

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No.201 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:- This Criminal Acquittal Appeal, filed under Section 417 of the Code of Criminal Procedure, 1898, challenges the judgment dated February 23, 2023, passed by the learned Judicial Magistrate-XIII (MTMC), Karachi-East, in Cr. Case No. 1113 of 2020, whereby all the accused persons were acquitted in pursuance of Section 245(1) Cr.P.C.

2. The genesis of the instant appeal lies in FIR No. 135/2020 lodged by the Appellant, Mst. Saima, at P.S. Zaman Town, Karachi. The complainant alleged that on January 26, 2020, at 2:00 PM, due to an electricity bill dispute, the accused persons abused her and her husband, Shabbir Ahmed, and subjected them to beating in the presence of Ex-Councilor Ali Bhai. They allegedly created a commotion and left. Subsequently, on January 30, 2020, while the complainant was at her parents' house, her husband informed her of his arrest by the police. Upon returning home with her elder sister Nafeesa and sister-in-law Rukhsana, they found the house lock changed. When questioned, accused Shahzeb allegedly brandished a pistol, assaulted the complainant, and tore her shirt, leading to an outrage of modesty. Upon the gathering of locality people, the accused fled. The complainant then broke the lock and discovered various household articles missing, including a 48-inch LED TV, speaker set, stabilizer, UPS, two gold sets, cash amounting to Rs.180,000/-, and original CNICs and passports of her husband and father-in-law. She informed "15" (police helpline), but the accused had already

absconded. A petition was later filed before the competent court, culminating in the registration of the aforementioned FIR for offences punishable under Sections 147, 337-A(i), 354, 380, 506-B, 457, 504 & 34 PPC.

3. Following the lodging of the FIR, routine investigation was conducted, and a charge-sheet was submitted, leading to the framing of charges against the accused. The accused pleaded not guilty and claimed trial. The prosecution examined Mst. Saima (PW-01), Shabbir Ahmed (PW-02), ASI M. Ayub (PW-03), Muhammad Ali (PW-04), and SIP Javed Ahmed (PW-05). The accused, in their statements under Section 342 Cr.P.C., denied the allegations and claimed innocence, opting not to record statements on oath or lead defence evidence. The learned trial court, after hearing arguments and appraising the evidence, acquitted all the accused, concluding that the prosecution had failed to prove its case beyond reasonable doubt. The findings on the points of determination (whether the alleged incidents occurred and what offence was committed) were recorded as "Doubtful" and "By extending benefit of doubt present accused are acquitted," respectively.

4. Learned counsel for the Appellant argued that the impugned judgment is erroneous and passed in a hasty manner, overlooking the merits of the case. The Appellant contended that the accused are not innocent and are fully involved in the alleged crimes. He argued that the trial court's failure to appreciate facts and a hasty disposal of the case. The trial court's acquittal of the accused despite the serious injuries caused, theft of articles, and criminal intimidation. Allegations that the trial judge acted not as an impartial judge but as an arbitrator, coercing the complainant to compromise, and that the acquittal was a consequence of the complainant's refusal. The trial court's failure to consider the torn shirt of the complainant, which was allegedly presented multiple times by the Investigating Officer (I.O.). The presence of the I.O. and other witnesses on the day of the judgment, whose facts were not considered. The challan and the I.O.'s opinion fully proved the offence against the accused. The acquittal deprived the Appellant of her legal and legitimate rights, despite the alleged full establishment and proof of the offence. Crucially, the Appellant, through her detailed submissions to this Court, highlighted several procedural irregularities and inconsistencies in the trial court's record, which form a significant part of the challenge to the

acquittal. PW-01 Mst. Saima's examination-in-chief was recorded on October 11, 2022, and cross-examination was reserved. However, the record surprisingly shows her cross-examination also on the same date, indicating a possible copy-paste error from other cases. The case diaries for October 11, 2022, indicate the presence and examination of "complainant Shabbir Ahmed and PW Saima," which is contradictory as Mst. Saima is the sole complainant in this case, not Shabbir Ahmed. The evidence of PW-02 Shabbir Ahmed exhibits the same inconsistencies as Mst. Saima's deposition. The case diary for October 14, 2022, is missing from the record. The examination of PW-03 ASI Muhammad Ayub Jamali on October 19, 2022, is not reflected in the case diary, and the diary for his cross-examination on November 28, 2022, is also missing. On December 7, 2022, SIP Javed Ahmed's evidence was recorded, and cross-examination was reserved, yet the stage abruptly shifted to closure of prosecution side and recording of accused's statements, without the cross-examination taking place. The statements of the accused under Section 342 Cr.P.C. appear to have all questions computer-generated, lacking any handwritten endorsement or certificate from the learned Presiding Officer, raising concerns about their authenticity and proper recording. 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.

5. 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.

6. I have given our thoughtful consideration to the arguments advanced by the learned counsel for the Appellant, perused the impugned judgment, and carefully examined the content of the appeal, particularly the detailed objections raised regarding the procedural conduct of the trial.

7. While it is true that an acquittal judgment enjoys a double presumption of innocence and should not be lightly interfered with, this Court must ensure that the trial process itself was conducted in accordance with law and principles of fair trial. The detailed irregularities pointed out by the Appellant concerning the recording of evidence, the inconsistencies in the case diaries, the missing entries, and the lack of proper endorsements on the statements of the accused, raise serious doubts about the integrity and transparency of the trial proceedings.

8. The discrepancy regarding the recording of Mst. Saima's cross-examination on the same day as her examination-in-chief, despite a reservation, and the contradictory entries in the case diaries about the presence and examination of "complainant Shabbir Ahmed" when Mst. Saima is the sole complainant, are deeply concerning. The absence of specific case diaries (October 14, 2022, and November 28, 2022 for PW-03's cross-examination) further exacerbates these concerns, suggesting a lapse in the meticulous record-keeping expected of a judicial court. The abrupt change of stage from reserved cross-examination of SIP Javed Ahmed to closure of the prosecution side and recording of accused's statements, without any apparent reason on record, also points towards procedural anomalies.

9. Moreover, the assertion that all questions in the accused's statements were computer-generated without any handwritten certificate or endorsement by the learned Presiding Officer, if found true upon verification of the original record, would undermine the sanctity and authenticity of these crucial documents. These are not mere technicalities but go to the root of a fair trial, which is a fundamental right guaranteed under Article 10-A of the Constitution of Pakistan.

10. While the learned trial court's judgment highlights contradictions in the prosecution evidence, which are valid grounds for acquittal, the procedural infirmities raised by the Appellant cannot be overlooked. A judgment, however sound in its reasoning on merits, loses its legal sanctity if the underlying trial process is marred by fundamental procedural defects that compromise its fairness and transparency.

11. The cumulative effect of the identified irregularities, including the copy-pasting of diary entries, inconsistencies in witness examination records, missing diaries, and lack of proper authentication of crucial documents, creates a strong impression that the trial proceedings were conducted in a perfunctory manner, potentially denying both sides a fair opportunity to present their case and for the court to accurately record and assess the evidence. Such procedural lapses make it difficult for this appellate court to confidently assess the merits of the trial court's findings. For a just and fair determination of the case, it is imperative that the trial proceeds on a clear and undisputed record of proceedings. The aforementioned anomalies suggest that such a clear record was not maintained, thereby preventing a proper appraisal of the evidence. Therefore, this Court is of the considered view that the trial was vitiated by significant procedural irregularities, which require a fresh examination of the evidence.

12. In light of the foregoing reasons, particularly the serious procedural infirmities and inconsistencies highlighted in the trial court's record, which compromise the fairness and transparency of the proceedings, this Criminal Acquittal Appeal is allowed. The impugned judgment dated February 23, 2023, passed by the learned Judicial Magistrate-XIII (MTMC), Karachi-East, in Cr. Case No. 1113 of 2020, is hereby set aside. The case is remanded back

to the learned Judicial Magistrate-XIII (MTMC), Karachi-East, with the direction to conduct a re-trial of the case from the stage of examination of prosecution witnesses, ensuring strict adherence to the procedural requirements of the Code of Criminal Procedure, 1898, and maintaining a meticulously accurate record of all proceedings. The learned trial court shall ensure that all evidence is properly recorded, cross-examinations are conducted as per law, and all documentary evidence, including the case diaries and statements of the accused, are duly authenticated. The case shall be disposed of expeditiously, preferably within a period of three months from the date of receipt of this order. The accused persons shall appear before the trial court on the date fixed by the learned Magistrate. Their bail bonds shall remain in force, subject to any orders passed by the trial court. The office is directed to send back the R&P of Cr. Case No. 1113 of 2020 to the trial court forthwith for compliance.

J U D G E