

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
**Criminal Appeal No.S-128 of 2024**

Date	Order with signature of Judge
<b>Appellant:</b>	Allah Wadhayo S/o Muhammad Tagial, Solangi, R/o Village Wada Machiyoon Taluka & District Khairpur. (confined at Central Prison Khairpur)  Through Mr. Shafique Ahmed Laghari, Advocate .
<b>The State:</b>	Through Syed Naved Ahmed Shah, Deputy Attorney General for Pakistan.
<b>Complainant:</b>	Ghulam Mustufa S/o Amanullah, Tanwari, Deputy Manager FIR Cell, CJTO, SSGC Sukkur  Through Mr. Muneer Ahmed Maitlo, Law Officer, SSGC
<b>Date of hearing.</b>	18-04-2025.
<b>Date of decision.</b>	18-04-2025.
<b>Date of Reason:.</b>	24-04-2025.

**J U D G M E N T.**

**Ali Haider 'Ada' J:-** Through the instant appeal, the appellant named above impugned the judgment dated 28-11-2024, passed by learned Sessions Judge/ Special Judge For Gas Utility Court, Khairpur in Sessions Case No. 66/2023, Re. The State Vs. Allah Wadhayo, bearing Crime No. 27/2022, for offence punishable u/s 15 Gas Theft (Control & Recovery) Act 2016, (herein after called as Act-2016), registered at Police Station Wada Machiyoon, whereby the appellant was convicted under and sentenced to suffer rigorous imprisonment (R.I) for ten years and to pay a fine of Rs.10,00,000/- (Rupees One Million), In case of default in payment of fine, he shall suffers simple imprisonment for six months more with benefit of section 382-B Cr.P.C.

2. Brief facts of the prosecution case are that the complainant, Ghulam Mustafa, Deputy Manager, FIR Cell, CJTO, Gas Company, along with his staff members namely Ubedullah (Deputy Manager), Ghulam Muhammad (Superintendent), and Driver Nazir Ahmed, departed from the office for the purpose of inspecting the gas pipeline. When they reached at Wada Machiyoon at about 1600 hours, they received a spy information to the effect that the accused was allegedly committing theft

of gas by illegally connecting a plastic pipe to a 4-inch gas pipeline. Acting upon such information, they inspected the pointed location and dug a pit 4 to 5 feet deep, where they found a 4-inch main pipeline. Upon examination, they discovered that an iron clip/clamp had been fixed to the pipeline, from which a plastic pipe extended outward and was connected to a Beco Machine and line was also traced leading towards the house of the accused. The team removed the iron clamp from the main pipeline and welded it to seal the breach. The entire material, including the iron clamp, plastic pipe, and Beco machine, was collected and taken to the police station. After narrating the entire incident to their higher authorities, instructions were received to lodge the FIR. Consequently, the present FIR was registered on 11-12-2022.

3. After registration of the FIR, the investigation was entrusted to SIP Bakhtiar Ali, who, upon completion of the investigation, submitted the challan before the Magistrate having jurisdiction. However, since the offence was exclusively triable by the Special Court, the learned Magistrate transmitted the case to the learned trial Court for its disposal. Consequently, the accused was sent up for trial. Necessary case papers were duly supplied to the accused under receipt. Thereafter, a charge was framed against the accused at Ex.2, to which he pleaded not guilty and claimed trial.

4. In order to prove the case against the accused, the prosecution has examined PW/1 Complainant Ghulam Mustufa at Exh.4, who produced FIR, Photographs and Letter Dated 08-12-2022, regarding registration of FIR with addressing to the SHO, PW/2 Ubedullah at Exh.5, who produced Memo of place of incident and Memo of recovery of case property and PW/3 SIP Bakhtiar Ali, Investigation Officer, at Exh 06, who produced Roznamacha Entries. Thereafter, the learned State Counsel submitted a statement for the closure of the prosecution evidence, which was taken on record as Exh.07.

5. Statement of accused as provided u/s 342 Cr.PC was recorded at Ex.08, wherein he has denied the allegations of prosecution. As, neither



accused examined himself on oath nor produced any witness in his defense and finally prayed for justice.

6. Learned counsel for the appellant contended that the present case has been registered due to personal enmity with one Jinsar Solangi, who is an employee of the Gas Company and belongs to the same tribe as due to enmity, the appellant has been falsely implicated in the matter. Learned counsel further submitted that the prosecution case is full of material contradictions and discrepancies. He also argued that the recovery shown in the case is highly doubtful, particularly in light of the unexplained delay in lodging the FIR and it is admitted by the prosecution that from the very inception of the alleged incident, police officials remained in constant contact with the complainant party, which further adds to the element of doubt. The learned counsel relied upon the cases reported as 2025 SCMR 281, 2024 MLD 276, and 2022 YLR 963 and ultimately prayed for the acquittal of the appellant.

7. Conversely, the learned Deputy Attorney General, assisted by the learned Law Officer of SSGC, submitted that the recovery was duly effected from the possession of the accused and he is clearly involved in the offence of gas theft. It was further contended that although there may be minor discrepancies in the evidence, the prosecution has nonetheless succeeded in establishing its case beyond reasonable doubt. The learned Law Officer emphasized that the evidence on record is corroborative in nature and does not suffer from any material deficiency. In support of their stance, reliance was placed upon the judgments reported as 2020 SCMR 474, 2008 SCMR 784, 2011 SCMR 872, as well as an unreported judgment passed in Criminal Appeal No. S-143/2020 of this Court.

8. Heard Arguments and perused the material available on record. Upon careful perusal of the record, major discrepancies, inconsistency and contradictions are found in the prosecution case, which are discussed in the following paragraphs.

9. The case of prosecution is stated to have commenced on the very day of the incident, i.e., 08.12.2022, when the complainant, after

completing his proceedings, approached the concerned police station and submitted an application for registration of the FIR. It is further deposed by the complainant that thereafter he returned to his office and apprised the higher authorities, who permitted him to lodge FIR. However, according to the complainant, the police conditioned to register the FIR on the ground that permission from the SSP was required for lodging such a case. Though, no such permission from the SSP is mandated for the registration of a cognizable offence. The complainant also claimed to have handed over the case property (i.e., material recovered during inspection) to the police on the same day. Besides, the FIR was lodged with an unexplained delay of three days, i.e., on 11.12.2022. The explanation offered in this regard lacks legal substantiation, particularly when Entry No. 06 of the relevant police station diary reflects that the complainant first visited the police station on 11.12.2022 and disclosed the commission of a cognizable offence. It is also pertinent to note that the Investigating Officer did not substantiate the letter, submitted by the complainant on 08.12.2022 for registration of the FIR. Moreover, HC Ali Hassan, who was said to have recorded the version of complainant, was neither cited as a witness nor examined by the prosecution on this point. Importantly, the letter exhibited by the complainant in Court also does not bear any endorsement or acknowledgment of receipt by the police station, thereby creating doubt upon its authenticity and timing. Furthermore, both the complainant and prosecution witness deposed that the case property was actually shifted with the assistance of police officials. However, neither any such police official was examined during the course of trial, nor was any documentary evidence produced to substantiate this claim. This omission creates a material gap in the prosecution version. On the one hand, the complainant categorically stated that at the time of the raid, police officials were accompanying him as part of the raiding party, yet on the other, no effort was made to bring such police personnel on record to affirm this crucial aspect. This contradiction further dents the prosecution case upon the manner in which the alleged recovery proceedings were conducted.

10. Moreover, a significant question mark looms over the prosecution case with regard to whether any technical team accompanied the complainant party during the raid. In this regard, prosecution witness



Ubedullah, Deputy Manager, in his deposition specifically stated that evidence was collected on the spot with the assistance of a technical team, called from the Pir Jo Goth station to carry out repairs on the gas line. However, a close scrutiny of the record reveals that not a single document, nor any oral testimony, corroborates the presence or examination of any such technical team. The Investigating Officer also failed to associate or examine any technician in order to support the version of prosecution evidence. Notably, the complainant himself remained silent on this important aspect. This constitutes a material contradiction in the case, particularly when the very team that identified and repaired the tampering with the pipeline would have been the most competent to speak to the alleged theft. Their omission from the prosecution evidence leaves a substantial gap in the chain of proof and undermines the accuracy of the entire proceedings. The non-production of material witnesses, particularly the members of the technical team who were involved in detecting and verifying the act of gas theft, as per prosecution witness version, causes a serious dent in the prosecution case. Their testimony was essential to substantiate the technical aspects and to establish the veracity of the allegations. In this regard, reliance is placed on the verdict of the Honourable Division Bench of this Court in *Abdul Raheem Dayo v. The State and another* (2024 YLR 1157), Further strength is drawn from *Muhammad Raziq and another v. The State* (2025 YLR 26).

11. Now, advertent to the aspect of the photographic evidence, it is the case of the complainant that during the inspection, an iron clamp was found affixed to the gas pipeline, which allegedly connected a plastic/rubber pipe leading towards the residence of the accused and was further attached to a Beco machine. In support of this version, the complainant has relied upon photographic evidence exhibited as 4/B to 4/D. However, a careful perusal of the said photographs reveals that they do not provide any conclusive indication regarding the direction or endpoint of the plastic/rubber pipe, particularly whether the same was in fact extending to the house of the accused. The claim of the prosecution is that the said pipeline was used to facilitate gas supply to both the Beco machine and the residential premises of the accused, while the same is not borne out from the record. Significantly, the site inspection memo is also silent on any photograph or description showing a visible connection of

the pipeline to the residence of accused or specific portion where such linkage was found. In the absence of such corroborative material, the version of prosecution appears conjectural and fails to inspire confidence.

12. Now, turning to the aspect of recovery, it is the case of the complainant that during the raid, a rubber pipe measuring approximately 12 feet in length was recovered, which connected then gas pipeline to both the Beco machine and the house of the accused. The complainant specifically deposed that the pipe was seized in a single piece and this version was categorically supported by the witness Ubedullah. Furthermore, the recovery memo also reflects that a 12-foot pipe was secured as case property in one continuous piece. However, a material contradiction surfaced during the trial when the case property was produced before the learned Trial Court. At that stage, the recovered pipe was presented in two separate pieces, a discrepancy acknowledged by the Law Officer of the company, who attributed the fragmentation to the lapse of time. This explanation was also noted by the learned Trial Court during the deposition of the complainant. During cross-examination, both the complainant and PW Ubedullah admitted that the pipe presented was not only in two but in three separate pieces. Moreover, it was observed that the pieces were of three different types, thus creating a serious doubt as to the identity and continuity of the case property. Notably, there is no documentation on record indicating that the pipe initially recovered was composed of varied materials or comprised multiple segments. The initial narrative was consistent that a single and indistinguishable piece of rubber pipe was recovered. The sudden emergence of pipes of differing types and segments, without any plausible explanation or supporting documentary evidence, strikes at the root of the case and significantly weak the evidentiary value of the recovery.

13. Now, again coming to the recovery of the case property, it is not sufficient to rely merely on verbal assertions. The requirement of law mandates that any recovery must be substantiated through proper documentation and corroboration to ensure its evidentiary value. In the present case, it appears that the recovery is being presumed to have been handed over to the police or produced before the Investigating Officer or



the Trial Court. However, this remains a presumption rather than a conclusion supported by strong corroborative evidence. The complainant deposed that the case property was handed over to the police on 08-12-2022 through a written letter. However, this crucial aspect finds no support in the official police record. A careful examination of the relevant Roznamcha entries No. 06 to 09 reveal no mention of any such handing over of the recovered property on the said date. Entry No. 06 reflects that on 11-12-2022, the complainant appeared at the police station and disclosed the commission of a cognizable offence, which was recorded by HC Ali Hassan. Entry No. 07 shows that subsequent to the registration of the FIR, the papers were handed over to the Investigating Officer. However, there is no mention of any case property being present or received at the police station. Entry No. 08 merely states that the Investigating Officer, along with the complainant party, visited the place of occurrence. It is Entry No. 09 which reflects that after the site visit, the Investigating Officer returned to the police station and prepared a recovery memo, showing that the case property was present. However, conspicuously missing from the entire record is any specific entry evidencing that the case property was earlier handed over by the complainant to the police, or that the same was received into official custody under Register No. 19, as required by law. The absence of such crucial documentation and failure to make a contemporaneous entry of the alleged recovery gravely undermines the evidence of the prosecution case. It gives rise to a legitimate doubt as to whether the recovery ever took place in the manner asserted, or whether it was later manipulated to strengthen the case.

14. Now, in order to examine the procedural compliance on part of the police, it becomes essential to refer to the relevant statutory framework governing police documentation. In this regard, Chapter XXII of the Police Rules, 1934, specifically Rule 22.45, delineates the registers that are to be maintained at each police station for record keeping and transparency purposes, particularly, relevance are Register No. 2, as defined under Rule 22.48, which pertains to the daily diary (Roznamcha), and Register No. 19, as defined under Rule 22.70, which is exclusively maintained for the receipt, custody, and disposal of case property.



15. These rules are not mere procedural formalities but are intended to safeguard the evidentiary sanctity of criminal proceedings. Therefore, non-compliance with such provisions, especially in matters involving disputed recovery, creates a serious doubt upon the credibility of the investigation and the legitimacy of the prosecution claim. It is essential that the relevant rules be read in conjunction with the facts of the case.

*Rule 22.48*

*(Register Noll)(1)-----*

*(2) The Daily Diary is intended to be a complete record of all events which take place at the police station. It should, therefore, record not only the movements and activities of all police officers, but also visit of outsiders, whether official or non-official, coming or brought to the police station for any purpose whatsoever.*

*(3) -----*

*(4) -----*

*Rule 22.70*

*This register shall be maintained in Form 22.70*

*(Register No.XIX)*

*With the exception of articles already included in register No.XVI every article placed in the store-room shall be entered in this register and the removal of any such article shall be noted in the appropriate column.*

*The register may be destroyed three years after the date of the last entry*

16. It is also pertinent to note that other significant discrepancies and contradictions have emerged on the record. The Investigation Officer categorically deposed that during the visit to the place of occurrence, he was accompanied by only one police official. However, this version is contradicted by the ocular account, as the attesting witnesses of the memo of site inspection deposed that no police official was present with the Investigation Officer at the time of the visit. Furthermore, the said witness also stated that the memo of site inspection was prepared by the Investigation Officer himself at the spot, whereas the Investigation Officer negated this assertion by stating that the said memo was prepared by his subordinate staff. As on the point of contradiction in prosecution evidence, reliance is placed upon the case of *Karamat Arain and another Vs. The State* (2018 PCrLJ 669) and *Case of PC Veeram Khan Vs. The State* (2024 YLR 2323).



17. The role of the investigation in the criminal justice system is vital and foundational, as it serves as the primary mechanism through which the truth is to be unearthed. The Investigation Officer, being at the forefront, is expected to conduct a fair, thorough and impartial investigation to discover the actual facts of the case. In the instant matter, the case of the complainant revolved around the allegation that a rubber pipe was illicitly attached to the gas pipeline through an iron clamp or clip. However, despite the gravity of this assertion, it is quite astonishing to observe that the Investigation Officer, who promptly visited the place of occurrence upon registration of the FIR and prepared the memo of site inspection, has made no mention either in the memo or in his deposition regarding the condition or presence of the pipeline, the alleged iron clamp affixed thereto or the subsequent welding of the pipeline as claimed by the complainant. This glaring omission on a pivotal point of the narrative of prosecution reflects a serious lapse, thereby raising legitimate doubt as to whether the investigation was conducted with the due diligence and objectivity required under the law. It is further noteworthy that even the attesting witnesses, who are officials of the company and had accompanied the Investigation Officer during the visit to the place of occurrence, remained completely silent regarding any inspection of the gas pipeline or the alleged welded area. These witnesses, having attested the site inspection memo and claimed that it was prepared in their presence, did not depose a single word to the effect that the Investigation Officer examined the pipeline or that the complainant pointed out any welding marks or tampering at the site where the theft allegedly took place. This silence from both the Investigation Officer and the ocular witnesses on a matter as material discrepancy, as the inspection of the main gas pipeline especially when the entire prosecution case hinges on the alleged connection of the rubber pipe via an iron clamp to the said pipeline makes a serious shadow of doubt on the prosecution version.

18. It is evident that the complainant party has failed to establish or point out any specific loss allegedly caused by the accused. The absence of an assessment detailing the exact amount of loss or the corresponding loss is a significant gap in the prosecution case. Furthermore, there is no evidence showing that any such loss was fixed or assessed, which raises

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substantial doubts and constitutes a crucial omission in the prosecution case, this can be further fortified by the observation made by the Honourable Supreme Court of Pakistan in the case of *Sui Northern Gas Pipeline Limited v. Muhammad Arshad (2024 SCMR 122)*, wherein it was highlighted that no inventory of the appliances was produced, if any, prepared by the raiding team. Furthermore, it was neither established through evidence that the procedural requirements were complied with in letter and spirit prior to fixing liability, nor was it pleaded that the alleged liability was assessed with reference to the actual load after a thorough physical examination and verification of all appliances and equipment installed or used.

19. Thus, the case of the prosecution is not free from reasonable doubt and has utterly failed to establish the charge against the accused. The material placed on record is riddled with significant loopholes and inconsistencies. In such circumstances, it is a settled principle of criminal jurisprudence that benefit of doubt must be extended to the accused, as enshrined in the legal maxim "*In dubio pro reo*", meaning "*when in doubt, for the accused*".

20. As, It is a settled principle of law that once a single loophole/lacuna is observed in a case presented by the prosecution, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused. Reliance is placed upon the authoritative pronouncement of the Honourable Supreme Court of Pakistan in *Asmatullah Khan & others v. The State & others (PLD 2024 SC 149)*, Further support is drawn from *Khial Muhammad v. The State (2024 SCMR 1490)*, the same stance taken herein is duly fortified by the observations made in *Muhammad Hassan and another v. The State and others (2024 SCMR 1427)* and *Muhammad Imtiaz Baig and another v. The State (2024 SCMR 1191)*

21. In view of the foregoing discussion, the instant Criminal Appeal is hereby allowed. Consequently, the impugned judgment dated 28.11.2024, passed by the learned Sessions Judge/Special Judge for Gas Utility Court, Khairpur, in Sessions Case No. 66 of 2023 titled *The State vs. Allah Wadhayo*,



is set aside. As a result, the appellant, Allah Wadhayo son of Muhammad Tagial, by caste Solangi, is acquitted of the charges for which he was tried, convicted, and sentenced by the learned Trial Court. He shall be released forthwith if not required to be detained in any other custody case.

These are the reasons of short order dated 18-04-2025..

