

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No.202 of 2023

Appellant : Mst. Saima
Through M/s Barrister Iftikhar Ahmed Shah
& Barrister Raja Zeeshan.

Complainant : Jameel Ahmed & others
Through Muhammad Hanif, advocate

Respondent : The State
Mr. Muhammad Hanif Magsi, Asstt; P.G

Date of hearing : 29.05.2025

Date of judgment : 29.05.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J:- This Criminal Acquittal Appeal, filed under the provisions of Section 417 of the Code of Criminal Procedure, 1898, seeks to challenge the judgment dated February 22, 2023. The said judgment was rendered by the learned Judicial Magistrate-XIII (MTMC), Karachi-East, in Criminal Case No. 1924 of 2020, resulting in the acquittal of all accused persons in pursuance of Section 245(1) Cr.P.C.

2. The genesis of this appeal lies in FIR No. 236/2020, lodged by the Appellant, Mst. Saima, at P.S. Awami Colony, Karachi. The complainant's narrative unfolds with an incident on March 5, 2020, around 8:00 PM. She recounts that she had visited Sindh Government Hospital, Korangi No. 5, for medical treatment, accompanied by her sister Nafisa and nephew. After their visit, as they were departing the hospital by rickshaw, a startling assault allegedly occurred. According to the complainant, her husband's elder brothers, Jameel, Shakeel, Shahzeb, and Osama, forcibly removed her from the rickshaw and subjected her to a violent beating with kicks and fists. This alleged assault resulted in injuries to her leg and other internal injuries. Following this ordeal, Mst. Saima reported the incident to the police, leading to the registration of the FIR. The Medical Legal Officer report subsequently classified the injury as "Jurh Ghair Jaifa." Consequent upon; case was registered inter-alia on above facts.

3. Subsequent to the lodging of the FIR, a routine investigation was undertaken, culminating in the submission of a charge-sheet. The judicial process then commenced, with charges formally framed against the accused. During the trial, the prosecution presented its case by examining several witnesses: SIP M. Akram (PW-01), Mst. Saima (PW-02, the complainant herself), Shabbir Ahmed (PW-03), Shakeel (PW-04), and Muhammad Ali (PW-05). The accused, in their statements recorded under Section 342 Cr.P.C., unequivocally denied all allegations, asserting their innocence, and opted not to offer any evidence in their defense under oath.

4. Upon the conclusion of the trial, and after due deliberation, the learned trial court rendered its judgment. It ultimately acquitted all the accused, concluding that the prosecution had regrettably failed to discharge its fundamental burden of proving their guilt beyond a reasonable doubt. The court's findings on the crucial points of determination namely, whether the alleged incident transpired and what specific offense, if any, the accused had committed were unequivocally recorded as "Doubtful," leading to the extension of the "benefit of doubt" and the consequent acquittal of the accused in pursuance of Section 245(1) Cr.P.C.

5. Learned counsel for the Appellant has passionately contended that the impugned judgment is not merely flawed, but demonstrably erroneous. It is argued that the judgment was passed in a hasty manner, failing to engage adequately with the substantive merits of the case. The Appellant firmly maintains that the accused are far from innocent and are, in fact, deeply implicated in the alleged crime. The grounds of appeal, presented with conviction, include that a fundamental assertion that the trial court fundamentally misapprehended the facts and proceeded to deliver its judgment with undue haste. A protest against the trial court's erroneous acquittal, especially given the serious injuries sustained by the Appellant, including an alleged broken tooth, and the very foundation of the FIR being rooted in comprehensive medical reports. A significant point of contention regarding Respondent No.1, Jameel Ahmed, who, despite having secured and confirmed his pre-arrest bail, is alleged to be an absconder, a fact that the trial court purportedly overlooked. A direct challenge to the trial court's impartiality, alleging that the presiding judge acted less as an impartial arbiter

and more as a mediator, even attempting to coerce the complainant's counsel into a compromise. The Appellant forcefully argues that the subsequent acquittal was a punitive measure, a direct consequence of her resolute refusal to accede to such a compromise. A strong emphasis on the trial court's inexplicable failure to consider crucial pieces of physical evidence, such as the blood-stained clothes parcel and the torn shirt of the complainant, which were allegedly presented multiple times by the Investigating Officer (I.O.) during the trial. The Appellant highlighted that both the I.O. and other material witnesses were physically present on the very day the impugned judgment was delivered, yet their testimonies and the facts they presented were ostensibly disregarded by the trial court. It was submitted that both the Challan and the I.O.'s professional opinion unequivocally affirmed that the offense was fully proven against the accused persons, a finding that the trial court inexplicably rejected. The Appellant lamented that the acquittal of the nominated accused persons, despite the alleged conclusive proof of the offense/crime, effectively deprived her of her legal and legitimate rights. Crucially, the Appellant has painstakingly brought to the attention of this Court a series of deeply unsettling procedural irregularities that, in her view, fundamentally undermine the very fabric of the trial's integrity. These irregularities are not mere technicalities but suggest a systemic breakdown in the due process of law. The examination of the I.O., Muhammad Akram SIP, commenced on October 25, 2022, with his further examination-in-chief explicitly reserved for a later date. The case diary for October 25, 2022, confirms the presence of accused Jameel on bail, while also noting the absence of co-accused Shakeel, Osama, and Shahzeb Ahmed, whose absences were condoned, and attendance dispensed with for the limited purpose of the examination-in-chief. Subsequently, the I.O.'s further examination was conducted on December 21, 2022. However, a profound procedural breach occurred in the interim: between October 25, 2022, and December 21, 2022, before the I.O.'s cross-examination was completed (or even his examination-in-chief fully concluded), the evidence of two other witnesses was inexplicably recorded. This arbitrary jumping of stages in witness examination is a glaring procedural anomaly, violating the established principles of orderly and sequential witness examination. A particularly egregious factual inconsistency emerged from the examination dates of PW-03 and PW-04. The record startlingly indicates that PW-03

Shakeel's evidence was recorded on December 21, 2022, at Ex. 07, while PW-04 Muhammad Ali's evidence was ostensibly recorded on January 12, 2022, at Ex. 08. This implies that PW-04's testimony was taken 12 months before PW-03 Shakeel's evidence, a chronological impossibility that casts severe doubt on the reliability and veracity of the judicial record itself. These stark inconsistencies in the witness examination dates are, alarmingly, not corroborated by the corresponding case diaries, further compounding the concerns about the accuracy and integrity of the trial's official documentation. Furthermore, significant apprehension was voiced regarding the statements of the accused recorded under Section 342 Cr.P.C. It is asserted that these statements were entirely computerized and lacked any proper handwritten endorsement or certification by the learned Presiding Officer. This raises a critical question about whether the accused were genuinely confronted with the incriminating evidence in a proper legal manner and whether their responses were truly recorded as required by law. The absence of such authentication creates a profound lacuna in the record of the accused's defence. These manifold procedural lapses, when viewed collectively, strongly suggest a fundamental breakdown in the very conduct of the trial, rendering it impossible to confidently assert that justice was administered fairly and in accordance with established legal norms. The Appellant, therefore, earnestly seeks a re-trial to ensure a just and equitable outcome. He relied upon the case laws cited at SBLR 2021 Sindh 112, PLD 2006 Karachi 377, PLD 2005 Supreme Court 63, 1986 SCMR 1736 and 2022 P.Cr.L.J 1088.

6. Learned advocate for respondents vehemently opposed the instant appeal by arguing that a substantial delay, exceeding of about two months, in the lodging of the FIR, without any plausible explanation, was a fatal flaw in the prosecution's case. That material contradictions existed between the statements of the complainant and other prosecution witnesses, coupled with inconsistencies between their depositions in court and their statements recorded under Section 161 Cr.P.C. That there was an absence of independent and natural eye-witnesses to the occurrence, and the Investigating Officer himself conceded that no independent witness, other than Mst. Nafeesa (who was not examined), was available. That the prosecution witnesses, including the complainant, were found to have made

"dishonest improvements" in their statements with the apparent intent to bolster the prosecution's case, thereby casting serious doubt upon their credibility. That the medical evidence, while detailing the injuries, serves merely a corroborative purpose and cannot, in the absence of a trustworthy ocular account, substitute for direct evidence, particularly when the latter is fraught with discrepancies. That the Investigating Officer's admission regarding the lodging of the FIR stemming from a property dispute suggests a potential motive for false implication. That the fundamental principle of criminal jurisprudence dictates that if even a singular circumstance engenders a reasonable doubt in a prudent mind concerning the guilt of an accused, such accused is entitled to the benefit of doubt as a matter of right, not as a concession. He relied upon the case laws cited at 2024 SCMR 1116, 2009 SCMR 237, PLD 2006 Supreme Court 538.

7. Based on these multifaceted inconsistencies, material improvements, and unexplained delays, the respondents firmly assert that the trial court was entirely justified in concluding that a reasonable doubt existed, thereby compelling their acquittal as a matter of right, not merely grace or concession. They stressed that the trial court's decision was a correct application of the well-established principle that the benefit of doubt must always accrue to the accused when the prosecution fails to establish guilt unequivocally.

8. I have accorded my most thoughtful and meticulous consideration to the arguments presented by the learned counsel for the Appellant. I have undertaken a thorough review of the impugned judgment, meticulously perusing the trial court's record, and giving particular attention to the profound procedural irregularities articulated by the Appellant.

9. It is undeniable that the learned trial court's judgment meticulously elucidated a multitude of contradictions and inherent infirmities within the prosecution's narrative. The protracted and unexplained delay in the lodging of the FIR, a critical foundational document, casts a long and dark shadow over its authenticity and credibility. As correctly observed by the trial court, and supported by a venerable line of judicial precedents, such a delay often implies careful deliberation and concoction, rather than an immediate and truthful account of a genuine occurrence. The complainant's testimony itself

was plagued by stark inconsistencies when juxtaposed with her initial FIR, oscillating wildly on crucial details, including the nature of injuries and the alleged use of weapons that never materialized in court. The testimonial frailties extended to other prosecution witnesses, with much of the evidence being hearsay, unreliable, or riddled with contradictions regarding vital facts. The Investigating Officer's admissions further underscored the prosecution's precarious position, revealing issues such as unverified alterations in official documents and an existing civil dispute between the parties that could potentially colour the allegations. The absence of crucial physical evidence during the trial further compounded these weaknesses.

10. However, while these substantive evidentiary weaknesses were meticulously identified and logically addressed by the trial court, this appellate forum finds itself confronted with an even more fundamental issue: the alarming and pervasive procedural irregularities that, in my considered view, permeate the very fabric of the trial proceedings. These are not minor oversights but fundamental flaws that strike at the heart of fair process and the credibility of the judicial record.

11. The chronological impossibility in the recording of witness evidence, particularly the inexplicable recording of PW-04's testimony a full year before that of PW-03, is nothing short of a judicial aberration. This is not a mere clerical error; it is a profound defect that renders the sequential integrity of the evidence presented utterly suspect. When coupled with the I.O.'s fragmented examination where his testimony was recorded in disjointed phases, with other witnesses being interposed before his own cross-examination could be completed it points to a systemic breakdown in the orderly progression of the trial. The very notion of a fair trial hinges upon a meticulously maintained, transparent, and comprehensible record of proceedings. The discovery that critical case diaries are either missing or contain entries that simply do not align with the recorded evidence further exacerbates these concerns, suggesting a disturbing level of disregard for proper judicial record-keeping.

12. Furthermore, the allegations regarding the statements of the accused under Section 342 Cr.P.C. are equally troubling. If these vital statements where the accused are confronted with the evidence against them and

afforded an opportunity to explain or defend were merely computer-typed, devoid of any handwritten endorsement or certification by the Presiding Officer, it casts profound doubt on their authenticity and the genuineness of the confrontation process. This lack of proper authentication undermines the very essence of due process and the fundamental right of an accused to a fair trial.

13. In essence, while the trial court's analysis of the evidentiary contradictions is commendable, the cumulative effect of these profound procedural irregularities cannot be ignored. The integrity of a judicial verdict rests not only on the merits of the evidence but also, fundamentally, on the fairness and regularity of the process through which that evidence is adduced, recorded, and evaluated. When the process itself is riddled with such glaring inconsistencies, chronological impossibilities, and authentication deficits, it becomes impossible for any appellate court to confidently affirm the outcome. The very foundation upon which the acquittal rests the reliability of the trial record is severely shaken.

14. The principle of a fair trial, enshrined in Article 10-A of the Constitution of Pakistan, is not a mere theoretical ideal; it is a practical imperative that demands transparency, orderliness, and scrupulous adherence to procedural norms. The irregularities brought to light in this appeal are so fundamental and pervasive that they effectively vitiate the entire trial. A re-trial is not merely a formality; it is a necessity to ensure that justice, in both substance and procedure, is visibly and demonstrably done. Without a complete and reliable record, this Court is incapable of exercising its appellate function effectively.

15. Therefore, this Court is left with no option but to conclude that the trial was irretrievably flawed due to these fundamental procedural defects, mandating a fresh and proper determination of the case. In light of the profound and pervasive procedural irregularities and inconsistencies identified in the trial court's record, including, but not limited to, the chronological discrepancies in witness examination dates, the intermittent recording of the I.O.'s testimony, the missing or contradictory case diary entries, and the unauthenticated statements of the accused, which collectively

undermine the fairness, transparency, and integrity of the trial process, this Criminal Acquittal Appeal is hereby allowed.

16. The impugned judgment dated February 22, 2023, passed by the learned Judicial Magistrate-XIII (MTMC), Karachi-East, in Cr. Case No. 1924 of 2020, is hereby set aside. The case is remanded back to the learned Judicial Magistrate-XIII (MTMC), Karachi-East, with the explicit and rigorous direction to conduct a de novo trial from the stage of examination of prosecution witnesses. The trial court is sternly enjoined to ensure scrupulous and meticulous adherence to all procedural requirements stipulated by the Code of Criminal Procedure, 1898. This mandate includes, but is not limited to Establishing and maintaining a proper, sequential, and uninterrupted recording of all witness examinations and cross-examinations, ensuring that all testimony is taken in a logical and complete manner without any irregular jumps in stages. Ensuring the creation and maintenance of accurate, consistent, and complete case diaries that faithfully reflect the true chronological progression of each hearing and every step taken in the proceedings. Guaranteeing that statements of the accused recorded under Section 342 Cr.P.C. are meticulously and genuinely recorded, duly authenticated by the handwritten endorsement or certificate of the Presiding Officer, and that the accused are properly and clearly confronted with all incriminating material adduced against them. All documentary evidence submitted or relied upon must be meticulously maintained and recorded with utmost care, precision, and accuracy. The learned trial court is further directed to exert every effort to dispose of the case with expeditious dispatch, preferably within a strict period of three months from the date of receipt of this order, in line with the spirit of expeditious justice. The accused persons shall present themselves before the trial court on the date fixed by the learned Magistrate. Their existing bail bonds shall remain in force, subject to any further orders passed by the trial court in the course of the re-trial. The office is directed to dispatch the R&P of Criminal Case No.1924 of 2020 to the trial court forthwith for compliance.

J U D G E