

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Criminal Acquittal Appeal No.D-18 of 2018

Present:

Mr. Justice Amjad Ali Sahito
Mr. Justice Jan Ali Junejo.

Appellant : Riaz Hussain S/o Haji Muhammad
Through Mr. Habibullah G. Ghouri, Advocate.

The Respondent/State : Through Mr. Muhammad Noonari, learned D.P.G.

Date of hearing: 08-05-2025

Date of Judgment: 08-05-2025

JUDGMENT

Jan Ali Junejo, J.--- This Criminal Acquittal Appeal has been filed by the Appellant, Riaz Hussain (Complainant), under Section 417(2-A) of the Code of Criminal Procedure, 1898, read with Sections 25(4-A) and 25(4-B) of the Anti-Terrorism Act, 1997. The appeal challenges the judgment dated 03.12.2018 (hereinafter referred to as the "*Impugned Judgment*"), passed by the learned Special Judge, Anti-Terrorism Court, Kashmore @ Kandhkot (hereinafter referred to as the "*Trial Court*"). Through the Impugned Judgment, Respondent No.1, Imran, son of Dilbar Mazari, was acquitted under Section 265-H(1) Cr.P.C. of the charges framed against him in Special Case No.19 of 2015 (amalgamated with Special Case No.38 of 2016). These cases arose from:

- **Crime No. 33 of 2015**, registered at Police Station Guddu, District Kashmore @ Kandhkot, under Sections 365-A of the Pakistan Penal Code (PPC), read with Sections 6 and 7 of the Anti-Terrorism Act, 1997; and
- **Crime No. 124 of 2015**, registered at Police Station Abadpur, District Rahim Yar Khan (Punjab), under Sections 302, 148, and 149 PPC, read with Sections 6 and 7 of the Anti-Terrorism Act, 1997.

The Appellant, being the complainant and the brother of the deceased Meer Ahmed, seeks the reversal of the acquittal and prays for the conviction of Respondent No.1.

2. The prosecution case, as emerging from the two FIRs, commenced with the alleged incident on 16.04.2015. According to FIR No. 33/2015 (Ex. 9/A), lodged by the Appellant Riaz Hussain at PS Guddu on 28.04.2015, he, along with his now-deceased brother Meer Ahmed, nephew Abid Hussain, and cousin Sadaruddin, were proceeding towards village Shah Muhammad Mazari near Guddu Barrage around 10:00 AM. Near Bhatti Mohalla near Wapda Chanel, they were intercepted by occupants of a Double Cabin Pajero and a Cultus car. The Appellant identified the accused, including Respondent No.1 Imran, (2) Safdar, (3) Shahzad, (4) Muhammad Nawaz, (5) Ahmed Nawaz, (6) Ahmed Hussain and (7) Dahar Mazari, along with three unidentified persons armed with Kalashnikovs. It is alleged that Respondent No.1 Imran and co-accused Shahzad forcibly abducted Meer Ahmed and created terror, put him in the Double Cabin Pajero, and declared they were kidnapping him for a ransom of Rs. 30 lac. The Appellant stated he initially attempted to negotiate Meer Ahmed's release through community elders ('Nekmards') before lodging the FIR.

3. Subsequently, on 30.04.2015, the Appellant lodged FIR No. 124/2015 (Ex. 19/B) at PS Abadpur, District Rahim Yar Khan. He stated that after failing to arrange the ransom, he contacted the accused party on 30.04.2015, who informed him that Meer Ahmed had been murdered on the night of 16/17.04.2015 due to non-payment of ransom and his body disposed of. The FIR further narrates that the Appellant then met PWs Sajjad Ahmed and Abdul Razzak, who claimed to have witnessed the murder on the night of 16/17.04.2015 near Sarri Basti. They allegedly saw the accused, including Respondent No. 1 Imran, torturing Meer Ahmed. Specifically, they claimed Respondent No. 1 Imran and co-accused Safdar tightened a rope around Meer Ahmed's neck, while others assaulted him and fired shots, after which the body was concealed. These witnesses allegedly remained silent initially due to fear and enmity.

4. During the trial, the prosecution examined eleven witnesses. Key among them were Dr. Muhammad Azam (PW-1), the Medical Officer who conducted the post-mortem examination on the recovered bones (Ex. 17/C), though he was unable to determine the cause of death; HC Abdul Jabbar (PW-2), the author of FIR (Ex. 18); the complainant Riaz Hussain (PW-3, Ex. 19); Mashir Shahik (PW-4, Ex. 20); (PW-5, Ex.21) I.O Khalid Ahmed, (PW-6, Ex.22) SHO Asghar Nawaz, (PW-7, Ex.23) PC Ghulam Yaseen, eye witness Abid Hussain (PW-8, Ex. 24); SHO/Investigating Officer Baghoo Khan (PW-9, Ex. 25); ASI Faiz Muhammad (PW-10, Ex. 26) and another eye witness, Sajjad Hussain (PW-11, Ex. 29). The prosecution also produced several documentary exhibits, including FIRs (Ex.19/A and 19/B), the post-mortem report (Ex. 17/C), site plans and memos (Ex. 20/A, 25/A, 25/B), and statements recorded under Section 164 Cr.P.C. (Ex. 19/D and 24/C). Upon conclusion of the evidence, the prosecution formally closed its side.

5. Respondent No. 1 Imran, in his statement under Section 342 Cr.P.C. (Ex. 32) and examination on oath under Section 340(2) Cr.P.C. (Ex. 33), denied the allegations. He pleaded false implication due to enmity arising from his court marriage on 26.06.2014 with Mst. Reeshma, the cousin of the complainant Riaz Hussain. He claimed the deceased Meer Ahmed was his cousin and was killed by unknown persons in Karachi prior to this case. He produced copies of a petition filed by his wife Mst. Reeshma against the complainant (Ex.33/A) and his Nikahnama (Ex. 33/B). He asserted innocence and prayed for justice.

6. The learned Trial Court, after evaluating the evidence and hearing arguments, acquitted Respondent No. 1 vide the impugned judgment dated 03.12.2018. The trial Court found significant weaknesses in the prosecution case, including the unexplained delay in lodging the first FIR, the lack of conclusive medical evidence establishing the cause of death, the reliance on interested and potentially inimical witnesses without sufficient independent corroboration, and the plausibility of the defense plea regarding false implication due to the

matrimonial dispute. Consequently, the trial Court extended the benefit of doubt to Respondent No. 1.

7. The learned counsel representing the Appellant, Riaz Hussain, advanced several arguments challenging the trial Court's acquittal judgment. It was contended that the impugned judgment suffered from significant errors, primarily stemming from a misreading and non-reading of the evidence presented during the trial. The counsel asserted that the learned Trial Court had erred both in its application of the law and its assessment of the factual matrix of the case, rendering the judgment fundamentally flawed. A central point raised was the trial Court's alleged failure to properly evaluate and assign due weight to the prosecution's evidence. The counsel emphasized that Respondent No. 1, Imran Mazari, was explicitly named in FIR No.33/2015 with specific allegations detailing his role in the abduction and the demand for ransom. Regarding the subsequent murder detailed in FIR No.124/2015, the counsel argued that Respondent No. 1 was specifically implicated in the killing of Meer Ahmed by tightening a rope around his neck and was also involved in concealing the body. It was submitted that the testimony provided by the complainant (PW-3) and eyewitness Abid Hussain (PW-8) consistently supported the prosecution's narrative. The counsel maintained that the ocular evidence was substantially corroborated by medical and circumstantial evidence. Addressing the 12-day delay in lodging the initial FIR, the counsel argued that this delay was plausibly explained by the family's initial efforts to negotiate the safe release of the abductee. Further criticism was directed at the trial Court's assessment of the witnesses' credibility and its acceptance of the defense plea concerning the matrimonial dispute, arguing the defense failed to substantiate its claims while the prosecution presented impeachable evidence regarding the ransom demand. In conclusion, the learned counsel prayed for the Honourable Court to set aside the impugned acquittal judgment and convict Respondent No. 1.

8. In response, the learned Deputy Prosecutor General (DPG), urged the dismissal of the appeal. He contended that the prosecution's case was fundamentally weak, resting predominantly on the testimony of interested and inimical witnesses (PW-3 Riaz Hussain and PW-8 Abid Hussain), whose evidence required strong, independent corroboration which was lacking. The testimony of PW-11 Sajjad Hussain was characterized as hearsay. The counsel highlighted the significant and unexplained delay of 12 days in lodging FIR No. 33/2015, despite the accused being known and the police station being nearby, suggesting deliberation and potential fabrication. The registration of the second FIR (No. 124/2015) based on hearsay accounts was also criticized. Significant emphasis was placed on the inconclusive medical evidence, as the Medico Legal Officer (PW-1) could not determine the cause of death from the skeletal remains provided. Procedural lapses, like the delay in recording Section 164 Cr.P.C. statements, were noted. Crucially, the defense counsel reiterated the plea that Respondent No. 1 was falsely implicated due to personal animosity stemming from his court marriage to Mst. Reeshma (complainant's cousin), producing supporting documents (Ex. 33/A, 33/B). This defense plea, he argued, offered a plausible alternative explanation. In conclusion, he submitted that the trial court correctly assessed the evidence, identified weaknesses, rightly extended the benefit of doubt, and asserted that the well-reasoned acquittal judgment, respecting the double presumption of innocence, warranted no interference.

9. Upon a thorough examination of the entire case record, the evidence presented, the impugned judgment, and the arguments advanced by the learned counsel for all parties, this Court finds itself in agreement with the overall findings and conclusion reached by the learned Trial Court. A key factor influencing this concurrence is the inordinate and unexplained delay of 12 days in the lodging of the First Information Report (FIR), despite the fact that the assailants were known to the complainant and witnesses. Moreover, the police station at Guddu was situated merely 2 kilometers from the scene of occurrence. Such a delay,

particularly in these circumstances, is neither trivial nor insignificant, it is substantial enough to cast serious doubt on the credibility of the prosecution's version of events. The explanation offered by the complainant, involving attempts to negotiate through community elders, loses considerable weight given that the accused were allegedly well-known to the complainant and witnesses from the outset. In such circumstances, immediate reporting to the nearby police station would be the expected course of action, making the prolonged delay highly suspect and suggestive of deliberation. In this context, it is pertinent to refer to the judgment of the Honourable Supreme Court of Pakistan in *Shaukat Hussain v. The State through Prosecutor General Punjab and another (2024 SCMR 929)*, wherein the Court held as follows:

“As per contents of FIR, the occurrence in this case took place on 03.05.2008 at 11:30 a.m. and the matter was reported to the Police on the same day at 3:30 p.m. and as such there is a delay of about four hours in reporting the crime to the Police whereas Police Station was situated at a distance of about 20 kilometers from the place of occurrence. No explanation at all was furnished for causing delay in reporting the crime to the Police. The contention that approximately four hours delay in lodging FIR is a normal thing does not appeal to the mind. Had the matter been reported within reasonable time, the police would have easily reached at the place of occurrence within about an hour. Why the matter has not been reported immediately by the eye-witnesses is a question which could not be satisfactorily explained by the witnesses during their evidence. In the circumstances, chances of deliberations and consultations before reporting the matter to the Police cannot be ruled out”.

10. The prosecution's failure to place a DNA profiling report on record constitutes a fundamental evidentiary gap, critically undermining its ability to scientifically establish the identity of the victim. This omission is legally fatal because:

- Without DNA confirmation, the prosecution cannot prove beyond reasonable doubt that the skeletal remains belong to the alleged deceased, Meer Ahmed.
- Given that only skeletal remains were recovered, DNA profiling was not merely desirable but essential for the positive identification required to link the remains conclusively to the purported victim.
- The identification remains speculative and inherently unreliable, failing to meet the requisite standard of proof.

11. The Medico-Legal Officer (MLO) explicitly admitted an inability to determine the cause of death due to the exclusive presentation of skeletal remains.

This admission carries critical legal weight:

- The absence of soft tissue necessary for determining the mechanism of death renders this failure not merely inconclusive, but constitutes exculpatory evidence.
- Establishing a definitive cause of death is an essential prerequisite for any homicide prosecution. The MLO's inability to satisfy this fundamental forensic requirement leaves a core element of the offense unproven.

12. The complainant's failure to apply for the constitution of a Medical Board represents a significant procedural lapse when the circumstances clearly warranted it:

- Established forensic protocols mandate convening a Medical Board, comprising specialized forensic pathologists and anthropologists, precisely when an individual MLO cannot determine the cause of death from skeletal remains.
- This failure to initiate the appropriate expert procedure when required demonstrates a critical oversight, prejudicing the fair administration of justice and the pursuit of reliable forensic conclusions.

The combined impact of these deficiencies, the speculative identification, the undetermined cause of death, and the failure to employ available specialized procedures to resolve it, creates insurmountable reasonable doubt regarding whether a homicide even occurred. Specifically, the prosecution has failed to establish the following essential elements required for a criminal conviction:

- Definitive scientific identification of the deceased.
- A conclusive determination of the cause of death by competent medical authority.
- The exclusion of natural causes through appropriate forensic procedures.

13. In the absence of definitive evidence establishing a homicidal death, the legal presumption favors natural death. The prosecution has categorically failed to rebut this presumption. These profound evidentiary gaps generate reasonable

doubt that is fatal to the prosecution's case. Guilt must be established beyond reasonable doubt based on credible scientific and medical evidence, not conjecture or procedural neglect. In similar circumstances, this Court observed in the case of ***Aslam and Others v. The State (2023 YLR 1188)*** that: *"Besides above, there are also other serious infirmities and discrepancies in the prosecution case. For instance, (i) there was a delay of 28 days in exhumation proceedings, as admitted by P.W. Bhupat Rai, Civil Judge and Judicial Magistrate, Thana Bolla Khan; (ii) in the final postmortem report it was opined that cause of death of deceased was undermined; (iii) no crime weapon, allegedly used by the accused, has been recovered from any of the appellants; and (iv) although it has been alleged that the coaster allegedly driven by the deceased, was secured from lands of accused; however, no material has been placed on record to establish that the land/place of recovery belonged to the accused/ appellants".*

14. Thirdly, the defense has raised the plea that the Respondent No.1 had married Mst. Reeshma, who was the cousin of the complainant and that the complainant implicated him due to this marriage in order to take revenge. This plea raised by the defense appears plausible. Furthermore, it is crucial to underscore the status of the key prosecution witnesses in light of this plea. The complainant, Riaz Hussain (PW-3), being the brother of the alleged deceased and cousin of Mst. Reeshma, is inherently an interested witness. Similarly, PW Sajjad Hussain (PW-11), also falls into the category of an interested witness, potentially harboring animosity towards Respondent No. 1 due to the court marriage against the family's wishes, as suggested by the defense evidence. The testimony of such interested and potentially inimical witnesses requires careful scrutiny and strong independent corroboration, which is lacking in this case. Consequently, the defense's assertion that Respondent No. 1 was falsely implicated out of revenge stemming from the matrimonial dispute gains significant plausibility, and the possibility of such false implication cannot be confidently ruled out.

15. It is a well-established principle that under the criminal jurisprudence, once an accused is acquitted by the trial Court, he earns a presumption of innocence. In the present case, the learned trial Court rightly acquitted the accused (Respondent No.1) based on material contradictions, unreliable prosecution evidence, and failure to establish the charge beyond a reasonable doubt. These factors fully justified the acquittal of the accused. Since the appellant has not pointed out any illegality, perversity, or misreading of evidence in the impugned judgment, this Court finds no reason to interfere. Reference is made to the authoritative ruling of the Honourable Supreme Court of Pakistan in the case of ***Muhammad Riaz v. Khurram Shehzad and another (2024 SCMR 51)***, wherein the Apex Court unequivocally upheld the principle that: *“It is a well-settled exposition of law that in an appeal against acquittal, the Court would not ordinarily interfere and would instead give due weight and consideration to the findings of the Court acquitting the accused which carries a double presumption of innocence, i.e. the initial presumption that an accused is innocent until found guilty, which is then fortified by a second presumption once the Court below confirms the assumption of innocence, which cannot be displaced lightly”*.

16. In view of the foregoing discussion, the evaluation of evidence, and the applicable legal principles, this Court finds no compelling ground or lawful basis to interfere with the well-reasoned judgment of acquittal rendered by the learned Special Judge, Anti-Terrorism Court, Kashmore @ Kandhkot. The prosecution has failed to prove its case against Respondent No. 1, Imran, son of Dilbar Mazari, beyond reasonable doubt. Accordingly, the appeal against acquittal, being devoid of substantive merit, is hereby dismissed. The impugned judgment passed by the learned trial Court is affirmed.

JUDGE

JUDGE