intermediary.

For the accused defending a Section 249-A order, identify which statutory limb applies: the charge is groundless, or there is no probability of conviction. For a Section 265-K order, demonstrate no probability of conviction. Do not rely on a bare slogan of double presumption.

The defence should take the prosecution material at its lawful highest and show why an essential ingredient is still absent, why the proposed material is inadmissible or incapable of curing the defect, or why the charge is legally groundless under Section 249-A.

For the prosecution or complainant, identify the admissible evidence that remained to be recorded and the element it could prove. A general request to complete trial is weak if no material capable of supporting conviction is identified. Conversely, where such material exists, Model Customs supports recording and testing it rather than deciding disputed facts prematurely.

The larger-bench rule in 2022 SCMR 1861 is that these intermediary orders do not automatically receive full-trial double-presumption protection. A separate article on this website examines a later smaller-bench formulation and the resulting precedent issue. Until that conflict is resolved by an appropriate larger bench, counsel should place the bench strength and the exact procedural stage before the court rather than citing only the newest sentence in isolation.

Evidence lessons that travel beyond these cases

The five judgments also contain practical rules for handling recurring prosecution arguments.

Medical evidence

Medical evidence may corroborate the seat and nature of injuries and the kind of weapon, but it ordinarily does not identify the culprit. Where ocular and medical evidence materially conflict, as in Muhammad Riaz, the contradiction may strengthen reasonable doubt. Counsel must state whether medical material corroborates only the occurrence or also undermines the alleged manner of occurrence.

Abscondence and conduct

Abscondence may be a supporting circumstance, but Muhammad Tasaweer warns that it is not conclusive and cannot convert suspicion into proof. Its value depends on the facts, the explanation, the timing and the rest of the evidence.

Identification

Muhammad Riaz shows the combined significance of a night occurrence, no proved source of light, delayed nomination, absence of identifying features in the first report, and failure to hold an identification parade. These defects must be examined cumulatively, not separated into harmless fragments.

Injured, interested or inimical witnesses

Ghulam Sikandar demonstrates that an injury may strongly support a witness's presence but does not automatically corroborate the participation of every accused named by an interested or inimical witness. Where false implication of one accused is established or reasonably suspected, counsel should examine the need for independent and reliable corroboration against each remaining accused.

Recovery and circumstantial material

Recovery, motive, location of the body, medical evidence and conduct must form a lawful and reliable chain connecting the particular accused. Muhammad Tasaweer shows that listing circumstances is not the same as proving that the acquitting court's contrary assessment was perverse.

Harmless and material errors

Abdul Khaliq supplies the best practical check. Remove the disputed material and ask whether the acquittal still stands. Add the allegedly ignored material and ask whether reasonable doubt remains. The appeal succeeds only when the correction matters to the result.

Relief must match the procedural posture

Counsel should not assume that proving error produces only one possible order.

Where a full trial record exists, the appellate court may have a range of powers depending on the forum, statutory route and procedural history. Where an intermediary acquittal prematurely prevented evidence, Model Customs shows the principled remedy: set aside the order, remand for evidence, protect cross-examination, and direct the trial court to decide without being bound by preliminary appellate observations.

The relief section of the appeal should therefore answer:

- Was all material evidence recorded and tested?
- Which court first acquitted and in what jurisdiction?
- Does a lawful finding remain after the identified error is corrected?
- Would restoration, remand, retrial or another statutory order best preserve fair process for both sides?

An appellate court should correct the unlawful acquittal without itself short-circuiting the trial guarantees that were missing below.

A six-question courtroom checklist

Before filing or arguing, counsel should be able to answer six questions in one sentence each.

- What kind of acquittal is under challenge?
- What exact finding is alleged to be wrong?
- What exact part of the record or law disproves that finding?
- Is the defect misreading, non-reading, illegal reliance, jurisdictional error or unsupported inference?
- Why does the corrected position make the acquitting view no longer reasonably possible?
- What relief follows lawfully from the procedural stage?

If the appellant cannot answer the fifth question, the appeal is probably only offering a second view. If the defence cannot answer the third and fourth, repeating double presumption will not cure a materially defective judgment.

Conclusion

The five judgments do not create a blanket rule for either side. They create a sequence of analysis.

Classify the acquittal. Apply the correct presumption. Respect the power of reappraisal but enforce the two-view rule. Identify the exact record or legal error. Prove its material effect. Then request relief suited to the stage of the case.

For the appellant, the winning unit of argument is not the prosecution story; it is finding, record, error, materiality and relief.

For the acquitted accused, the strongest protection is not the phrase double presumption standing alone; it is a reasoned judgment that remains a sensible and legally permissible view of the complete record.

The resulting rule is demanding but coherent: appellate restraint protects a reasonably possible acquittal, while grave and outcome-changing perversity remains correctable in order to prevent miscarriage of justice.

This commentary is independent legal analysis for research and general information. Before reliance in proceedings, counsel should verify the reported judgments, complete record, current statutory text, forum, limitation and procedural route.