

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Criminal Acquittal Appeal No.S-42 of 2024

Appellant: Piyaro son of Wadho Odh,
Through Mr. Om Parkash H. Karmani, Advocate.

Respondents: Gopichand and 04 others.

The State: Through Mr. Dhani Bakhsh Mari, A.P.G Sindh.

Date of Hearing: 23.09.2025.

Date of Judgment: 23.09.2025.

J U D G M E N T

AMJAD ALI SAHITO, J.- Being aggrieved and dissatisfied with the judgment dated 19.01.2018, passed by the learned Additional Sessions Judge, Khipro, in Criminal Appeal No.01/2017 “Re-Gopichand and others Vs. The State” and Criminal Revision Application No.01/ 2017 “Re-Piyaro v. Gopichand and others” whereby he allowed the appeal and set aside judgment of conviction dated 08-05-2017 passed by learned Assistant Sessions Judge, Khipro, in Sessions Case No. 12/ 2016 Re: S/V Gopichand and others, arising out of FIR No.157/ 2024 under sections 377, 342, 147, 148 PPC registered at PS Khipro and acquitted the respondents/ accused persons and so also dismissed Criminal Revision Application, filed by the appellant for enhancement of sentence.

2. The brief facts of the FIR are that on 23.12.2014, complainant Piyaro Oad lodged FIR stating therein that he has seven sons, including his eldest son Raichand, aged about 35 years, who lives with him. On 14.11.2014, Raichand went to village Jumman Shah Johli to visit relative namely Peeru Oad. On 15.11.2014 at about 6:00 p.m, Raichand returned and informed him that while he was on his way to Peeru Oad’s house, he was intercepted by (1) Gopi s/o Walu Oad, (2) Khooban s/o Gaju Oad, (3) Pakloo s/o Peeru Oad, (4) Daloo s/o Gaju Oad, (5) Walu s/o Gaju Oad and (6) Master Shamon s/o Janhwar Oad. They allegedly took him to Walu Oad’s house, where they attacked him with the blunt side of hatchets and with lathies, causing him to

lose stability. Thereafter, Gopi Oad, Khooban Oad and Pakloo Oad forcibly committed sodomy and kept him confined throughout the night. The next day, taking advantage of an opportunity, Raichand escaped and reached Police Station Khipro, where he obtained a referral letter for medical treatment and examination. Following this, the complainant moved Criminal Miscellaneous application before the learned Sessions Court/Ex-Officio Justice of Peace, Sanghar, and after obtaining appropriate orders, he reported the incident.

3. After completion of usual investigation, the investigation officer submitted a report under section 173 Cr.P.C before the competent Court of law and thereafter the case papers were supplied to the respondents /accused under receipt and charge was framed against them to which they pleaded not guilty and claimed to be tried vide their pleas recorded at Exh.04/A to 04/E.

4. In order to establish the accusation against the respondents/accused, the prosecution examined complainant Piyaro Oad at Exh.05, he produced FIR at Exh:05/A, order dated 22.12.2014 passed by learned Sessions Judge/Ex-Officio Justice of Peace, Sanghar at Exh.05/B. P.W-2 victim Raichand at Exh.06, P.W-3 Harchand (mashir) at Exh. 07, he produced memo of place of incident at Exh.07/A, memo of arrest of accused Gopichand, Dalo and Shamon at Exh.07/B to 07/D. PW-4 Dr. Nathur Mal at Exh.08, he produced police letter dated 15.11.2014 at Exh.08/A, provisional MLC at Exh.08/B, final MLC at Exh.08/C, chemical examiner report at Exh.08/D, final MLC at Exh.08/E, police letter dated 27.12.2014 for examination of accused Gopi at Exh.08/F, provisional MLC of accused Gopi at Exh.08/G and final MLC of accused Gopi at Exh.08/H and P.W-5 IO/ASI Allah Bachayo at Exh.09, thereafter prosecution closed its side vide side at Exh.10.

5. The statement of the respondents/accused U/S 342 Cr.P.C were recorded at Ex.11 to Ex.15 to which they denied all the allegations leveled against them by the prosecution and claimed their innocence. However, they did not examine themselves on oath nor led any evidence in their defence.

6. The learned trial Court on evaluation of the evidence and after hearing the counsel for the parties, convicted and sentenced the respondents/accused vide Judgment dated 17.08.2016. Thereafter, respondents/accused preferred Criminal Appeal No.01/2017 against said judgment of conviction, which was allowed by learned Additional Sessions Judge, Khipro, and acquitted the respondents/ accused vide judgment dated 19.01.2018, which the appellant/complainant has impugned before this Court by preferring instant Criminal Acquittal Appeal.

7. It is pertinent to mention here that instant Criminal Acquittal Appeal was dismissed in non-prosecution vide order dated 12-11-2019 and then learned counsel for the appellant filed application under section 516 Cr.P.C (M.A No.10863/ 2019) for setting aside impugned order dated 12-11-2019. However, there is no provision under Criminal Procedure Code for restoration of a criminal matter. Even on merit, the instant Criminal Acquittal is devoid of merit for the following reasons:

Admittedly, complainant is not an eyewitness and lodged the F.I.R solely on the disclosure of the alleged victim. The victim's own versions are inconsistent. In his statement under Section 161 Cr.P.C, he stated that the incident took place inside the house of Walu, but in his evidence before the court he claimed that he was stopped near Walu's house, taken to a cotton crop field and tied to a Neem tree. In cross-examination, he stated that 100-150 people of the locality gathered and intervened, yet not a single independent witness was examined. Even the site inspection memo does not indicate the presence of any cotton crop as claimed. The medical evidence also does not support the charge. The provisional MLC mentions only minor bruises and abrasions and there was no mark of injury or tear around the anus. The final chemical report merely states that human sperm was detected on the shalwar and on one anal-margin swab but no semen group was determined. Crucially, no semen sample of the accused was taken, no DNA or cross-matching test was performed, and the co-accused was never medically examined. The medical officer also conceded in cross-examination that the bruises could be caused by a fall from a motorcycle and remarked

that the victim was “habitual of such practice”. The learned Appellate Court has rightly observed that mere presence of human semen without matching it to any accused is not conclusive proof. It is settled law that an acquittal carries a double presumption of innocence and interference is justified only when the findings are perverse, arbitrary or the result of misreading or non-reading of evidence. The record does not reveal any such illegality or perversity in the impugned judgment.

8. The upshot of the above discussion is that the restoration application filed by learned counsel for the appellant is not maintainable, hence same is hereby dismissed and even on merit instant Criminal Acquittal Appeal is devoid of merit.

JUDGE

****Faisal****