

# IN THE HIGH COURT OF SINDH AT KARACHI

## Criminal Acquittal Appeal No.200 of 2023

Appellant : Shabbir Ahmed  
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.:-** Being aggrieved and dissatisfied with the impugned judgment dated 28.01.2023 passed by the learned Judicial Magistrate-XIII (MTMC) Karachi East in Cr. Case No: 1258 of 2020, whereby the learned Judge acquitted the above-named accused persons in pursuance of Section 245(1) Cr.P.C., the appellant has preferred this Criminal Acquittal Appeal.

2. The instant appeal arises from a criminal case initiated by the appellant, Shabbir Ahmed, against the respondents Jameel Ahmed, Sufiyan, and Shakeel Ahmed. The prosecution's case, as articulated in FIR No. 460/2020, lodged on July 10, 2020, at P.S. Zaman Town, for offence under Section 337-F(v) of the Pakistan Penal Code (PPC), alleged that on July 04, 2020, at about 9:00 PM, the accused persons launched an assault upon the complainant at his residential premises, House No.1348, Raheem Abad, Korangi No: 3½, Karachi. This alleged assault resulted in injuries to the complainant's forehead and various internal parts of his body, notably including a lacerated wound with a fracture on his right little finger. The lodging of the FIR was predicated upon the complainant having obtained a Medico-Legal Certificate (MLC) report. Subsequent to the recording of prosecution evidence, the framing of charges, and the recording of statements of the accused under Section 342 of the Code of Criminal Procedure (Cr.P.C.), the learned trial court pronounced its judgment on January 28,

2023, thereby acquitting all the accused persons by extending to them the benefit of doubt in accordance with Section 245(1) Cr.P.C.

3. Upon the submission of the charge sheet, bearing No. 518/2020, the trial proceedings duly commenced. In compliance with the provisions of Section 241-A Cr.P.C., the requisite documents were furnished to the accused, and their receipt was duly acknowledged and placed on record at Ex.1. Charges were formally framed against the accused at Ex.02, which were read over and explained to them. The accused, in response, pleaded not guilty and opted to claim trial, their pleas being duly recorded and brought on record at Ex.2/A to Ex-02/G. In order to substantiate the charge, the prosecution proceeded to examine the following witnesses:

- PW-01 ASI Subhan Ali, the author of the FIR, who produced the carbon copy of the FIR (Ex-03/A) and relevant Roznamcha entries (Ex-03/B & Ex-03/C).
- PW-02 Shabbir Ahmed, the complainant, who tendered into evidence medical treatment letters, Medico-Legal Certificates (MLCs) at Ex-04/B & Ex-04/C, the memo of site inspection at Ex-04/D, applications addressed to the Station Investigation Officer (SIO) of P.S. Zaman Town and the Deputy Inspector General (DIG) Karachi (along with two leaves) at Ex-04/E & Ex-04/F, and the memo of arrest at Ex-03/F.
- PW-03 Mst. Saima.
- PW-04 SIP Ali Akber, the Investigating Officer.
- PW-05 Dr./MLO Syed Umair Ahmed.

4. Following the examination of these witnesses, the learned Assistant District Public Prosecutor formally closed the prosecution side at Ex-08. The statements of the accused persons were subsequently recorded under Section 342 Cr.P.C. at Ex-09 to Ex-11, wherein they unequivocally denied all allegations leveled against them by the prosecution and asserted their innocence. They neither opted to record their statements on oath nor produced any witness in their defense.

5. The learned trial court, in its deliberation, framed two pivotal points for determination: (i) whether, on July 04, 2020, at 2100 hours, inside House No.1348, Sector 43/A, Raheemabad, Korangi No: 3½, Karachi, all the above-

named accused persons caused injury to the complainant on his forehead and internal injuries on his body in the manner as alleged; and (ii) what offense the accused had committed. The trial court's findings on these points were "Doubtful" for the first and an acquittal of the accused by extending the benefit of doubt in pursuance of Section 245(1) Cr.P.C.

6. The learned advocate appearing on behalf of the appellant meticulously articulated several grounds challenging the legality and propriety of the impugned judgment dated 28.01.2023. He argued, the accused persons are demonstrably involved in the alleged crime, and the learned trial court committed a material error by rendering the impugned judgment in a hasty manner, without a thorough consideration of the merits of the case. That the trial court's findings of facts are flawed, leading to an incorrect acquittal of the accused in pursuance of Section 245(1) Cr.P.C. That the trial court failed to appreciate the gravity of the injuries sustained by the appellant, including serious injuries to his forehead and other body parts, and that the FIR was lodged solely on the basis of medical findings. That the examination-in-chief of Dr. Syed Umair Ahmed, the Medico-Legal Officer (MLO), clearly delineated five significant injuries, encompassing abrasions, bruises, human bite marks, and a lacerated wound with a fracture on the right little finger, thereby providing robust corroboration to the prosecution's narrative. That the conduct of the trial court evinced a role akin to an arbitrator, exerting pressure upon the complainant's counsel to compel a compromise, and that the impugned judgment is a direct consequence of the complainant's steadfast refusal to accede to such a compromise. That the Investigating Officer had duly presented blood-stained clothes of the complainant as evidence before the trial court, yet this crucial piece of evidence received no discussion or consideration in the impugned judgment. That despite the physical presence of the Investigating Officer and other prosecution witnesses on the date of the impugned judgment, their testimonies and the pertinent facts of the case were inadequately considered by the trial court. That, in consonance with the Challan and the opinion rendered by the Investigating Officer, the offense against the accused persons was fully established. That the acquittal of the nominated accused has unjustly deprived the appellant/complainant of his legal and legitimate rights,

notwithstanding the comprehensive proof of the offense. 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.

7. Learned advocate for respondents vehemently opposed the instant appeal by arguing that a substantial delay, exceeding six days, 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 (PW-02) and other prosecution witnesses (PW-03 Mst. Saima), 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.

8. Upon a thorough and meticulous perusal of the entire R&P of the learned trial court, and after affording due consideration to the arguments advanced by the learned counsel for the appellant, this Court has discerned several glaring procedural irregularities and inconsistencies that, in its considered opinion, have demonstrably vitiated the fairness and integrity of the trial proceedings. These procedural lapses, highlighted by the appellant, are of paramount importance and cannot be disregarded:

9. It has been averred by the appellant, and corroborated by the case diaries, that on September 03, 2022, during the examination of PW-01 ASI Subhan Ali (the author of the FIR), co-accused Sufiyan and Shakeel Ahmed were noted as absent. Their learned counsel submitted an application for condonation of their absence, which was granted, and the evidence of PW-01 was consequently recorded in their absence. While the trial court possesses the discretion to dispense with the attendance of an accused, the appellant's contention that this occurred on "number of dates" and that proceedings were completed in their absence raises a serious concern regarding the fundamental right of an accused to be present during the recording of evidence, particularly during examination-in-chief and cross-examination, which is an indispensable facet of a fair trial.

10. Further exacerbating this concern, the examination-in-chief of PW-02 Shabbir Ahmed (the complainant) was recorded on October 11, 2022, on which occasion co-accused Shakeel Ahmed and Sufiyan were again marked absent. The recording of the complainant's pivotal evidence in the absence of the accused, without ensuring their presence or adequate legal representation, constitutes a significant procedural lapse that calls into question the adherence to due process. A critical procedural anomaly is the absence of the diary entry for October 14, 2022. The case diaries explicitly reflect that the cross-examination of the complainant (PW-02) and PW Mst. Saima (PW-03) was reserved for this date. The conspicuous omission of this entry from the official record creates an undeniable gap in the documented proceedings of the trial and casts serious doubts upon the continuity, regularity, and transparency of the judicial process.

11. Furthermore, while PW Mst. Saima's examination-in-chief was recorded on October 11, 2022, and a request for time for cross-examination was explicitly made and granted, the subsequent page/record documenting her cross-examination surprisingly bears the same date, October 11, 2022. This directly contradicts the preceding case diary entry (or the absence thereof for October 14, 2022) and the fact that an adjournment for cross-examination was specifically sought and allowed. Such an inconsistency profoundly undermines the authenticity and reliability of the recorded

evidence. The record indicates a perplexing procedural anomaly concerning the testimony of Dr. Syed Umair Ahmed, the MLO. He was designated as PW-06, and his evidence was recorded on December 07, 2022, at Ex.07. Concurrently, the case diaries for the very same date reflect that accused Jameel and Sufiyan were noted as absent, and an application for adjournment was filed. More bewildering is the fact that the court was simultaneously issuing a letter for the MLO's attendance while his evidence was being recorded. This confluence of events unequivocally points to a severe lack of coordination and adherence to proper procedural protocols. Analogous to the inconsistency observed in PW Mst. Saima's testimony, the cross-examination of PW-06 MLO Syed Umair Ahmed was ostensibly reserved for a subsequent date, yet it was also recorded on the identical date, December 07, 2022. This further compounds the array of procedural irregularities, strongly suggesting a hurried process that may have precluded adequate preparation for defense or effective cross-examination.

12. While the learned trial court's judgment meticulously delineated the grounds for acquittal, primarily focusing on the delay in the lodging of the FIR, the perceived contradictions in witness statements, and the alleged lack of independent corroboration, the procedural infirmities highlighted by the appellant are of such a fundamental nature that they cannot be disregarded. The right to a fair trial, which encompasses the imperative right of the accused to be physically present during the recording of evidence and the meticulous maintenance of a transparent and accurate record of proceedings, is a cornerstone of justice. The aforementioned irregularities, particularly the recurrent recording of evidence in the absence of the accused and the pervasive inconsistencies in the dating of cross-examinations and the absence of crucial diary entries, cast a profound shadow over the entire trial. These are not mere technical omissions but rather go to the very essence of due process and the integrity of judicial proceedings. The trial court's discretion to dispense with the attendance of the accused must be exercised with utmost judiciousness and sparingly, especially when critical evidence is being adduced, and certainly not in a manner that compromises the fairness of the trial.

13. Therefore, without entering into a detailed re-appraisal of the merits of the evidence at this juncture, this Court is firmly of the opinion that the procedural irregularities are of such a substantial magnitude as to necessitate interference with the impugned judgment. It is plausible that the trial court's findings on the merits, while appearing sound on paper, may have been inadvertently influenced by a flawed and irregular procedural framework.

14. In light of the significant and pervasive procedural irregularities and inconsistencies observed in the conduct of the trial, particularly concerning the recurrent absence of the accused during the recording of crucial prosecution evidence, the conspicuous absence and inconsistency of case diary entries, and the anomalies pertaining to the recording of cross-examinations, this Court is of the considered view that the impugned judgment cannot be sustained. The procedural flaws identified are fundamental in nature and have demonstrably prejudiced the appellant's right to a fair trial. Accordingly, this Criminal Acquittal Appeal is allowed. The impugned judgment dated 28.01.2023 passed by the learned Judicial Magistrate-XIII (MTMC) Karachi East in Cr. Case No: 1258 of 2020 is hereby set aside. The case is remanded to the learned trial court for a fresh trial from the stage of recording prosecution evidence, with explicit directions to ensure strict adherence to the principles of fair trial and due process, including, but not limited to, ensuring the presence of the accused during the recording of evidence and the meticulous maintenance of comprehensive and accurate case diaries. The learned trial court is further directed to conclude the trial expeditiously, preferably within a period of three months from the date of receipt of this order.

**J U D G E**