

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No.203 of 2023

Appellant : Mst. Saima
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:- Being aggrieved and dissatisfied with the impugned judgment dated February 22, 2023, passed by the trial court, the XIII Judicial Magistrate (MTMC) Karachi East, in Cr. Case No: 1335 of 2020, the appellant, Mst. Saima, has preferred this Criminal Acquittal Appeal.

2. The facts leading to this trial, as per the complainant, are that on April 12, 2020, she lodged an FIR stating her residence at the address mentioned in Column No. 02 of the FIR with her family. She asserted that a property dispute existed between her husband, Shabbir Ahmed, and Jameel Ahmed, with her deceased mother-in-law, Parsa Bibi, being the owner of the property. On the said date, accompanied by her sister Nafeesa, she visited the house of Rehana, where Sufyan and Osama were present. She alleged that they abused her, and Rehana and Fahmeeda (Jameel's wife) physically assaulted her, causing injury to her cheek. During this altercation, her purse containing Rs. 4,000/- and her mobile phone were allegedly snatched. The complainant sought legal action, claiming offenses under Section 504/337A(i) PPC, and was referred to Jinnah Hospital with a medical letter for treatment.

3. ASI Subhan Ali, the duty officer, verified that the report was reduced to writing as per the complainant's verbatim statement, read over to her, and verified. Based on the facts and MLO report No. 1327/2020, the offenses were categorized under Section 337A(i)/336/337A(F) (ii)/34 PPC, with

investigation to be conducted by the SIO and FIR copies supplied as per procedure.

4. Following the FIR's lodgment, usual police investigation was carried out, culminating in the submission of a charge sheet, which was accepted, cognizance taken, and the case registered.

5. Before trial commencement, in compliance with Section 241-A Cr.P.C., required documents were supplied to the accused, and receipts obtained and taken on record at Ex.1. Charges were framed at Ex.02, read over, and explained to them. The accused pleaded not guilty and claimed trial, their pleas recorded at Ex. 2/A to Ex-02/G. The accused's statements, recorded at Ex-11 to Ex-17, denied all allegations and professed innocence. They neither recorded statements on oath nor presented any defense evidence, after wards the learned trial court acquitted the accused by extending benefits of doubts.

6. Learned counsel for the appellant mainly contended, the trial court erred in acquitting the accused, who are allegedly fully involved in the crime, rendering the judgment liable to be set aside. The trial court failed in its finding of facts and passed the judgment in a hasty manner. The trial court's explicit statement of acquittal for all accused in the judgment dated February 22, 2023, is challenged as erroneous. The trial court disregarded the serious injuries inflicted upon the appellant, the theft of articles, and criminal intimidation. The appellant alleges that the trial court acted as an arbitrator, coercing her counsel to compel a compromise, and that the impugned judgment is a result of her refusal to compromise, indicating a lack of impartiality. The trial court did not consider the facts of the case despite the presence of the IO and complainant's witnesses on the judgment date. The challan and the IO's opinion indicated that the offense was fully proven against the accused. The trial court's acquittal of all nominated accused, despite full proof of the offense, deprived the appellant of her legal and legitimate rights. The FIR was lodged based on a medical report indicating the loss of a tooth due to the accused's beating, yet the judge forced a compromise and, upon refusal, acquitted the accused by extending the benefit of doubt, despite the offense being fully established per the challan and IO's

report. The appeal is maintainable and deserves to be heard on merits. 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.

7. Learned advocate for respondents vehemently opposed the instant appeal by arguing that a substantial delay, in the lodging of the FIR, without any plausible explanation, was a fatal flaw in the prosecution's case. That material contradictions existed between the statements of the complainant and other prosecution witnesses coupled with inconsistencies between their depositions in court and their statements recorded under Section 161 Cr.P.C. That there was an absence of independent and natural eye-witnesses to the occurrence, and the Investigating Officer himself conceded that no independent witness. That the prosecution witnesses, including the complainant, were found to have made "dishonest improvements" in their statements with the apparent intent to bolster the prosecution's case, thereby casting serious doubt upon their credibility. That the medical evidence, while detailing the injuries, serves merely a corroborative purpose and cannot, in the absence of a trustworthy ocular account, substitute for direct evidence, particularly when the latter is fraught with discrepancies. That the Investigating Officer's admission regarding the lodging of the FIR stemming from a property dispute suggests a potential motive for false implication. That the fundamental principle of criminal jurisprudence dictates that if even a singular circumstance engenders a reasonable doubt in a prudent mind concerning the guilt of an accused, such accused is entitled to the benefit of doubt as a matter of right, not as a concession. He relied upon the case laws cited at 2024 SCMR 1116, 2009 SCMR 237, PLD 2006 Supreme Court 538.

8. The core of this appeal, and the specific focus of this analysis, lies in the appellant's contention that the trial court's proceedings were marred by significant procedural irregularities that fundamentally infringed upon the rights of both the prosecution and, by extension, the accused. The allegations concerning the examination of witnesses and the closing of the prosecution's side without complete cross-examination of key witnesses, coupled with concerns about the nature of the accused's statements, raise serious questions about the fairness and due process afforded in the trial. The appellant

highlights a critical sequence of events in the trial that P.W-01 ASI Subhan Ali was examined on September 3, 2022. P.W-02 MLO Shahzad was examined on November 10, 2022, and his cross-examination was reserved. P.W-03 Jamshed (IO) was examined on November 19, 2022, and his cross-examination was reserved. P.W-04 Mst. Saima and P.W-05 Shabbir Ahmed recorded their evidence on December 19, 2022. Crucially, the appellant states that without affording an opportunity to cross-examine MLO Shahzad and PW Jamshed, the prosecution's side was closed *suo motu* by the Court. This sequence, if accurate, constitutes a sheer violation and prejudice to the rights of both parties, directly undermining the principles of a fair trial. The right to a fair trial is not solely the prerogative of the accused; it equally extends to the prosecution's right to present its case effectively and rigorously. The ability to properly examine and re-examine its own witnesses, and to ensure that the defense has had a full opportunity for cross-examination, is paramount. When the court *suo motu* closes the prosecution's side without critical cross-examinations being completed, several fundamental rights are curtailed. The prosecution's case often hinges on the complete testimony of its witnesses, particularly expert witnesses like the MLO and the investigating officer. The MLO's testimony regarding the nature and extent of injuries, and the IO's account of the investigation, including the collection of evidence and preparation of memos, are foundational. Denying the defense the opportunity to cross-examine these witnesses, and simultaneously preventing the prosecution from ensuring the integrity of their testimony through potential re-examination if necessary, creates a significant lacuna in the evidentiary record. The prosecution cannot adequately address any ambiguities or clarify points that might arise from an incomplete cross-examination. Due process demands adherence to established legal procedures. The Criminal Procedure Code outlines the process of examination-in-chief, cross-examination, and re-examination as essential stages of a trial. Arbitrarily closing the prosecution's evidence before these stages are completed for key witnesses represents a stark departure from these procedures. This procedural irregularity undermines the integrity of the trial process itself, suggesting a hasty disposition rather than a meticulous examination of facts. The trial court's judgment heavily relies on contradictions and infirmities in the prosecution's case, particularly regarding

the medical evidence and the IO's actions. However, if the defense was not given the chance to fully cross-examine the MLO on the "dental opinion" not being on record, or the IO on the non-production of the broken tooth or injury memos, then the grounds for acquittal (as stated by the trial court) might themselves be based on an incomplete and therefore potentially flawed record. The absence of cross-examination means that any ambiguities or omissions in the witnesses' initial statements could not be explored or clarified. This directly prejudices the prosecution's ability to prove its case "beyond reasonable doubt," as the very doubt could have been clarified or substantiated through proper cross-examination.

9. While the appellant is the complainant, the alleged procedural irregularities equally impact the accused's right to a fair trial, albeit in a paradoxical manner that might seem to favor them in the short term but sets a dangerous precedent. The right to cross-examine prosecution witnesses is a cornerstone of a fair trial, enshrined in common law principles and criminal procedure. It allows the defense to challenge the veracity, reliability, and credibility of the prosecution's evidence. If the cross-examination of the MLO and the IO was indeed reserved but never conducted, the accused were deprived of a fundamental tool to test the prosecution's case. While this *prima facie* might appear beneficial to the accused (as unchallenged testimony could be seen as weaker), it also means that the accused did not get the opportunity to elicit favorable evidence or to expose inconsistencies that might have further strengthened their defense during the trial itself. The court's acquittal, while beneficial, rests on a trial process that was not fully adversarial, potentially leaving open questions about the true extent of the evidence. A full and proper cross-examination would have provided the defense with a clearer picture of the strengths and weaknesses of the prosecution's case. Without this, the defense's ability to decide whether to lead evidence in their own defense, or to make an informed decision about not recording statements on oath, could be compromised. While the accused chose not to present defense evidence, this decision should ideally be made after a complete understanding of the prosecution's fully tested case. An acquittal, while desirable for the accused, should be based on a robust and complete judicial process. If an acquittal is granted due to procedural

shortcuts that prevent the full testing of evidence, it can lead to situations where justice is perceived as not having been fully served. In an appeal, this procedural flaw can become grounds for remand, forcing the accused to undergo the rigors of a new trial, which in itself is a violation of the right to an expeditious trial. The "benefit of doubt" should ideally arise from a thorough adversarial process where all evidence has been duly presented and challenged.

10. The appellant's further observation that the accused's statements were "stereo type of charge, computerized written and the certificate is also written by type" raises concerns about the mechanical nature of these crucial documents. While not a direct procedural irregularity in the same vein as incomplete cross-examination, it points to a potential lack of individual attention and proper record-keeping, further contributing to doubts about the trial's fairness and diligence. Furthermore, the appellant's strong allegation that the "character of the trial court was merely as arbitrator the trial court judge did not play role of impartial judge, but forced on the counsel of complainant to compel complainant for compromise, but the complainant refused for compromise, thus the present impugned judgment dated 23.02.2023 is the result of said refusal of compromise," if substantiated, would be a grave breach of judicial impartiality. A judge's role is to adjudicate impartially, not to compel compromise, especially in criminal matters. Such conduct, if true, directly compromises the fundamental right to an impartial tribunal, rendering any subsequent judgment inherently suspect, irrespective of its outcome. This would indicate a deliberate disregard for the merits of the case and an attempt to dispose of it through extra-judicial means, which is wholly unacceptable.

11. The trial court's conclusion to extend the "benefit of doubt" to the accused, while a fundamental principle of criminal law, must stem from doubts that arise despite a thorough and fair trial process. If the procedural irregularities described by the appellant are true, particularly the *suo motu* closing of the prosecution's side without critical cross-examinations, then the "doubt" in the prosecution's case might not be a genuine consequence of a weak case after full adversarial testing, but rather an artificial doubt created by an incomplete and flawed trial. The very foundation upon which the

acquittal rests becomes shaky. The objective of justice is not merely to acquit or convict, but to ensure that the process leading to either outcome is fair, transparent, and in strict adherence to legal procedures.

12. In light of the compelling arguments presented by the appellant regarding significant procedural irregularities, particularly the alleged closure of the prosecution's evidence without affording the opportunity for cross-examination of crucial witnesses (P.W-02 MLO Shahzad and P.W-03 Jamshed), this Court finds that the trial conducted by the learned Judicial Magistrate-XIII (MTMC), Karachi-East, was fundamentally flawed. The principles of a fair trial, encompassing the right of both the prosecution to present its case fully and the accused to effectively cross-examine witnesses, appear to have been infringed upon. The detailed record of examination dates and the subsequent *suo motu* closing of the prosecution's side, if accurate, constitutes a clear violation of the established criminal procedure and has caused severe prejudice to the appellant (complainant) and potentially, albeit inadvertently, to the accused by leading to an acquittal based on an incomplete evidentiary record. Such procedural defects undermine the integrity and impartiality of the judicial process, making it impossible for this Court to determine the true merits of the case on the basis of the existing record. The alleged attempts to compel compromise, if proven, further exacerbate these concerns regarding the impartiality of the trial court.

13. Therefore, this Court holds that the impugned judgment dated February 22, 2023, is unsustainable in law due to these grave procedural infirmities. It is imperative that the trial proceeds in strict accordance with the law, ensuring that both parties are afforded their full rights to present and challenge evidence. Accordingly, the Criminal Acquittal Appeal is allowed. The impugned judgment dated February 22, 2023, passed by the learned Judicial Magistrate-XIII (MTMC), Karachi-East, in Cr. Case No.1335 of 2020, is hereby set aside. The case is remanded back to the learned Judicial Magistrate-XIII (MTMC), Karachi-East, with directions to re-open the prosecution evidence. Afford ample opportunity to the defense to cross-examine P.W-02 MLO Shahzad and P.W-03 Jamshed. If deemed necessary, allow the prosecution to conduct re-examination of these witnesses after

cross-examination. Thereafter, proceed with the recording of statements of the accused under Section 342 Cr.P.C., ensuring they are recorded in a manner that reflects their individual responses rather than a stereo-typed format. Allow the accused, if they so choose, to lead any defense evidence. Conclude the trial expeditiously, ensuring strict adherence to all procedural requirements and fundamental principles of a fair trial, including impartiality. The R&P of Cr. Case No: 1335 of 2020 shall be forthwith transmitted to the learned Trial Court for compliance.

J U D G E