IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Acquittal Appeal No.S-173/2024

Appellant	:	Ghulam Muhammad s/o Muhammad Siddique, Through Mr. Rao Faisal Ali advocate.
Respondent No.1	:	Nawaz s/o Allah Jurio Shar (present in person).
Respondents Nos.2 &3:		1. Saddam Hussain s/o Darya Khan Shar, 2. Shahid Hussain s/o Muhammad Hanif Shar Through Mr. Hasnain Nizamani advocate.
The State:		Through Mr. Neel Parkash Deputy Prosecutor General Sindh.
Date of Hearing:		15.10.2026
Date of Judgment:		15.10.2026

JUDGMENT

Nisar Ahmed Bhanbhro, J*:* This Criminal Acquittal Appeal is directed against the judgment dated 05.12.2024 (**impugned judgment**) passed by the Learned Additional Sessions Judge, Khipro (**Trial Court**) in Sessions Case No.253/2024 "*Re- The state versus Nawaz & others*", whereby acquitted the respondents Nos.1 to 3/accused Nawaz, Sadam Hussain and Shahid Hussain of the charge of the above sessions case, stemming from F.I.R No.06 of 2024 of Police Station Mangli for offences punishable under Section 377-B, 34 of Pakistan Penal Code (P.P.C.) and Sections 21 -22 of Prevention of Electronic Crimes Act, 2016 (PECA) .

2. Facts in brief of the prosecution case are that complainant Ghulam Muhammad lodged an FIR after watching a video viral on social media platforms regarding the offence of unnatural lust committed against his son Abdul Majeed aged about 12 years, by accused Nawaz S/o Allah Jurio Shar. On inquiry, his son disclosed him that accused Nawaz, Sadam and Shahid met

him and forcibly took him to the jungle and committed sodomy and recorded video. The complainant approached to the police station and recorded FIR.

3. After usual investigation, report under section 173 Cr.P.C was submitted before learned Magistrate, who took cognizance against the accused and sent R&Ps of the case to learned Sessions Judge, Sanghar, wherefrom it was transmitted to the Trial Court. Formal charge was framed against accused persons, wherein they pleaded not guilty and claimed for trial.

4. In order to prove it case, prosecution examined PW - 1 complainant Ghulam Muhammad, who produced FIR, PW - 2 Abdul Majeed, PW - 3 Muhammad Ibrahim who produced memo of production of USB, memo of place of incident and memo of arrest of the accused. PW - 4 Dr. Arz Muhammad, who produced police letter of accused persons, police letter of victim, ticket, provisional MLC, and final MLC with DNA report and PW - 5 IO SIP Muhammad Shafique, PW - 6 ASI Ilyas Gul and PW - 7 PC Nasir Mehmood, thereafter, learned ADPP for the State closed prosecution.

5. Statements of accused persons were recorded under Section 342 Cr.P.C, whereby they professed innocence and claimed justice for their false implication. Learned Trial Court, after hearing parties acquitted accused persons; hence, this appeal.

6. Learned counsel for the appellant contended that prosecution proved its case beyond shadow of doubt. The impugned judgment of acquittal has been passed on surmises and conjectures and is not sustainable under the law. He contended that the evidence of the victim was recorded and the USB of video viral on social media platforms was produced before the learned trial Court. He contended that the prosecution witnesses remained consistent on every aspect of the case. He contended that statement of victim Abdul Majeed was sufficient to record conviction. He next contended that accused were given the benefit of

doubt for want of DNA which was found negative and forensic analysis of USB. He further contended that there was no ill will of victim to falsely involve the accused persons; as such, the judgment passed by Trial Court warranted interference. He prayed that failure of Investigation Officer to get forensic analysis of USB cannot be attributed to appellant, he therefore prayed to remand the matter back to the trial Court for recording fresh evidence after forensic analysis of the USB.

7. On the other hand, learned D.P.G for the State supported the contentions raised by learned counsel for the appellant and submitted that sufficient material was available to award conviction. He contended that prosecution witnesses were subjected to lengthy cross examination but nothing fruitful came. He contended that the prosecution had successfully proved its case beyond any shadow of doubt, therefore, it was a fit case for conviction. He prayed to allow this appeal.

8. Learned counsel for the respondents contended that the prosecution failed to prove the charge against the accused persons beyond any shadow of doubt. The M.L.C, issued by the Medical Officer did not support the prosecution case; therefore, the learned trial Court rightly acquitted the accused by extending them benefit of doubt. He contended that F.I.R was recorded with delay of Five months and no plausible explanation was furnished. He contended that no recovery was effected from the accused persons. He next contended that USB was prepared by the complainant himself and not sent for forensic analysis and Prosecution case is silent with regard to the ID on which alleged video was shared. He submitted that the acquittal of the accused carries double presumption of innocence and the parameters for interference in an appeal against acquittal and conviction are different, as the prosecution had failed to point out any misreading or non-reading of the evidence on the

record, therefore, no case for indulgence is made out, and he prayed for the dismissal of the appeal.

9. I have heard arguments of learned counsel for the parties as well as learned D.P.G for the State and perused the material available on the record.

10. From record it transpired that initially, F.I.R of the incident was recorded for an offence of un-natural lust punishable under Section 377(B), 34 of P.P.C., and during course of investigation, I.O recommended to add charge for offences punishable under Sections 21 and 22 of PECA, however, retained investigation despite having concluded that an offence punishable under section 21-22 of PECA was also made out from the statements of prosecution witnesses and material collected during investigation. Local Police cannot record and investigate an offence punishable under the provisions of PECA. Section 16 of the PECA provides that all the offences punishable under PECA shall be investigated by the agency established under the Act. In this regard National Cyber Crime Investigation Agency has been established to investigate the offences relating to the electronic crimes.

11. Local Police is mandated to record the statement of an aggrieved person under section 154 Cr.P.C., however, latter on or when during investigation, it borne out from record that occurrence pertained to another police station, then by invoking the provisions of Rule 25.7 of Police Rule, 1934, the FIR along with police file ought to have been transferred to said police station after canceling the F.I.R. Rule 25.7 reads as follows:

> *"**25.7**: Cancellation of a case in one police station and registration in another: When a case is transferred from one police station to another, the offence registered in the original police station shall be canceled by the Superintendent and a First Information Report shall be submitted from the police station in the jurisdiction of which the case occurred."*

12. It is crystal clear from above provisions, that if F.I.R. of the incident is recorded at one police station but incident appears to have occurred in the jurisdiction of another police station, in the said eventuality, Superintendent of Police is required to cancel the FIR registered at First Police Station and transmit the same to the police station concerned in whose jurisdiction the incident had occurred. In the present case, the alleged offence was covered under the provisions of PECA, though initially F.I.R was recorded under the provisions of P.P.C. The PECA is a special enactment, promulgated to investigate and prosecute the electronic crimes. Under section 2(w) investigation agency has been defined as an agency established under the said Act, and as discussed above offences under PECA fell exclusively under the dominion of NCCIA (at the relevant time FIA) to investigate, but the investigation of the present case was conducted by local police in violation of provisions of PECA, which in fact resulted into a week investigation and prosecution. I.O of the case did not appear to be well acquainted with the law and unfortunately this aspect of the case skipped notice of the District Public Prosecutor while scrutinizing the case file, Learned Magister while taking cognizance and Trial Court, which ought to have ordered transfer of FIR and the investigation as the case may be to the concerned agency vested with the powers to investigate the electronic crimes under PECA.

13. Learned Counsel for the Appellant, has requested that the case may be remanded back for a fresh trial with a further request for forensic analysis of USB secured during investigation. The appellate Court is conferred with powers under section 423 and 428 of Cr.P.C. to remand a case for recording the fresh evidence. It is the case of appellant that piece of evidence viz. USB connecting the accused with criminal liability was improperly reject. Article 162 of the Qanun-e-Shahadat Order, 1984, is the relevant provision of law, that

provides for a new trial for improper admission or rejection of the evidence, which is reproduced below for the ease of reference:

> *"162.* ***No new trial for improper admission or rejection of evidence****: The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independent of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision."*

14. From the perusal of above provisions, it is crystal clear that a new trial is warranted when a piece of evidence is admitted or rejected improperly. In the present case, it is argued by the Counsel for Appellant that USB an incriminating piece of evidence was rejected improperly, therefore, a fresh investigation may be ordered to conduct forensic analysis of the USB and then to proceed with trial afresh against the accused persons. In the present case Learned Trial Court after appraising the evidence observed that the USB was recorded by Complainant party itself, it was not sure that who placed alleged videos on Social Media Platforms, USB was not sent for forensic analysis to say whether it was genuine or otherwise. It was the duty of the I.O to send the USB for forensic analysis and produce forensic report before Trial Court. In absence thereof, it cannot be safely held that the USB produced in evidence contained genuine record. Moreover the witnesses admitted while deposing in Trial Court that in the video seen by them, the accused persons were wearing clothes and they were not in position of committing offence as alleged and coupled with the fact that DNA report was negative and no marks of violence were available on the person of victim. In view of above material defects, the benefit of doubt was extended to the accused person.

15. To delineate the established principles of law governing appeals against acquittal and the exercise of power of remand under sections 423 and 428 of the Cr.P.C. The scope of remand in a criminal case, was discussed

by the Honorable Supreme Court of Pakistan in the case of **Haji Muhammad Jee v. Muhammad Ibrahim Shouq (1988 SCMR 1691)** and it was held that;

> *"Any retrial would amount to a denial of the principle of doubt and would lead to injustice if the case is allowed to proceed in the trial Court as that would in the another opinion on the evidence which had already been appraised, commented a on and the benefit of it extended to the appellants. It would have no other result but one of conviction in view of the opinion expressed by the High Court which appears to us not to be based on proper appraisal of the trial Court's opinion."*

16. In the case of **Abdur Rashid v. The State (P L D 1962 S C 249)**, Honorable Supreme Court, laid down the guidelines for remand of a criminal case for re-trial in the following words:

> *"Where the prosecution witnesses are affected by partisan ship or their evidence gives rise to doubts of a reasonable character, or there are circumstances which do not support the prosecution case, and may lend support to the defence case, so as to render the defence version a possible one, there to remand the case for a retrial may amount merely to presenting a doubtful prosecution case before a Court of first instance of another opinion."*

17. Yet, in another case of **Abdur Rashid Khondkar v. Chandu Matbar (P L D 1964 S C 795)**, the principle was laid and it was held that:

> *"The governing consideration must always be whether, in relation to the proved facts and circumstances, justice has been done in accordance with law. In particular, full weigh must be given (1) to the fact that the appreciation of evidence by the trial Court is based upon the Court having seen and heard the witnesses, and (2) that the fact of that Court having given the accused the benefit of any doubt serves emphasise the need of giving full weight to the principle in the re appraisement of the evidence that is necessitated by the appeal."*

18. Upon a holistic review of the settled principles, expounded through the judgments of Honorable Supreme Court, it can be concluded that the sections 423 and 428 of the Cr.P.C. though confer the power of remand to appellate court for a fresh trial, but such discretion must be exercised with extreme caution and only upon the clear dictates of justice, ensuring that it does not serve to merely provide the prosecution a second opportunity to

strengthen a doubtful case. In the present case if a fresh investigation or fresh trial is ordered, it will tantamount to fill up the lacuna in prosecution case, as will militate the dictates of justice. Accordingly no case to exercise the powers conferred under section 423 and 428 of Cr.P.C. is made out. Thus remand of the case back to the trial Court to record fresh evidence is not warranted under the facts and circumstance od the instant case. At this stage, sending the matter back to the trial Court would tantamount to double jeopardy, barred under section 403 of the Cr.P.C.

19. Adverting to the merits of the case. It transpired from the re-appraisal of the evidence that the alleged incident had taken place on some day and time Five months prior to registration of F.I.R recorded on 18.02.2024. The explanation tendered for delay in recording of F.I.R. was that the complainant came to know about the alleged incident when the video of the victim went viral on social media platform. However, such an explanation was found unreasonable by Trial Court. Delay in recording the F.I.R in such cases is not considered fatal to the prosecution case, as offence involved the dignity of a person and such like offences are hardly reported to police. In the present case F.I.R was recorded by father when video of the incident went viral on social media. The delay so happened was natural and not in any manner fatal to prosecution case and accused in such like cases cannot earn the benefit of delay in recording the F.I.R.

20. As far as the findings of Trial Court, regarding contradiction in prosecution evidence is concerned. On appraisal of the evidence of prosecution witnesses, Trial Court found that per deposition of PW - 4 Dr. Arz Muhammad, that there were no marks of violence and fresh intercourse on the body of victim. Per Provisional Medical Certificate available at page No. 53 of the Court file, the anal swab samples and clothes of the victim and the semen of the accused were sent for forensic analysis, and DNA analysis revealed that the

same did not match. It was the case of the prosecution that sodomy was committed upon the victim, but no date and time of the incident were mentioned. Time and Date constituted essential ingredients for indictment of charge codified under Section 222 of the Cr.P.C. which reads as under:

> ***"222. Particulars as to time, place and person.*** *– (1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.*
> *(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234:*
> *Provided that the time included between the first and last of such dates shall not exceed one year."*

21. From the above provision of law, it is crystal clear that in absence of particulars as to time, place and date, indictment for an offence can not be sustained. The charge in the instant case is defective to that effect. Coupled with the fact that no direct evidence excepting the words of victim, improper investigation and the source of video and its genuineness were the questions that remained unanswered by the prosecution, and created reasonable doubt in the prosecution case,

22. It is the prosecution, burdened to prove the charge beyond any shadow of doubt. This burden is transferred to the other side when the prosecution discharged its duty in accordance with the parameters fixed for that purpose. From perusal of the evidence, it appears that the prosecution had not discharged its burden and benefit earned by the accused on account of this failure was the right of the accused. It is a well settled principle in the criminal justice system that if two sensible and judicious conclusions can be drawn keeping in mind the substance of the evidence, then the view which

espouses and provides backing towards acquittal must be subscribed and assented to. The doctrine of presumption of innocence is structured on the fundamental principle that every person is presumed to be innocent unless proven guilty and, in the event of an acquittal, the presumption of innocence is reinvigorated, fortified and strengthened.

23. It is a well-settled exposition of law that in an appeal against acquittal, the Court would not ordinarily interfere and would instead give due weight and consideration to the findings of the Court acquitting the accused which carries a double presumption of innocence, i.e. the initial presumption that an accused is innocent until found guilty, which is then fortified by a second presumption once the Court below confirms the assumption of innocence, the same cannot be displaced lightly.

24. The criteria of interference in the judgment against acquittal are not the same, as against the cases involving a conviction. In this regard, the settled principles of law have been developed progressively. In an appeal against acquittal the Court must examine the findings of Trial Court as to the credibility of the prosecution witnesses; the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; the right of the accused to the benefit of any doubt; and the slowness of an Appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.

25. Honorable Supreme Court of Pakistan in the case of **The State v. Abdul Khaliq (PLD 2011 SC 554)** held that the scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal

judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal.

26. For the foregoing reasons, no case for indulgence of this Court is made out. Consequently, the appeal against acquittal fails and accordingly dismissed.

27. Before parting with the judgment, it will be pertinent to observe that the prosecution has followed this case in a callous manner, right from the registration of F.I.R until the conclusion of Trial. It was a case falling outside the domain of local police, and ought to have been transferred to NCCIA for investigation. In order to avoid such mistakes to happen in future, Office is directed to transmit the copy of the Judgment to Learned Inspector General of Police, Sindh, who shall ensure that in future in such like cases the proper pathway is followed.

JUDGE

Approved for reporting

"Chander Kumar"