# IN THE HIGH COURT OF SINDH AT KARACHI
**Crl. Acq. Appeal No. 861 of 2019**

**Present:**

**Acting Chief Justice Zafar Ahmed Rajput**
**Justice Miran Muhammad Shah**

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| Appellant | : | Faiz-ur-Rehman, through Mr. Mansoor Mir Advocate. |
| Respondents No. 1 & 21 | : | The State & VIII$^{th}$ Additional Sessions Judge Karachi-West, through Mr. Abrar Ali Khichi, Addl. P.G. |
| Respondents Nos. 2 to 6, 8 to 10 and 12 to 14 | : | Gulsher and others through Mr. Aijaz Ali Hisbani, Advocate. |
| Respondents Nos. 7, 11 and 15 to 20 | : | Muhammad Zubair & others (Nemo) |
| Date of hearing | : | **22.09.2025** |
| Date of order | : | **22.09.2025** |

**JUDGMENT**

**ZAFAR AHMED RAJPUT, ACTING CHIEF JUSTICE:-** This Criminal Acquittal Appeal is directed against the Judgment, dated 15.11.2019, whereby the learned VIII$^{th}$ Addl. Sessions Judge/Additional Model Criminal Trial Court, Karachi-West **("Trial Court")** acquitted the respondents No. 2 to 20 of the charge in Sessions Case No.840 of 2016, arising out of FIR No. 08 of 2016, registered at P.S. Orangi Town, Karachi-West under sections 363, 302, 201, 376, 511 & 34, P.P.C.

**2.** Brief facts of the case are that, on 25-1-2016 at about 10.30 pm, complainant Faiz-ur-Rehman alongwith his wife and daughters reached Shahnaee Shadi Hall to attend a valima ceremony. His daughter, namely, Pakeeza aged about 6 ½ years was playing with other girls in the said marriage hall. On closing of valima ceremony at about 01.00 am, he was

leaving the marriage hall when he found his said daughter missing. He alongwith his relatives searched her but could not find her. He then informed to police and helplessly searched his daughter. On 28.01.2016, he lodged the FIR against the unknown persons for kidnapping of his daughter. On 31.01.2016, the dead body of the said minor baby was recovered from the under-ground water tank of the marriage hall. After compliance of section 174 CrPC, and post mortem, police handed over the dead body to complainant. As per MLC, the minor baby was sexually assaulted before being murdered, hence, section 302, PPC was added in FIR. After completion of investigation, police submitted the charge-sheet against the private respondents-accused No. 2 to 20, who at trial denied the charge. Prosecution examined eleven witnesses and produced relevant documents. The respondents-accused in their statements under section 342 CrPC denied the prosecution's allegation by pleading innocence. After assessing the evidence on record, the learned trial Court acquitted the respondents-accused under section 265-H(i) CrPC vide impugned judgment. Aggrieved by the same, the appellant-complainant has preferred this criminal acquittal appeal.

**3.** Heard the learned counsel for the appellant, learned counsel for respondents No. 2 to 6, 8 to 10 and 12 to 14 as well as learned Addl. PG for the State and perused the material available on record.

**4.** During pendency of the instant Appeal, respondents No. 11, 16 and 20, namely, Sabir Hussain, Hassan Ali and Abdul Ghani, respectively, died.

**5.** It appears from the perusal of the record that the prosecution witnesses examined at trial have only deposed regarding the disappearance

of the minor child, the search carried out for her, and the eventual recovery of her dead body from the underground water tank of the Marriage Hall — a place which, by their own account, had been inspected several times prior to the discovery. Their evidence does not confidently or convincingly connect the respondents/accused with the occurrence. At most, they identified the respondents/accused as being the Manager, electrician, and employees of the Hall, yet none of them ascribed to them the role of perpetrators of the crime. From such testimony, it becomes evident that no substantive evidence was brought forward by the prosecution to link the respondents/accused with the alleged offences of kidnapping, rape, murder, or destruction of evidence. The statements of the three private witnesses were, in fact, discredited during cross-examination by the defence.

**6.** The evidence of the official witnesses also suffers from the same deficiency. Collectively, the testimony of private and police witnesses does not assign any role to any of the respondents/accused regarding commission of the alleged offences. As regards the medical evidence, though the learned counsel for the appellant/complainant sought to place reliance on the opinion of the Woman Medical Officer, who noted that the intestine of the deceased baby was protruding from the vagina, and argued that this demonstrated the commission of a fearful and inhuman act, yet the record reveals that the medical officer's opinion stood alone and was not supported by any scientific confirmation. The samples collected were forwarded for chemical and DNA analysis, but the results did not turn out on account of non-matching of the same with respondents/accused, thus, did not prove the charge of rape against them. The injury in question may

reasonably admit of another explanation — for instance, that it might have occurred when the child was thrown into the tank which was not filled with water, or by some other unidentified means. Since the actual circumstances of the incident remain undiscovered, the medical evidence by itself cannot be stretched to conclusively prove the charge. It is well-settled that medical evidence can at best serve as corroborative material, but it cannot by itself determine the identity of the assailant or connect the accused with the crime.

**7.** In the present case, there is thus no evidence on record which could lawfully implicate the respondents/accused. The depositions of the prosecution witnesses do not disclose either direct, indirect, or circumstantial material to establish the occurrence of kidnapping, rape, or murder by them, nor do they point towards the persons responsible for committing those offences. These aspects remain untraced owing to the failure of the investigation to unearth the truth. Therefore, the evidence produced is inadequate and unreliable for awarding the conviction to respondents/accused. It is equally a firmly entrenched principle of criminal jurisprudence that conviction, especially in cases involving heinous charges, must rest upon unimpeachable evidence leading to certainty of guilt. Where the prosecution case gives rise to doubt, the benefit thereof must always be extended to the accused.

**8.** It would be relevant to mention here that the extraordinary remedy of an appeal against an acquittal is different from that of an appeal against the conviction and sentence because a presumption of double innocence of the accused is attached to the order of acquittal. Thus, on the examination of an order of acquittal as a whole, credence is accorded to the findings of

the Trial Court whereby the accused has been exonerated from the charge of commission of the offence. Therefore, to reverse an order of acquittal, it must be shown that the acquittal order is unreasonable, perverse and manifestly wrong. The order of acquittal passed by the Trial Court which is based on correct appreciation of evidence will not warrant interference in appeal. The Apex Court while dealing with the appeal against acquittal has been pleased to lay down the principle in the case of *Muhammad Shafi Vs Muhammad Raza & another* **(2008 SCMR 329)** that *"an accused is presumed to be innocent in law and if after regular trial he is acquitted, he earns a double presumption of innocence and there is a heavy onus on the prosecution to rebut the said presumption."*

**9.** For the foregoing facts and reasons, we are of the view that the impugned judgment does not suffer from any illegality or infirmity and misreading or non-reading of evidence leading to miscarriage of justice; therefore, the same is not open for interference by the High Court under section 417 (2A), CrPC. Hence, this Appeal is dismissed, accordingly.

**ACTING CHIEF JUSTICE**

**JUDGE**

*Athar Zai*