

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Acquittal Appeal No. S-99 of 2023

Riaz Hussain Vs The State and another

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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For hearing of main case.

Mr. Hamayoun Shaikh, Advocate for appellant.
 Mr. Ali Ahmed Khan, Advocate for Respondent No.02.
 Syed Naved Ahmed Shah Deputy Attorney General.
 Mr. Mansoor Ahmed Shaikh, Deputy Prosecutor General, Sindh for State.

Date of Hearing: 14-04-2025, 19-05-2025 & 19-06-2025

Date of Decision: 19-06-2025.

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 05.08.2023, passed by the learned Sessions Judge, Sukkur, in Sessions Case No. 49 of 2022, titled The State vs. Qambar Ali Soomro, (Respondent No.2), whereby the learned Trial Court acquitted Respondent No.02 in Crime No. 121 of 2021, registered at Police Station Newpind Sukkur, for offence punishable under Sections 15, 17 and 24 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, Riaz Hussain Solangi Deputy Manager Sui Southern Gas Company accompanied with his subordinate staff left office to patrolling of different area in order to check the illegal connections, when they reached at Shikarpur railway crossing at about 01:00 pm, they found direct gas connection for one Pakwan and hotel by name of Bukhari Pakwan center, on enquiry the owner disclosed his name as Qamber Ali and did not reply satisfactory about direct connection of gas as he slipped away, the complainant party repaired the said direct connection and after getting necessary permissions, lodged the FIR on 25-11-2021 at Police Station Newpind Sukkur for offence punishable under section Sections 15, 17 and 24 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 two cauldrons, one stove/ burner with stand and 15 feet gas pipe 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 28-01-2022 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 Riaz Hussain, the complainant, who produced the letter for registration of FIR, copy of FIR,

PW-2 Irshad Ali, Investigation officer, who exhibited the roznamcha relevant entries, memo of site inspection and memo of recovery of case property

PW-3 Muzafar Hussain, the mashir was examined

PW-4 Abdul Jabbar the witness of incident , member of raiding party was examined

5. Thereafter, the prosecution side was closed through a statement submitted dated 12-06-2023.

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 from 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, therefore, it was prayed that the impugned judgment is legally unsustainable and is liable to be set aside.

8. On the other hand, the learned counsel for the respondent has emphasized the primary grounds for contesting the appeal. Firstly, it is contended that the judgment in question was passed on 05-08-2023, whereas the acquittal appeal was filed by the complainant on 18-09-2023, which is beyond the prescribed period of 30 days. No explanation or justification for the delay has been provided. Moreover, the complainant has failed to file an application for the condonation of delay, further strengthening the argument that the appeal is not maintainable. On merits, argued that the prosecution has failed to establish a connection between the accused and the Pakewan Center. There is no credible evidence regarding the ownership of the Pakewan Center by the accused. Furthermore, several contradictions have surfaced in the prosecution's case, which cast serious doubt on its veracity. In light of these factors, asserted that Respondent has a strong case for acquittal, as the judgment delivered is well-reasoned. So, it is argued that the appeal be dismissed, both on the grounds of maintainability and on merits.

9. Conversely, the learned Deputy Prosecutor General supported the impugned judgment and further submitted that the Gas (Theft Control and Recovery) Act, 2016, is a special law, which specifically provides for a limitation period. Therefore, the appeal is hopelessly time-barred. The complainant, who is also the company, is well-versed in the law but has nonetheless failed to establish the case within the prescribed time limit.

10. The learned Deputy Attorney General contended that the limitation issue is a mixed question of law and fact, which can be considered and, if justified, even condoned. On merits, he argued that the recovery was made from the possession of Respondent No. 012. At this stage, such evidence cannot be discarded merely on the grounds of limitation, as the prosecution has otherwise successfully established the case.

11. Heard arguments and the perused the material available on record.

12. First and foremost, before addressing the question of limitation, it is essential to peruse the relevant law. In this case, under the **Gas (Theft Control and Recovery) Act, 2016**, the pertinent provision is **Section 13(1)**. For ease of reference, the same is reproduced as follows:

13. Appeal. — (1) Any person aggrieved by any judgment, decree, sentence or final order passed by a Gas Utility Court may, within thirty days of such judgment, decree, sentence or final order, prefer an appeal to the High Court.

13. As far as the **Code of Criminal Procedure** is concerned, the relevant provision is **Section 417**. For clarity, the same is also reproduced below for assessment:

[417. Appeal in case of acquittal. (1) Subject to the provision of sub-section (4), the Provincial Government may, in any case, 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.

(2) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf grants special leave to appeal from the order of acquittal the complainant may present such an appeal to the High Court.

[(2-A) A person aggrieved by the order of acquittal passed by any Court other than a High Court, may, within thirty days, file an appeal against such order.]

(3) No application under sub-section (2) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order.

(4) If, in any case, the application under sub-section (2) for the grant of special leave to appeal from an order of acquittal is refused, on appeal from that order of acquittal shall lie under sub-section (1).]

[(5) An appeal against an order of conviction or acquittal under Sections 354-A, 376, 376-A, 377 or 377-B of the Pakistan Penal Code, 1860 (Act XLV of 1860) shall be decided within six months.]

14. Upon a careful perusal of the relevant laws, it is crystal clear that the law prescribes a specific limitation period for filing the appeal, which is 30 days. This limitation period is defined either under Section 13(1) of the Gas (Theft Control and Recovery) Act, 2016, or by virtue of Section 417 of the Cr.P.C. Both provisions set a clear timeframe within which the appeal must be filed.

15. The appellant has filed this appeal under Section 13 of the Gas (Theft Control and Recovery) Act, 2016, in conjunction with Section 417 of the Criminal Procedure Code. The first issue raised by the learned defense counsel

and the learned Deputy Prosecutor General pertains to the timeliness of the appeal, with the argument that the appeal is time-barred. Upon thorough examination of the record, it is apparent that the judgment acquitting Respondent No. 02 was delivered on 05-08-2023. The complainant, as indicated by the documents annexed to the appeal, approached the trial Court on 07-08-2023. The stamp for the judgment was provided on 07-09-2023 and on the same day, the complainant received a copy of the judgment. Subsequently, the complainant filed the present appeal before this Court on 18-09-2023, which falls beyond the prescribed period. The statutory time limit for filing the appeal, as per Section 13(1) of the Gas (Theft Control and Recovery) Act, 2016, and Section 417 of the Cr.P.C, is 30 days. Therefore, the last date for filing the appeal was 04-09-2023. However, the appeal was filed on 18-09-2023, resulting in a delay of 13 days. It is pertinent to note that the complainant neither provided any explanation or justification for the delay in filing the appeal, nor has an application for condonation of delay been filed, as required under the relevant provisions of law. As a result, the issue of limitation becomes crucial in determining whether the appeal is maintainable or whether the delay in filing the appeal can be excused.

16. The question that arises for consideration is when the period of limitation should be reckoned. It is well-established under law that the limitation period is to be counted from the date on which the judgment is delivered. In the present case, the judgment was delivered on 05-08-2023, as reflected in the record. The appellant, having been aggrieved by the judgment, applied for a certified copy of the judgment on 07-08-2023. However, remarkably, the required stamps and costs were paid on 07-09-2023, which is a full month after the application for the certified copy. This delay in the payment of stamps and costs raises serious concerns. While the appellant may have taken the initial step of applying for the certified copy in a timely manner, the failure to deposit the required costs or provide the necessary stamps within a reasonable time suggests a lack of diligence. Such a delay can only be construed as deliberate indolence, rather than a vigilant effort to pursue the appeal within the prescribed time limit.

17. Further compounding this issue is the fact that the appeal memo itself contains no justification for this significant delay. No explanation has been

offered by the appellant for why the required fees and stamps were not deposited promptly, despite the fact that the appellant had clearly taken steps to pursue the matter immediately after the judgment was delivered. In the absence of any explanation for the delay, it is evident that the appellant has not demonstrated the necessary diligence expected under the law. The appellant cannot be permitted to claim the right to appeal at their own convenience or on their own terms. The law mandates adherence to procedural timelines and any lapse in meeting these deadlines without reasonable justification cannot create an entitlement for the appellant to proceed with the appeal at their leisure.

18. Even though, Section 12 of the Limitation Act provides a mechanism for the exclusion of time in legal proceedings and governs the computation of time, the appellant cannot derive any benefit from its provisions in this case. For ready reference, **Section 12 of the Limitation Act** is reproduced as follows:

12. Exclusion of time in legal proceedings.– (1) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

[(5) For the purposes of sub-sections (2), (3) and (4), the time requisite for obtaining a copy of the decree, sentence, order, judgment or award shall be deemed to be the time intervening between the day on which an application for the copy is made and the day actually intimated to the applicant to be the day on which the copy will be ready for delivery.]

19. In the case of *Pak Leather Crafts Limited & Others v. Al-Baraka Bank Pakistan Limited* (2022 SCMR 1868), the Honorable Supreme Court of Pakistan delivered an authoritative judgment, holding that mere filing of an application without the deposition of the process fee or requisite costs does not stop the period of limitation. The Court held as follows:

9. A bare perusal of the pre-amended section 12 of the Act reveals that it details the manner in which period of limitation prescribed for any suit, appeal or application, is to be reckoned. It provides for the exclusion of certain time period for obtaining the certified copies by prescribing it as "time requisite" for obtaining a copy of the order appealed. However, the provision of section 12 of the Limitation Act providing exclusion of "time requisite" are applicable only after the application for certified copies is submitted, and the consistent view of this Court has been that the "time requisite" includes only that period of time which is taken up in drawing up the judgment, decree or order by the official of the Court in preparing and issuing the same, and does not include the period of time consumed by the litigant. The reason being that these provisions were always interpreted keeping in view the rules in the field for obtaining certified copies of decree or order such as Rule 128 of the Sindh Chief Court Rules as well as Rule 324 of the Sindh Civil Court Rules which provided that "the preparation of copies not commenced until prescribed fee deposited". A similar provision is found in "Rules and Orders of the Lahore High Court; Volume V, Chapter 5, Part B(6)(v) which provides that every application for attested copy will be entertained subject to deposit of cost in advance. It appears that these rules were adopted by rest of the High Courts except Sindh, which as stated, had its own rules. Likewise, Rule 133 of the Sindh Chief Court Rules as well as Rule 329 of the Sindh Civil Court Rules provide for the manner in which copies were to be certified and were to contain the endorsement of following particulars:

- "(1) the date of application for copy;
- (2) the date of estimate of fee;
- (3) the date of deposit of estimate fee and the day of supply of stamps;
- (4) the date of certification by Chief Ministerial Officer; and
- (5) the date of delivery of the copy."

The case-law developed on the pre-amendment section 12 throughout would reflect that the period prescribed for filing of appeal or the other prescribed proceedings would not stop, merely upon filing of application for the certified copies unless the fee/cost for the certified copies was paid. However, the time consumed by the office of the Court, for assessment of cost/fee would be excluded while computing the period of limitation. However, filing of application was treated as complete for the purposes of excluding time when it was entertained after payment of cost/fee. The case-law on pre-amended section 12 revolved upon the interpretation of the keyword in that section i.e. "time requisite" and the consistent view of this Court was that the time consumed by the office of the court in preparing copies and/or at times failure on their part to intimate that the copies were made ready or that the fee was estimated, was held to be "time requisite", and was accordingly excluded while computing the period of limitation but not the time consumed by a litigant on account of his negligence or default.

20. Further, In the case of *Rifat Bibi v. Abid Shah & Another* (2022 PCrLJ 52), it was held that the delay for each day must be satisfactorily explained. Once the prescribed period expires, a vested right is created in favor of the other party, which cannot be easily disregarded, as the law always favors the vigilant, not the indolent. Furthermore, the Honorable Supreme Court, in the case of *Lt. Col. Nasir Malik v. Additional District Judge, Lahore & Others*

(2016 SCMR 1821), observed that each day of delay in the limitation period must be explained.

21. The law of limitation, being *lex fori*, creates rights in favor of the parties and cannot be ignored as a mere technicality. This principle was reinforced in *The State v. Muhammad Imran* (2024 PCRLJ 1111 - DB Lahore), Moreover, in the case of *Government of Pakistan v. Messrs Malbrow Builders* (2006 SCMR 1248), the Honourable Supreme Court observed that the question of limitation is not a mere technicality and should not be taken lightly. The right accrued to the other party due to the lapse of the limitation period cannot be snatched away without sufficient cause and lawful justification. Sufficient cause is not capable of connotation with exactitude and would differ from case to case but laxity, carelessness and cursory approach of the functionaries of the Government do not constitute sufficient cause and question of any indulgence does not arise .

22. It is evident that the appeal has not been accompanied by any application filed under Section 5 of the Limitation Act for the condonation of delay. In this regard, the appellant has failed to provide any justification for the delay in filing the appeal. The absence of an application under Section 5 of the Limitation Act, coupled with the lack of any explanation for the delay in the appeal memo, further weakens the appellant's case. In such circumstances, the appellant cannot be excused for the delay without offering a valid explanation. Reliance is placed on the case of *Syed Najam-ud-Din Chishti v. Government of Pakistan* (2022 MLD 76 FSC).

23. Now, turning to the second aspect of the case, during the proceedings of the instant appeal on 21-03-2025, the issue of maintainability was raised, specifically regarding whether Section 4-A of the Central Law Officers Ordinance, 1970, authorizes a counsel who is not a government pleader, but instead a counsel representing the Sui Southern Gas Company, to file such an appeal. In response, the learned counsel for the appellant argued that the company is governed under the Companies Act, 2017 and does not have statutory rules, therefore, according to the appellant's counsel, the provisions of Section 4-A of the Central Law Officers Ordinance, 1970, which relate to filing proceedings through a Government Pleader, are not applicable in this case. It was also noted that when these submissions were made, high-level officials

from the company, including the Regional Head and Manager of Legal Services, were present.

24. Regarding merits of the case is concerned, the prosecution has failed to establish a clear nexus between the accused and the ownership of the Pakwan Center. While the complainant has alleged that the accused was the owner of the Pakwan Center, this claim has not been substantiated with direct evidence linking the accused to the ownership. The fact that the accused was seen sitting at the counter of the Pakwan Center does not in itself indicate ownership, as mere presence does not amount to ownership, especially in the absence of further corroborative evidence. The complainant's testimony only mentioned the accused sitting at the counter, which is insufficient to establish ownership. Furthermore, the evidence specifically recognized one Bhooral Shah and others as the actual owners of the Pakwan Center which has not been addressed or elaborated upon by the prosecution. Another significant issue in the case concerns the recovery of the case property. According to the complainant, the Investigating Officer recovered the case property from the scene of the incident. However, the Investigation Officer's testimony contradicted this statement, as the IO testified that the complainant had actually handed over the case property to him, not recovered it from the site. This contradiction raises serious concerns regarding the veracity of the prosecution's evidence. The complainant claimed that a repair was made to a main pipe, which was directly linked to the incident. However, this claim is not supported by the site inspection memo, which failed to note any such repair or the discovery of any damaged pipe during the investigation. The site inspection report did not reflect any indication of the repair that the complainant has testified to, further casting doubt on the accuracy and reliability of the complainant's account. In light of the contradictions and discrepancies in the prosecution's evidence, it is well-settled that the benefit of the doubt must be afforded to the accused, where there are significant inconsistencies beyond a reasonable doubt, the accused must be acquitted. In conclusion, the prosecution has not sufficiently proven the allegations against the accused and the legal principle of benefit of the doubt" must apply in this case, necessitating the acquittal of the accused. In case of *Ahmed Ali vs the state* (2023 SCMR 781), The Honourable Supreme Court held that:

12. Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right. Reliance in this regard may be placed on the cases reported as *Tajamal Hussain v. The State* (2022 SCMR 1567), *Sajjad Hussain v. The State* (2022 SCMR 1540), *Abdul Ghafoor v. The State* (2022 SCMR 1527 SC), *Kashif Ali v. The State* (2022 SCMR 1515), *Muhammad Ashraf v. The State* (2022 SCMR 1328), *Khalid Mehmood v. The State* (2022 SCMR 1148), *Muhammad Sami Ullah v. The State* (2022 SCMR 998), *Bashir Muhammad Khan v. The State* (2022 SCMR 986), *The State v. Ahmed Omer Sheikh* (2021 SCMR 873), *Najaf Ali Shah v. The State* (2021 SCMR 736), *Muhammad Imran v. The State* (2020 SCMR 857), *Abdul Jabbar v. The State* (2019 SCMR 129), *Mst. Asia Bibi v. The State* (PLD 2019 SC 64), *Hashim Qasim v. The State* (2017 SCMR 986), *Muhammad Mansha v. The State* (2018 SCMR 772), *Muhammad Zaman v. The State* (2014 SCMR 749 SC), *Khalid Mehmood v. The State* (2011 SCMR 664), *Muhammad Akram v. The State* (2009 SCMR 230), *Faheem Ahmed Farooqui v. The State* (2008 SCMR 1572), *Ghulam Qadir v. The State* (2008 SCMR 1221) and *Tariq Pervaiz v. The State* (1995 SCMR 1345).

25. In view of the foregoing reasons and discussion on the merits of the case, this Court finds no substance in the arguments advanced by the appellant. As such, the appeal is found to be without merit and stands dismissed accordingly.

JUDGE