

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No. 274 of 2023

Appellant : Abdul Ghaffar son of (Late) Rustam Ali,
Through Mr. Babar Ali, advocate for appellant.

Respondent : The State

Date of hearing : 30.05.2025

Date of Order : 30.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J.— Through this Criminal Acquittal Appeal, the Appellant seeks to challenge the judgment dated February 22, 2023, passed by the learned Judicial Magistrate-II, Karachi-South, in Criminal Case No.1618/2020. The said judgment resulted in the acquittal of the private respondents herein from charges initially framed for offence under Sections 448, 468, 506, 34 PPC.

2. The foundation of this appeal is rooted in FIR No. 339/2019, lodged by appellant/complainant, Abdul Ghaffar, at Police Station Baloch Colony, Karachi. The prosecution's narrative, as articulated in the FIR and reiterated by the appellant, postulates that the complainant acquired House No.506, Street No.D-15, Near Makki Masjid, Mehmoodabad No.4, Karachi, in 2007. He further averred that in 2013, he leased the ground floor of this residence to his brother Muhammad Almas, who regrettably passed away during the trial proceedings, for a stipulated monthly rent of Rs.15,000/-. Subsequently, the appellant asserted that Muhammad Almas, in concert with the co-accused Muhammad Mushtaq, Ishaq, Muhammad Waqas, Bilal, Javed, and Mst. Tabsum (with Mst. Naseem Akhtar being untraceable and subsequently deceased) allegedly fabricated a forged sale agreement dated September 17, 2007. Following this, they purportedly unlawfully occupied the premises and ceased remitting utility payments and rent. A further allegation posited by the appellant was that when representatives from Sui Southern Gas Company Limited (SSGCL) visited the property, the accused purportedly issued threats of severe repercussions.

3. Initially, charges were brought forth under Sections 448, 468, 506, and 34 PPC. However, the learned predecessor of the trial court, through an order dated February 8, 2020, accepted the report under Section 173 Cr.P.C. exclusively for offence under Sections 506 & 34 PPC, thereby discarding the

applicability of Sections 448 and 468 PPC. The learned trial court, subsequent to an exhaustive evaluation of the presented evidence, concluded that the prosecution had regrettably failed to discharge its burden of proving the case beyond a reasonable doubt. The judgment, rendered on February 22, 2023, meticulously elucidated several critical shortcomings in the prosecution's evidentiary foundation, which ultimately led to the acquittal of all accused individuals, including Javed Ishaq, who was acquitted in absentia notwithstanding the issuance of non-bailable warrants against him.

4. The learned counsel for the appellant diligently presented a lengthy discourse, vehemently challenging the impugned judgment. He asserted with unwavering conviction that the judgment was marred by egregious errors stemming from non-reading, mis-reading, non-consideration, and without application of judicial mind. The learned counsel forcefully contended that accused Muhammad Mushtaq, during his cross-examination while under oath pursuant to Section 340(2) Cr.P.C., unequivocally admitted that "future dates Pay Orders were used in the forged sale agreement." This alleged admission, the learned counsel stressed, constituted irrefutable proof of the commission of an offence, particularly under Section 468 PPC, thereby mandating conviction. He lamented that this pivotal admission was, astonishingly, overlooked by the learned trial court. Furthermore, the learned counsel strenuously argued that the trial court's acquittal of Javed Ishaq in absentia constituted a grave legal impropriety. Despite the issuance of non-bailable warrants against him and the separation of his trial, the learned counsel submitted that the trial court proceeded to acquit him without formally recalling its own warrant order or serving a notice to the surety. This, it was argued, demonstrated a palpable disregard for established procedural norms. Elaborating on the charge pertaining to forged sale agreements under Section 468 PPC, the appellant's counsel adamantly asserted that the fabrication of the sale agreement, evidenced by the alleged use of future-dated pay orders, squarely brought the offence within the ambit of Section 468 PPC. In support of this contention, reference was made to the testimonies of the Estate Agent, Aftab Ahmed Siddiqui, and the Junior Clerk from the Sub-Registrar's office, Muhammad Mukhtar, who purportedly attested to the authenticity of the appellant's sale deed and, conversely, to the forged nature of the agreement presented by the accused. The learned counsel further argued that the continued illegal possession of the ground floor of the property by the accused, particularly given the complainant's residence on the first floor, unequivocally attracted the provisions of Section 448 PPC. This persistent unlawful occupation, it was

submitted, necessitated conviction under the said section. Addressing the allegations of threats of dire consequences under Section 506 PPC, the appellant's counsel maintained that the actions of the accused indisputably amounted to criminal intimidation. Specific mention was made of the alleged destruction of Sui Gas pipes and the presence of Muhammad Irfan, a plumber, who was presented as an eye-witness to this incident. The learned counsel vigorously asserted that Muhammad Irfan, being an eye-witness and a private person, rendered any requirement for additional independent witnesses from the locality entirely superfluous. A significant portion of the appellant's arguments was dedicated to highlighting what were termed as instances of misreading and non-reading of crucial evidence by the trial court. The learned counsel pointed out that the trial court had allegedly selectively quoted from PW-05 Muhammad Irfan's cross-examination, while conspicuously disregarding his examination-in-chief, which, according to the appellant, depicted the accused's abusive language and the presence of the police at the scene. Similarly, it was contended that the trial court's conclusion regarding the complainant's failure to provide title documents, based on PW-03 SIP Muhammad Younus's testimony, was a misreading, as the appellant asserted that these documents were indeed furnished subsequent to the FIR's registration. The absence of private locality witnesses was again dismissed, with the argument that Muhammad Irfan, being a private individual and an eye-witness, along with the appellant himself, rendered further independent witnesses unnecessary. The learned counsel also insisted that the Investigating Officer's deposition regarding the absence of a complaint from SSGCL staff was a misreading, given Muhammad Irfan's presence. Finally, the learned counsel for the appellant emphasized the conclusive nature of the prosecution witnesses' statements, arguing that they were unequivocally directed against the accused. It was further asserted that the accused's statements under Section 342 Cr.P.C., particularly Muhammad Mushtaq's decision to depose on oath, effectively shifted the burden of proof onto the defense, a burden which, the learned counsel contended, they conspicuously failed to discharge.

5. This Court, having accorded a comprehensive hearing to the learned counsel for the appellant and having undertaken a thorough and painstaking scrutiny of all the material available on record, finds itself convinced that the instant appeal lacks substantial merit and warrants dismissal *in limine*. The appeal is primarily predicated on the assertion that the trial court engaged in misreading and non-reading of vital evidence, thereby vitiating its judgment. However, a deeper and more nuanced analytical scrutiny of the record reveals

that the trial court's conclusions are firmly rooted in a proper appreciation of established principles of criminal jurisprudence, coupled with a keen recognition of the glaring and fatal deficiencies inherent in the prosecution's case.

6. Let re-examine the core pillars of the prosecution's allegations and the trial court's findings to understand why no interference with the impugned judgment is warranted. Firstly, concerning the allegation of forged documents, particularly under Section 468 PPC, the complainant posited that his deceased brother, Muhammad Almas, was responsible for fabricating a fraudulent sale agreement. It is a fundamental tenet of criminal law that the burden of proving forgery, encompassing the creation of a false document with fraudulent intent, rests squarely and unequivocally upon the prosecution. Crucially, the most pivotal piece of evidence, indeed the very *corpus delicti* of the alleged forgery the purportedly forged sale agreement itself was conspicuously absent and never presented before the trial court. Without the physical production of the alleged forged document, and its subsequent authentication through forensic examination or other unimpeachable evidence, the charge under Section 468 PPC simply cannot be sustained. The appellant's reliance on a purported admission by accused Muhammad Mushtaq regarding future dated pay orders embedded within a forged sale agreement is, in my estimation, a vague and insufficient basis. Such a statement, devoid of the primary documentary evidence, cannot independently establish the intricate elements of forgery. An accused's statement, even when made under oath, is primarily a part of their defense, not a confession that can singularly bridge the evidentiary chasm created by a missing primary document. Moreover, it is highly significant to note that the learned predecessor court had already seen fit to discard the charges under Sections 448 and 468 PPC at an earlier stage, a decision that further underscores the inherent fragility of these particular accusations from the very inception of the proceedings. Forgery is defined in Section 463 PPC as making a false document with intent to cause damage, injury, support a claim, or commit fraud. A document is "false" under Section 464 PPC if made without authority or with dishonest/fraudulent intent. The prosecution's failure to present the alleged forged document and establish these elements leaves the charge utterly unsubstantiated. Secondly, addressing the allegation of house-trespass, falling under Section 448 PPC, the complainant's own narrative provides a crucial insight: he himself stated that he rented out the ground floor of the premises to his brother Almas in 2013. This admission, by its very nature, signifies an initial lawful entry by the accused. For Section 448 PPC to

be applicable, the act must qualify as a criminal trespass, as defined in Section 441 PPC, meaning entry with an intent to commit an offence, or to intimidate, insult, or annoy, or, crucially, having lawfully entered, to unlawfully remain with such intent. The prosecution, in this regard, failed entirely to produce any documentary evidence, be it a formal rent agreement, rent receipts, or a legally valid notice of eviction, which could substantiate the purported rental arrangement or, more importantly, prove that the tenancy was lawfully terminated and the accused's subsequent possession became unlawful. In the conspicuous absence of such concrete evidence, the dispute, when viewed objectively, appears to be fundamentally civil in nature, pertaining to ownership or tenancy rights, rather than a criminal trespass as meticulously defined within the PPC. The essential ingredients of Section 448 PPC simply fail to be met when there is no demonstrable proof of either unlawful entry or an unlawful remaining coupled with the requisite criminal intent. Thirdly, with respect to the allegation of threats, punishable under Section 506 PPC, the complainant asserted that both he and employees of Sui Southern Gas Company Limited (SSGCL) were subjected to intimidation. However, the prosecution's evidentiary presentation on this critical point was, lamentably, inadequate. Foremost, no employee of SSGCL was called upon or examined to corroborate the serious claim of threats being extended to them. Furthermore, there was an utter lack of any documentary evidence, such as unpaid monthly utility bills or formal complaints lodged by SSGCL, which could establish a clear motive or a specific instance where threats were allegedly issued in the context of outstanding dues or connection work. Most significantly, the complainant himself failed to articulate the precise words used by the accused during the alleged threats. As sagaciously observed by the learned trial court, drawing upon established judicial precedents (such as *Ghulam Rasul vs. Ch. Saleem Shad*, reported in 1986 PCr.L.J. 823), a mere threat simpliciter does not in itself constitute criminal intimidation. To truly attract the provisions of Section 506 PPC, the threat must be specific, demonstrably intended to cause alarm or designed to compel an act or omission, as meticulously defined in Section 503 PPC. Vague and generalized allegations of dire consequences, utterly devoid of concrete specifics or precise wording, are legally insufficient to meet the stringent requirements for proving criminal intimidation. The appellant's reliance on PW-05 Muhammad Irfan's testimony as an eye-witness to threats is also unpersuasive. While he may have been present during some form of altercation, his statement, as quoted by the appellant, refers to abuse language and being told to come down, which does not, by any stretch, clearly

establish specific threats falling within the legal ambit of Section 503 PPC by the accused, nor does it confirm threats explicitly directed at SSGCL staff.

7. Finally, and perhaps most crucially, the learned trial court's overarching findings regarding the inherent weaknesses pervading the entirety of the prosecution's case remain robust and unimpeachable. The unexplained and inordinate delay of over twelve years in lodging the FIR is a formidable and indeed fatal flaw that casts profound and irremovable doubts upon the veracity and timeliness of the allegations. Furthermore, the conspicuous failure to produce independent private witnesses from the locality, despite the alleged incident occurring in what was described as a thickly populated area, further undermines the credibility of the prosecution's narrative. The absence of police roznamcha entries pertaining to crucial investigative processes merely compounds these doubts, shrouding the police's actions in an aura of mystery. The various contradictions and inconsistencies within the prosecution's own evidentiary presentation, as meticulously highlighted by the trial court such as the differing versions of the incident presented by the complainant and the selective reading of testimonies collectively served to erode the very credibility of the prosecution's case. The fundamental principle of criminal justice, that any single and slightest doubt created, benefit of the same must go to the accused, serves as a cornerstone of our legal system. The cumulative effect of the multitude of deficiencies meticulously documented by the learned trial court, findings which this Court unequivocally affirms creates not merely a reasonable doubt, but rather renders the entirety of the prosecution's case highly improbable and ultimately unreliable.

8. Regarding the acquittal of Javed Ishaq in absentia, while it is standard practice for absconding accused individuals to be proceeded against separately, in the context of an acquittal appeal where the very foundation and substance of the prosecution's case have been determined to be insufficient and riddled with doubt against all accused who faced trial, extending the benefit of doubt to an absconding accused in the same proceedings becomes a logical and justifiable outcome. This is because the prosecution has demonstrably failed to prove the alleged offences against anyone, regardless of their presence in court.

9. In light of the foregoing detailed and exhaustive analysis, it is patently clear that the learned trial court engaged in a meticulous scrutiny of the evidence presented and applied established legal principles with precision and judiciousness. The findings rendered are neither perverse nor arbitrary; nor do

they suffer from any material misreading or non-reading of evidence that would necessitate intervention by this Court. The prosecution, in essence, failed miserably to discharge its paramount burden of proving the charges levelled against the private respondents beyond a reasonable doubt.

10. Therefore, this Court finds no merit whatsoever in this Criminal Acquittal Appeal, and it must consequently fail. Resultantly, the instant Criminal Acquittal Appeal stands dismissed in *limine*. The judgment of acquittal dated February 22, 2023, passed by the learned IInd Judicial Magistrate, Karachi-South is hereby maintained.

J U D G E