

THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No.269 of 2022

Applicant : Syed Asad Abbas Naqvi
through Mr. Muhammad Ilyas
Warraich, advocate

Respondent No.1 : Fahad Hussain
through Mr. Masood Hussain
Khan, advocate

Respondent No.2 : The State
through Ms. Robina Qadir, DPG.

Date of hearing : 03-03-2025

Date of Judgment : 03-03-2025

JUDGMENT

Jan Ali Junejo, J.-- The present Criminal Acquittal Appeal has been filed by the Appellant (Complainant), Syed Asad Abbas Naqvi, (Legal Counsel), Sui Southern Gas Company Limited, challenging the Judgment dated 30-10-2021 (here-in-after referred to as the *Impugned Judgment*) passed by the Court of learned Sessions Judge, Karachi-East (here-in-after referred to as the learned *Trial Court*) in Sessions Case No. 597/2019 (The State vs. Fahad Hussain), whereby the Respondent No.1 (accused) was acquitted under Section 265-H(i), Cr.P.C.

2. The present acquittal appeal arises from FIR No. 05/2019, registered under Sections 15, 17, and 24 of the Gas Theft Control and Recovery Act, 2016, at Police Station SSGC, Karachi. The case of the appellant is that on 14-02-2019 at 2000 hours, at Plot No. C-104/6, near Token Stop, Malir, Karachi, the Respondent No.1 was allegedly found operating a bakery

under the name "Al-Samad" while unlawfully using sui gas through a rubber and iron pipe connected to the main auxiliary gas line. It is further alleged that the illegal gas connection was being used to fuel a furnace (Bathi). Following this discovery, the Sui Gas team disconnected the unauthorized connection and seized two rods and a four-star stove from the premises.

3. The learned trial Court framed charges against Respondent No.1 under Sections 15, 17, and 24 of the Gas Theft Control and Recovery Act, 2016 and proceeded with the trial. During the course of proceedings, the prosecution presented the following evidence:

1. **PW Mubeen Ahmed (Ex.4)**

- Produced **statement under Section 154, Cr.P.C.** (Exh.4/A)
- **Memo of arrest and recovery** (Exh.4/B)
- **Photographs of the scene** pasted on four pages (Exh.4/C-1 to Exh.4/C-4)
- **Inspection Form** (Exh.4/D)
- **FIR** (Exh.4/E)

2. **PW Abdul Latif (Exh.5)**

- Produced **memo of the venue of occurrence** (Exh.5/A)

3. **PW Muhammad Nadeem (Exh.6)**

- Produced **departure and arrival entries** (Exh.6/A & Exh.6/B)

4. **PW Raees Hussain (Exh.7)**

5. **PW Muhammad Moeen (Exh.8)**

- Produced **CRO of the accused** (Exh.8/A & Exh.8/B)
- **Letters related to the case** (Exh.8/C & Exh.8/D)

- **Quantum of loss bill** (Exh.8/E)

Upon completion of the prosecution's evidence, the SSGC's side was closed. The Respondent No.1, in his statement recorded under Section 342 Cr.P.C. (Exh.10), categorically denied the allegations, pleading innocence. However, he opted not to examine himself on oath or present any witnesses in his defense. After hearing arguments from both sides, the learned trial Court acquitted the Respondent No.1 through the impugned judgment, concluding that the prosecution failed to establish its case beyond a reasonable doubt.

4. The learned counsel for the Appellant has argued that the impugned judgment is legally unsustainable, as the trial court failed to properly evaluate and appreciate the prosecution's evidence, including witness testimonies and physical proof of illegal gas usage, which conclusively established the guilt of the accused. **He further argues** that the acquittal was based on a misreading and non-reading of the record, wherein material evidence—such as the illicit gas connection via rubber/iron pipes and corroborative statements from prosecution witnesses—was overlooked or dismissed on hyper-technical grounds, contrary to settled principles that minor discrepancies do not vitiate a credible case. **He adds** that the judgment is perverse, capricious, and against the weight of evidence, as the trial court extended unwarranted benefit of doubt despite the prosecution proving its case beyond reasonable doubt, thereby violating precedents from superior courts mandating convictions where evidence is cogent and consistent. **He emphasizes** that the trial Court ignored critical legal provisions and precedents, such as the duty to deliver a reasoned judgment under Section 367 Cr.P.C., and erroneously applied

the law while disregarding the charge of utility theft, rendering the acquittal procedurally and substantively flawed. **He concludes** that such glaring errors in factual and legal analysis warrant the Appellate Court's intervention to set aside the judgment and ensure justice.

5. Per contra, the learned counsel for the Respondent No.1 has argued that the acquittal appeal lacks merit, as the trial Court's judgment was based on a meticulous and legally sound evaluation of the evidence, which conclusively exposed fatal gaps in the prosecution's case, including unreliable witness testimonies, absence of direct proof linking the accused to the alleged gas theft, and insufficient corroboration of claims about illegal connections. **He further argues** that the prosecution failed to discharge its burden of proving guilt "beyond reasonable doubt," since key evidence – such as forensic reports or photographic proof of the illicit pipe installation – was never adduced, rendering the case circumstantial and speculative. **He emphasizes** that the trial Court rightly extended the benefit of doubt to the accused, as material witnesses gave inconsistent accounts about the accused's role, and the prosecution's reliance on oral evidence alone, without technical or documentary support, fell short of establishing mens rea or overt criminal acts. **He adds** that the appellate court must defer to the trial court's findings of fact, which are entitled to a presumption of correctness, unless proven to be perverse – a threshold unmet here, as the judgment meticulously analyzed contradictions in witness statements and highlighted the prosecution's failure to secure independent or expert testimony. **He asserts** that the appellant's reliance on "minor discrepancies" jurisprudence is misplaced, as the inconsistencies in this case were not trivial but went to the root of the prosecution's narrative, such as conflicting dates,

ambiguous descriptions of the alleged illegal setup, and lack of recovery of stolen materials. The learned counsel contends that the present Acquittal Appeal is grossly time-barred and that the appellant has failed to provide any plausible justification for the delay in filing the appeal. In the absence of any valid reason, the appeal does not merit consideration. Consequently, he prays for its dismissal.

6. Similarly, the learned Deputy Prosecutor General (DPG) has argued that the appeal suffers from inordinate delay and that the application under Section 5 of the Limitation Act, 1908 lacks any substantial grounds for condonation. In light of this, the learned DPG also prays for the dismissal of the appeal.

7. I have carefully considered the arguments advanced by both parties and thoroughly examined the material available on record with due diligence. The learned trial Court, after analysing the evidence, concluded that the prosecution failed to establish its case beyond a reasonable doubt. The trial Court highlighted several inconsistencies and contradictions in the statements of the prosecution witnesses, which raised serious doubts regarding the veracity of the allegations against the accused. The primary reasons recorded by the learned trial Court for acquittal were as follows:

- **Inconsistencies in Prosecution Witnesses' Testimonies:** The complainant, during his deposition, admitted that the raid was conducted on the basis of a **raid letter**, but **PW Abdul Latif** contradicted this by stating that no specific order was received regarding the location of the

raid. This contradiction raises doubts about the credibility of the prosecution's case.

- **No Direct Evidence of Gas Theft at the Time of Raid:** The complainant conceded that at the time of the raid, **the gas connection was not in running condition**, which negates the prosecution's claim that the accused was actively involved in gas theft.
- **Doubtful Case Property:** The complainant acknowledged that the width of the gas meter was **1 foot**, and if the illegal connection had been made between two pipes affixed with the meter, the distance would also be **1 foot**. However, the rubber and iron pipes produced in Court were **much longer** than this, which casts doubt on whether the case property was actually used for the alleged theft or was later **managed** by the prosecution to strengthen its case.
- **Possibility of Tampering with Case Property:** Both the complainant and **PW Abdul Latif** admitted in their cross-examinations that the **case property was not sealed at the spot**. This creates a strong likelihood that the evidence may have been **tampered with**, thereby further weakening the prosecution's case.

8. It is a well-settled principle of criminal jurisprudence that the prosecution must prove its case beyond a reasonable doubt. If any doubt arises in the prosecution's story, the benefit of the same must go to the accused as a matter of right, not of grace. The Hon'ble Supreme Court of Pakistan in numerous

judgments has consistently held that conviction cannot be based on presumptions and assumptions; rather, it must rest on clear, cogent, and convincing evidence. In the present case, the failure of the prosecution to establish the essential ingredients of the alleged offence, coupled with contradictory testimonies and doubtful case property, has rightly created doubts in the prosecution's version.

9. The acquittal judgment was passed on 30-10-2021, whereas the appeal has been filed on 26-02-2022 after a delay of almost four (04) months, well beyond the prescribed limitation period. The only ground mentioned in the application for condonation of delay is that the complainant Mubeen Ahmed was terminated from his service in SSGC and was later reinstated, and due to his termination, the appeal could not be filed in time. However, this ground is not legally sufficient to justify the inordinate delay in filing the appeal. The FIR was lodged on behalf of Sui Southern Gas Company (SSGC), a corporate entity, and not by the complainant in his personal capacity. The termination or reinstatement of the complainant has no bearing on the ability of SSGC, as a company, to pursue the case within the prescribed time limit. The complainant was merely an individual officer of SSGC, whereas the case was initiated in the corporate capacity of the company. Hence, the complainant's termination does not constitute a valid justification for condoning such a significant delay. It is a well-settled principle of law that condonation of delay is not a matter of right but an exception that can only be granted if the delay is satisfactorily explained. It is well-settled principle of law that mere negligence, inaction, or personal inconvenience of a complainant is not a valid excuse to condone the delay. Since the appellant has failed to show sufficient cause, the application for condonation of delay is liable to be dismissed.

10. Even on merits, the case against the respondent/accused is not sustainable. The learned trial Court, after thoroughly evaluating the evidence, acquitted the accused by recording comprehensive findings based on contradictions and inconsistencies in the prosecution's case. 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. The prosecution's case suffered from serious infirmities, including the fact that the gas connection was not found in running condition at the time of the raid, contradictions in the statements of witnesses, and the possibility of tampering with the case property. 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"*.

11. In view of the above discussion, it is evident that the learned trial Court has passed a well-reasoned judgment after

carefully appreciating the evidence on record. The findings are based on sound legal principles, and no illegality, perversity, or misreading of evidence has been pointed out by the appellant to warrant interference by this Court. Accordingly, the instant Criminal Acquittal Appeal stands dismissed alongwith application under Section 5, of the Limitation Act, 1908, and the Impugned Judgment of acquittal 30-10-2021 passed by the learned trial Court is upheld.

JUDGE