

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No.199 of 2023

Appellant : Shabbir Ahmed
Through M/s Barrister Iftikhar Ahmed Shah
& Barrister Raja Zeeshan.

Complainant : Jameel Ahmed & others
Through Muhammad Hanif, advocate

Respondent : The State
Mr. Muhammad Hanif Magsi, Asstt; P.G

Date of hearing : 29.05.2025

Date of judgment : 29.05.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J.- Through this Criminal Acquittal Appeal, the complainant/appellant, Shabbir Ahmed, seeks to challenge and set aside the judgment dated 23.02.2023, delivered by the learned Judicial Magistrate-XIII (Model Trial Magistrate Court (MTMC), Karachi East, in Criminal Case No. 1028 of 2020. In the impugned judgment, the learned trial court, after conducting the proceedings, acquitted the private respondents, namely Rehana, M. Jameel, M. Shakeel, and Mst. Fehmeeda, by extending the benefit of doubt in pursuance of Section 245(1) Cr.P.C.

2. The foundational facts of the case trace back to FIR No. 171/2016, lodged on 27.03.2016 at 1500 hours by the complainant, Shabbir Ahmed. According to the FIR, on 16.02.2016 at about 1900 hours, while the complainant was present at his residence, his brothers, Jameel and Shakeel, accompanied by their wives, Fehmeeda and Rehana, allegedly engaged in abusive language directed towards the complainant's family members and children. When the complainant intervened and attempted to restrain them, they reportedly became agitated and subjected him to a physical assault involving fists, dandas, kicks, and blows. This alleged assault resulted in the complainant sustaining internal injuries to his body and his left hand. The FIR states that upon the complainant raising an alarm, individuals from the locality witnessed the incident and intervened to rescue him, leading to the accused persons retreating to their own house. Consequent upon; case was registered inter-alia on above facts.

3. Following the registration of the FIR, the standard investigative procedures were carried out by the police. Upon completion of the investigation, a charge-sheet was duly submitted before the learned trial court. The court took cognizance of the matter, and the case was formally registered. On 15.10.2020, charge was framed against the accused persons. The charge specifically accused them of using abusive language with common intention, thereby committing an offence punishable under Section 504 read with 34 PPC and further, by sharing a common intention, assaulting the complainant with fists, kicks, and dandas, causing injuries declared as Jurh-e-Ghayr-Jaifah Mutalahimah (Injury No.1) and Shajjah Khafifah (Injury No. 2), thereby committing offences punishable under Sections 337-F(iii) and 337-A(i) read with 34 PPC. All accused pleaded not guilty to the charge and opted to claim trial.

4. In order to establish its case, the prosecution adduced evidence from various witnesses. PW-01 Shabbir Ahmed, the complainant, was examined on 11.10.2022 (Exh.03). During his examination-in-chief, he produced crucial documents including the FIR (Exh.03/A), the Final MLC (Exh.03/B), a repeated FIR (Exh.03/C), and the Memo of Site Inspection (Exh.03/D). A critical point to note from the record is that the cross-examination of the complainant was expressly reserved. Subsequently, PW-02 ASI Ayub Jamali was examined on 28.11.2022 (Exh.04). His cross-examination was conducted on the same date. However, a significant ambiguity arises from the record, as the cross-examination of ASI Ayub Jamali appears to be marked with Exhibit 03 in some parts of the documentation, which is the same exhibit number assigned to the complainant's examination-in-chief, potentially leading to confusion and doubt regarding the actual cross-examination process of the complainant. PW-03 Dr. Shahzad (MLO) was examined on 10.11.2022 (Exh.06), during which he produced a photocopy of the MLC (Exh.06/A). It is also observed that his cross-examination was reserved due to the absence of the defense counsel. Lastly, PW-04 Muhammad Akram was examined on 21.12.2022 (Exh.07). Vide order dated 22.02.2023 (Exh.08), the learned Court closed the side of prosecution.

5. The statements of the accused persons under Section 342 Cr.P.C were recorded (Exh.09 to Exh.12). In these statements, the accused unequivocally denied all allegations leveled against them and asserted their innocence. They

chose not to offer statements on oath nor did they present any evidence in their defense.

6. Upon conclusion of the evidence and arguments, the learned trial court framed points for determination to resolve the contentious issues. After a thoughtful consideration and appraisal of the available evidence, the learned court answered Point No.1 (regarding the occurrence and injuries) as "Doubtful" and consequently, acquitted all the accused persons by extending them the benefit of doubt in pursuance of Section 245(1) Cr.P.C. in its judgment dated 23.02.2023. The judgment articulated various reasons for the acquittal, including inconsistencies in the complainant's testimony regarding the place of incident, the complainant's failure to nominate the accused persons in the initial medical letter, the non-production of the alleged weapons (dandas), and the contradictory nature of evidence presented by other prosecution witnesses. Furthermore, the trial court noted the pre-existing civil dispute between the parties and the absence of any independent corroborating witnesses to the incident.

7. The learned advocate for the appellant vehemently argued that the impugned judgment dated 23.02.2023 is flawed and requires setting aside. He contended that the learned trial court arrived at its conclusions in a hasty manner, overlooking critical aspects of the case. The thrust of his argument lay in highlighting several significant procedural irregularities and omissions during the trial, which, according to him, vitiated the entire proceedings and prejudiced the appellant's right to a fair trial. Firstly, he emphasized the glaring issue surrounding the cross-examination of the complainant (PW-01 Shabbir Ahmed). While the complainant's examination-in-chief was recorded on 11.10.2022 (Exh.03) and his cross-examination explicitly reserved, the record does not affirmatively show that his cross-examination was ever actually conducted. Instead, on 28.11.2022, the cross-examination of PW-02 ASI Ayub Jamali was conducted, with the exhibit number 03 confusingly attached to it. This, he argued, created a profound ambiguity and doubt as to whether the complainant, who is the star witness, was ever effectively cross-examined by the defense, which is a fundamental right of the accused and essential for testing the veracity of the prosecution's case. He underscored that the case diaries also reflect the cross-examination of ASI Ayub Jamali on the said date, compounding the confusion. Secondly, the learned counsel pointed out that PW-03 Dr. Shahzad (MLO), whose testimony provided

crucial medical insights into the complainant's injuries, was also not subjected to cross-examination (Exh.06), despite the record indicating that it was reserved. He argued that the absence of cross-examination for a medical expert, whose evidence speaks to the nature and extent of the alleged injuries, seriously undermined the prosecution's case and denied the defense a vital opportunity to challenge the medical findings. Thirdly, it was contended that the closure of the prosecution side was effected by the presiding officer himself, rather than by the learned Deputy District Public Prosecutor for the State. This, he suggested, was a procedural anomaly and indicative of the court's overreach. Finally, significant concerns were raised regarding the statements of the accused under Section 342 Cr.P.C. The learned advocate for the appellant highlighted that these statements were computerized written, lacked a proper certificate confirming their recording in open court and their true account, and crucially, were undated. He further questioned the fairness of the trial given that the case diaries showed the absence of some accused persons at various points, and yet, an application under Section 540-A Cr.P.C. for defense in absence was utilized, while the foundational Section 342 statements themselves suffered from such grave procedural infirmities. He submitted that these cumulative procedural lapses demonstrated a disregard for the principles of fair trial and warranted a fresh look at the case. He also stressed the seriousness of the injuries as per the MLO's report and the Investigating Officer's opinion in the challan, which, in his view, the trial court did not adequately consider. He relied upon the case laws cited at SBLR 2021 Sindh 112, PLD 2006 Karachi 377, PLD 2005 Supreme Court 63, 1986 SCMR 1736 and 2022 P.Cr.L.J 1088.

8. Conversely, the learned advocate for the respondents presented a robust rebuttal, asserting that the acquittal was correctly based on the merits of the evidence and that the procedural issues highlighted were either minor or the responsibility of the appellant/prosecution. Regarding the complainant's cross-examination, while acknowledging a potential clerical error in exhibit numbering, the learned counsel emphasized that the court record for 28.11.2022 explicitly records the cross-examination of ASI Ayub Jamali. He argued that the overall conduct of the trial, including the detailed cross-examination of other prosecution witnesses and the trial court's comprehensive analysis of the complainant's own contradictory evidence in its judgment, adequately allowed the defense to challenge the prosecution's

narrative, even if the complainant's specific cross-examination was not separately recorded under a distinct exhibit. Concerning the MLO's cross-examination, it was submitted that the reservation of cross-examination was an accommodation granted by the court due to the counsel's absence. It was then incumbent upon the defense to subsequently ensure that the cross-examination was conducted. The absence of a later record, therefore, should not be construed as a denial by the court but rather a failure on the part of the defense to pursue it or a deemed waiver of that right. He contended that the MLO's testimony primarily pertained to the injuries, the existence of which was not the primary point of contention in the acquittal judgment. On the issue of the closure of the prosecution side, the learned counsel argued that this is a procedural act well within the inherent powers of the court to manage the trial efficiently and ensure its expeditious conclusion. He submitted that this action is often taken when the court believes the prosecution has presented all available evidence or has failed to produce further witnesses despite opportunities, and it does not necessarily indicate prejudice, provided the prosecution had ample opportunity to present its case. Finally, in response to the criticisms regarding the Section 342 Cr.P.C. statements and absences, the learned counsel conceded that the computerized written nature, while not ideal, does not inherently invalidate these statements, provided their content reflects the accused's denials and stance. He suggested that the absence of a formal certificate or specific date could be a mere oversight rather than a deliberate procedural infirmity. Furthermore, he highlighted that the application under Section 540-A Cr.P.C. was duly made and granted, which signifies that the court did consider the reasons for the absence of certain accused and permitted their defense in absentia, thereby ensuring their rights were safeguarded within the prevailing procedural framework. The very fact that the judgment refers to these statements implies their due recording.

9. I have given our anxious consideration to the arguments presented by both the learned counsel for the appellant and the respondents. I have also meticulously examined the entire record of the case, including the impugned judgment, the FIR, the charge framed, the depositions of the prosecution witnesses, and the statements of the accused under Section 342 Cr.P.C.

10. While the learned trial court's judgment meticulously detailed various contradictions and infirmities in the prosecution's evidence, ultimately leading to the acquittal of the accused by extending the benefit of doubt on

merits, this Court finds itself constrained by certain profound procedural irregularities that have become apparent on the face of the record. These irregularities, unfortunately, undermine the very essence of a fair trial and the concept of due process, which are paramount consideration in the administration of criminal justice, as enshrined in Article 10-A of the Constitution of Pakistan, 1973. The most significant and unsettling irregularity revolves around the cross-examination of the complainant, PW-01 Shabbir Ahmed. The trial court's record explicitly states that his examination-in-chief was conducted on 11.10.2022, and his cross-examination was "reserved." However, a careful scrutiny of the subsequent proceedings, particularly the entry for 28.11.2022, reveals that the cross-examination of PW-02 ASI Ayub Jamali was conducted and assigned the exhibit number 03 the same exhibit number as the complainant's examination-in-chief. This creates an undeniable and substantial ambiguity as to whether the complainant, the primary witness in this case, was ever effectively cross-examined by the defense. The right to cross-examine a witness is a fundamental right of the accused, indispensable for testing the veracity of the evidence and challenging the prosecution's narrative. The absence of a clear and distinct record of the complainant's cross-examination, or its apparent conflation with another witness's testimony, constitutes a serious procedural lapse that strikes at the very root of a fair trial.

11. Furthermore, it is also evident that the cross-examination of PW-03 Dr. Shahzad (MLO), whose testimony provided crucial medical evidence, was reserved but seemingly never conducted. While the onus might partially lie on the defense to pursue this, the court has an overriding duty to ensure all opportunities are provided to both sides for a comprehensive and fair trial. The medical evidence, especially concerning the nature and extent of injuries, forms a significant part of the prosecution's case, and its unchallenged acceptance due to a procedural omission would be detrimental to a just outcome.

12. Lastly, the concerns regarding the recording of statements of the accused under Section 342 Cr.P.C., including their computerized written nature, the absence of a specific date of recording, and a complete certificate of being recorded in open court, cumulatively suggest a certain degree of procedural laxity. While these might appear as minor administrative oversights in isolation, when considered alongside the other significant

irregularities, they contribute to an overall impression that the trial did not fully adhere to the meticulous procedural safeguards required for a fair and transparent process. In sum, these identified irregularities and procedural flaws, when viewed in their totality, lead to the inescapable conclusion that the trial was not conducted in strict conformity with the letter and spirit of the law. The integrity and fairness of the process appear to have been compromised. The concept of a "fair trial" is not a mere procedural formality; it is a substantive right that must be diligently protected and observed at every stage of criminal proceedings. When such fundamental flaws manifest on the record, the validity of the judgment, irrespective of its outcome, becomes questionable.

13. Therefore, to rectify these procedural anomalies and ensure that justice is not only done but is manifestly seen to be done, this Court finds it just and proper to remand the case for a fresh trial. Accordingly, the Criminal Acquittal Appeal No.199 of 2023 is hereby allowed. The impugned judgment dated 23.02.2023, passed by the learned Judicial Magistrate-XIII (MTMC), Karachi East, in Criminal Case No.1028 of 2020, is set aside. The case is remanded back to the learned Judicial Magistrate-XIII (MTMC), Karachi East, for a retrial from the stage of cross-examination of PW-01 (complainant Shabbir Ahmed). Learned trial court is directed to conduct the retrial expeditiously, endeavoring to conclude the proceedings within a reasonable timeframe, while scrupulously ensuring that all parties are afforded a fair and impartial hearing without further undue delays. The office is directed to transmit the R&Ps forthwith to the learned trial court for compliance.

J U D G E