

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Acquittal Appeal No. S-95 of 2023
Muhammad Ramzan Kolachi Vs The State and another

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
-----------------	-------------------------------

- 1. For orders on Office Objection.
- 2. For Orders on MA No. 5560/2023 (Leave to appeal)
- 3. For hearing of main case.

Mr. Hamayoun Shaikh, Advocate for appellant.
Syed Naved Ahmed Shah Deputy Attorney General.
Mr. Mansoor Ahmed Shaikh, Deputy Prosecutor General,Sindh for State.
Respondent No.02 Nisar Ahmed Kalhoro in person

Date of Hearing: 14-04-2025 & 19-06-2025
Date of Decision: 19-06-2025
Date of Reason: 23-06-2025

JUDGMENT

Ali Haider “Ada”-I Through the instant Criminal Acquittal Appeal, the appellant has called into question the legality and propriety of the judgment dated 09.08.2023 passed by the learned Sessions Judge, Naushahro Feroze in Sessions Case No. 66 of 2020, titled The State vs. Nisar Ahmed Kalhoro, (Respondent No.2), whereby the learned Trial Court acquitted Respondent No.02 in Crime No. 05 of 2020, registered at Police Station Bhiria City, for offence punishable under Sections 15 and 17 of the Gas (Theft Control and Recovery) Act, 2016. The said verdict has been assailed before this Court on the ground of misreading of evidence and misapplication of law.

2. Briefly stated, the facts of the case are that the complainant, Fayaz Ahmed, serving as Deputy Manager in Sui Southern Gas Company, along with his subordinate staff Driver Tariq Pathan, was on routine inspection duty on 14.01.2020. Upon reaching the Bhiria office, the complainant, accompanied by other staff members namely Muhammad Ramzan and Ghulam Qadir, proceeded on patrolling duty. During the course of patrolling, the team reached the hotel of accused Nisar Ahmed (Respondent No.2), where they discovered an illegal direct gas connection. A stove in used at the hotel was found connected directly to the main gas pipeline by means of a hole created and secured with a clamp. After completing necessary formalities on the spot, the

matter was reported and FIR No.05 of 2020 was lodged on 15.01.2020 at Police Station Bhiria City under Sections 15 and 17 of the Gas (Theft Control and Recovery) Act, 2016.

3. After completion of the investigation, the Investigating Officer submitted the challan before the competent Court of law. In the said challan, a gas pipe, a clamp etc were shown as case property recovered from the place of occurrence. The accused, Respondent No.2, was accordingly sent up for trial in connection with the alleged offence.

4. After the supply of requisite documents to the accused, on 10.02.2020 the learned Trial Court framed the charge, to which the accused (Respondent No.2) pleaded not guilty and claimed trial. Consequently, the prosecution was directed to lead evidence and in support of its case, the following witnesses were examined:

PW-1 Muhammad Ramzan, who acted as a mashir of the memo of place of incident and also as a mashir in the recovery memo. He exhibited the memo of place of incident.

PW-2 Ghulam Qadir, a member of the raiding party, also acted as co-mashir of the recovery proceedings and exhibited the relevant recovery memo.

PW-3 Muhammad Qasim, a police official and the author of the FIR. He exhibited the copy of the FIR along with a letter from the company addressed to the SSP Naushahro Feroze, requesting registration of the FIR.

PW-4 Rahib Khan, Police Constable, acted as mashir of arrest and exhibited the memo of arrest.

PW-5 Fayaz Ahmed, the complainant and Deputy Manager of SSGC, deposed in support of the prosecution's case and exhibited documentary evidence including a damage report indicating loss caused by illegal gas usage, along with photographs.

PW-6 Ghulam Asghar, the Investigating Officer, who exhibited relevant entries of the roznamcha.

5. Thereafter, the prosecution side was closed through a statement submitted by the learned District Public Prosecutor on 09.08.2023.

6. Thenafter, the learned Trial Court recorded the statement of the accused under Section 342, Cr.P.C, wherein he denied the allegations and asserted his

innocence. Subsequently, arguments were heard from both sides through their respective counsel; and the learned Trial Court proceeded to deliver the impugned judgment, whereby the accused/Respondent No.2 was acquitted of the charge. The said judgment is now under challenge before this Court through the present criminal acquittal appeal.

7. Learned counsel for the appellant contended that the impugned judgment is based on surmises and conjectures, as the learned Trial Court failed to properly consider and appreciate the material evidence brought on record by the prosecution. It was submitted that the complainant side successfully established the case through convincing oral and documentary evidence, which was sufficient to warrant conviction of the accused. However, the learned Trial Court did not assign any cogent reason for discarding such evidence. It was further pointed out that in the statement recorded under Section 342 Cr.P.C., the accused himself claimed the recovered property, which directly connected him with the offence, yet this vital admission was not considered by the learned Trial Court. Therefore, it was prayed that the impugned judgment is legally unsustainable and is liable to be set aside.

8. On the other hand, a perusal of the record reveals that, upon issuance of notice, Respondent No.2 remained absent from the proceedings. Though he appeared once in response to notice, he subsequently failed to attend, leading to the issuance of bailable warrants on 17.10.2024. On the next date of hearing i.e., 14.11.2024, Respondent No.2 engaged counsel who concluded his argument on 14-04-2025, thereafter, the Respondent No.2 again remained absent on multiple occasions despite notices being issued through the concerned police station. On the final date of hearing i.e., 19.06.2025, Respondent No.2 appeared in person and sought to further argue his case himself. He was granted an opportunity of hearing and submitted that the FIR was registered against him due to ulterior motives and that he had no involvement in the commission of the alleged offence. He claimed that the entire case is based on false allegations, so far learned counsel for the Respondent No.2, who concluded the argument on 14-04-2025, submitted that the judgment of learned trial Court was well-reasoned and just. The trial court rightly passed the judgment after a thorough examination of the facts and evidence presented. In this context, the

complainant failed to establish the guilt of the accused/respondent No. 2 beyond a reasonable doubt, and thus, the trial court's decision stands affirmed.

9. Conversely, the learned Deputy Prosecutor General did not support the impugned judgment and submitted that it suffers from serious legal infirmities. It was argued that the judgment reflects a clear case of misreading and non-reading of material evidence. He pointed out that, in a error, the learned Trial Court referred to involvement of the accused under the Manpuri Gutka Act, 2019, which has no connection whatsoever with the instant matter. Additionally, the learned Trial Court passed acquittal for one Abdul Hafeez, who was not even a party to the present proceedings, instead of Respondent Nisar Ahmed. Furthermore, the learned Trial Court failed to evaluate the evidence in its entirety and omitted discussion on crucial aspects. The learned Law Officer submitted that the matter may be remanded for a fresh decision after proper appreciation of the record and affording a fair opportunity of hearing to both parties. The learned DAG adopted the same arguments advanced by the learned DPG.

10. Arguments heard and the record has been thoroughly examined under careful judicial scrutiny.

11. No doubt, from the very face of the record, the contention advanced by learned Deputy Prosecutor General is well-founded and merits serious consideration. The impugned judgment erroneously reflects that it was passed in a case pertaining to the Manpuri Gutka offences and the acquittal was recorded in favour of one Abdul Hafeez, rather than the accused/Respondent No.2, Nisar Ahmed. Such misreading and mis-identification is evident even upon a bird's eye view of the judgment and persists throughout the relevant portions thereof.

12. Furthermore, this discrepancy is compounded by the evident non-reading and non-consideration of vital evidence placed before the trial Court. The learned trial Court has failed to adequately appreciate or discuss the material evidence adduced by the prosecution, therefore, it is manifest that the impugned judgment is fraught with both material misreading of facts and non-reading of crucial evidence, which has led to an erroneous conclusion of

acquittal. This Court cannot allow such a flawed decision to stand uncorrected, particularly when the facts on record suggest otherwise.

13. Furthermore, the learned trial Court observed that one Tariq, who was an eyewitness, was given up by the prosecution. It was noted that the role of this particular witness was limited to that of a driver who merely drove the vehicle to the place of occurrence. On the other hand, the prosecution examined other eyewitnesses who also acted as mashirs in various memos of place of incident and recovery.

14. While further analyzing the impugned judgment, it is noted that the learned trial Court, in its reasoning, placed reliance on the testimony of witness Ghulam Qadir regarding the mashirnama, who specifically deposed that he was unaware of the exact location where the accused was arrested, so on such aspect the record reveals that the mashirs of arrest were, in fact, Rahib Khan, who was examined as PW-4 and another mashir named Shahnawaz instead of Ghulam Qadir who has no relevancy with arrest of accused.

15. It is the case of the prosecution that upon reaching the place of incident, the raiding party observed a clamp fixed over the main gas pipeline, which was directly utilized by the accused in his hotel, where the stove was found burning on the said connection. Despite this material, the learned trial Court, in its reasoning, concluded that no person was seen committing the alleged offence. Such a finding overlooks the value that an offence can be established not only by catching a person red-handed but also through the presence of tangible evidence at the scene.

16. At this stage, it is apparent that the evidence has not been properly and thoroughly examined by the learned trial Court. The judgment under challenge suffers from significant procedural and substantive infirmities, including misreading and non-reading of vital evidence. This view stands fortified by the judgments laid down in *Mst. Gulshan Bibi vs. Muhammad Sadiq and others* (PLD 2016 SC 769), *Mst. Naseema Bibi vs. Murad and others* (2021 YLR 1243-FSC), and *Aijaz Ahmed Bhatti vs. Muhammad Uris Meerani and others* (2024 YLR 1233 Sindh). In order to limit the decision to the present record would risk causing prejudice to either party, which is undesirable in a criminal trial where

the right to a fair hearing and due process is paramount. Accordingly, this matter is remanded to the learned trial Court with the following directions:

- (a). The trial court shall re-examine the entire evidence in its true spirit, ensuring that no material document or testimony is overlooked or misinterpreted.
- (b). Parties shall be given ample opportunity to present their arguments, ensuring adherence to the principles of natural justice.
- (c). The trial Court shall thereafter pass a reasoned and well-considered judgment, in accordance with law.

17. The appeal is accordingly allowed in part and the impugned judgment of acquittal is set aside only to the extent of remanding the matter for fresh decision. The learned trial Court is directed to conclude the proceedings within a period of two-months. Respondent No. 02, who appeared before this Court today, is directed to appear before the learned trial Court on 12.07.2025 and shall continue to remain on the same surety, if not yet released. However, in the event that has already been released, he shall furnish fresh surety before the learned trial Court. These are the reasons for the short order passed on 19.06.2025.

J U D G E