

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No. 646 of 2024

Appellant/Complainant : Mst.Ghazala Parveen through  
Mr.Muhammad Riaz Abbasi, Advocate.

Respondent No.1 : The State through Mr.Mohammad Mohsin  
Mangi, Asstt: P.G. Sindh.

Respondent No.2 to 4. : Nemo

Date of hearing : 30.10.2025.

Date of Reasons : 04.12.2025

### J U D G M E N T

**TASNEEM SULTANA-J:-** This Criminal Acquittal Appeal has been filed by the appellant/complainant Mst.Ghazala Parveen assailing the judgment dated 19.9.2019 passed by learned XVIIIth Judicial Magistrate/ (Model Trial Magistrate Court) Karachi South in Criminal Case No.4055 of 2017 arisen out of Crime No.34 of 2017 registered with Police Station City Court whereby the respondents/accused No.2 to 4 have been acquitted under Section 245(i) Cr.P.C of the charge under Section 354, 337-F(i), 337-L(ii), 34 PPC.

2. Succinctly, the prosecution case is that on 22-03-2017, the complainant lodged an FIR stating that her case had been pending since 2005 against accused Sadiq Daniel, Zafar, and others before the Court of Additional District Judge-V, Karachi (South). The accused, in order to compel her to withdraw the said case and effect a compromise, allegedly lodged false FIRs against her, her family, and witnesses, which were later found false and discharged. On 18-02-2017, the complainant, along with a Christian lady, Aster David, went to the Court of Additional District Judge-VII, Karachi (South), where bail applications of accused Sadiq Daniel, Zafar, and Waqar Hussain in FIR No. 345/2016 under Section 376, P.P.C. were decided granting bail to Sadiq Daniel and Zafar Iqbal, but declining it to Waqar Hussain. Enraged by this, accused Sadiq Daniel, Zafar Iqbal, Ashir Malik, and others assaulted Aster David within the court premises, tore her clothes, and issued threats. When the complainant reached the spot after being informed, the accused also attacked her, tore her clothes, pushed her to the ground, and Sadiq Daniel pressed his foot on her abdomen, causing internal and external injuries. The incident was witnessed by Attaullah, Ifta, Iqbal Bhatti, and Iqbal Manto. Hence, this FIR was lodged.

3. Having supplied the requisite documents to the accused persons Sadiq Daniel & Zafar Iqbal, formal charge was framed against them at Exh-4 wherein they did not plead their guilt and claimed for trial. Thereafter, accused Ashir

Malik was arrested and requisite copies had been supplied to him. Again formal charge was framed against all three accused/respondents No.2 to 4 at Exh-6 wherein they did not plead guilty and claimed for trial.

4. To prove the charge, prosecution examined PW-1, Complainant Ghazala Parveen at Exh-7; PW-2, SIP Inam-ul-Haq, at Exh-8; PW-3 SIP Ali Asghar at EXh-9; PW-4 Inspector Khalid Zaman at Exh-10; PW-5 Iqbal K. Alam at Exh-12; PW-6 Syed Saqib Ali Shah at Exh-13; PW-7, Ifta Shamoom at Exh-14; PW-8 MLO/Dr. Noor Ahmed at Exh-16; PW-9, DSP/I.O Khalid Javed at Exh-17. Prosecution given up five witnesses. Side of prosecution was closed vide statement at Exh-18.

5. After hearing learned counsel for the parties, learned trial Court acquitted the respondents/accused No.2 to 4 vide judgment dated 19.9.2019 which is challenged by complainant through instant appeal.

6. Learned counsel for the appellant has contended that the learned Trial Court has erred in law and facts while acquitting the accused persons despite sufficient evidence was available on record to connect them with the commission of offence; the Trial Court failed to properly appreciate the medical evidence and CCTV footage; ocular evidence is corroborated by medical evidence and the prosecution evidence being confidence inspiring warranted conviction yet the Trial Court gave undue weight to minor contradictions and discrepancies and acquitted the accused/respondents of the charge under impugned judgment which is not sustainable under the law.

7. Conversely learned Addl. P.G for State has contended that the prosecution case was riddled with material contradictions and improvements; the complainant failed to produce crucial witness Aster David, which created serious doubt about the prosecution's case; the torn clothes were not handed over to police immediately and were kept by the complainant for 35 days, destroying their evidentiary value' The CCTV photographs did not show any torn clothes; the medical evidence was not properly proved as the original MLO had expired and the substitute witness failed to establish his authority. the case was motivated by old enmity dating back to 2005, and the accused Sadiq Daniel had already been acquitted in an earlier similar case; that the first investigating officer had failed to find any evidence and submitted a report under Clause "A" creating serious doubt into the veracity of prosecution case, therefore, impugned judgment passed by trial Court being well reasoned does not call for interference by this Court.

8. I have heard the learned counsel for the appellant and Addl. P.G for the State at considerable length and have examined the record with their able

assistance. The following aspects emerge from a careful scrutiny of the evidence:

9. The prosecution case suffers from several material infirmities. The complainant admitted in cross-examination that she did not hand over the allegedly torn clothes to the police immediately on 18-02-2017 when she approached the police station. She retained possession of these clothes for approximately 35 days until 24-03-2017. This unexplained delay in producing crucial material evidence seriously undermines its authenticity and evidentiary value. In criminal jurisprudence, the chain of custody of material objects is of paramount importance, and any break or delay without reasonable explanation casts serious doubt on the genuineness of such evidence. Furthermore, the complainant herself acknowledged in cross-examination that the photographs did not show her torn clothes. The CCTV footage available at Exh-7/O-1 to 7/O-25 also does not reflect that the clothes (Kameez and Shalwar) of the complainant were torn. This material contradiction between the prosecution's claim and the photographic evidence is fatal to the case.

10. Perusal of record reflects that star eye-witness Aster David was not examined at the trial as a witness amongst five witnesses who were given up by the prosecution. According to the prosecution's own case, Aster David present at the scene, was assaulted along with the complainant and sustained injuries, and her modesty was outraged. She was not merely a bystander but an alleged victim of the same incident. The complainant even lodged a separate FIR No. 37/2017 on behalf of Aster David. Despite having family terms with Aster David and despite her being a crucial eyewitness and co-victim, the prosecution did not produce her before the Court. No application was filed seeking her protection or requesting the Court to compel her attendance. The complainant herself admitted in cross-examination that according to an affidavit by Aster David, no incident as narrated in FIR No.37/2017 had taken place which created serious doubt and dent in the prosecution case. Non-production of a such a vital eye-witness of occurrence without any explanation attracts the application of Article 129(g) of the Qanun-e-Shahadat Order, 1984. The Trial Court was justified in drawing an adverse inference against the prosecution for this withholding of evidence. Besides, it is noted that besides above eye-witness, four others were also given up by the prosecution. In such eventuality, adverse inference could be draw that had such witnesses been produced, their evidence would have been unfavourable to the prosecution. This further weakens the already fragile case and supports the conclusion that no reliable material was available to connect the respondent with the alleged offence. Reliance is placed in the case of '**Lal Khan v. State**' (2006 SCMR 1846) wherein it has been observed as under:

“The prosecution is certainly not required to produce a number of witnesses as the quality and not the quantity of the evidence is the rule but non-production of most natural and material witnesses of occurrence, would strongly lead to an inference of prosecutorial misconduct which would not only be considered a source of undue advantage for possession but also an act of suppression of material facts causing prejudice to the accused. The act of withholding of most natural and a material witness of the occurrence would create an impression that the witness if would have been brought into witness-box, he might not have supported the prosecution and in such eventuality the prosecution must not be in a position to avoid the consequence.”

11. The record establishes admitted enmity between the parties dating back to 2005, when the accused Sadiq Daniel was Chairman of the Diocese and the complainant was an employee. The complainant had previously filed FIR No. 169/2005 under Sections 354-A/506-B PPC at P.S. Frere against accused Sadiq Daniel on similar allegations, and the accused was acquitted by the Trial Court (ADJ-V, Karachi-South).

12. While the existence of enmity does not automatically falsify the prosecution case, it certainly requires the Court to scrutinize the evidence with greater caution. When viewed in conjunction with the other infirmities in the case, the background of litigation and enmity between the parties assumes significance. The investigation itself reflects the weakness of the prosecution case. The first investigating officer, PI Khalid Zaman, after investigation, submitted a final report under Clause "A", indicating that he found no evidence against the accused persons. Subsequently, DSP Khalid Javed re-investigated and submitted the challan. However, as noted by the Trial Court, even the second investigating officer could not adequately explain the collection of incriminating evidence and admitted the old enmity between the parties over church matters.

13. It is also worth to note that accused Sadiq Daniel was approximately 69 years old at the time of trial, physically weak, and serving as a Bishop a highly esteemed position in the Christian community. It strains credulity that such a person would engage in the alleged shameful conduct of outraging the modesty of the complainant, aged about 54 years, particularly in a public place like court premises, and especially when he had already been acquitted of similar allegations in 2005. All these aspects when conjointly taken into consideration creates doubt into the veracity of prosecution case against the respondents/accused.

14. The scope of criminal acquittal appeal is very limited. Once an accused has been acquitted by the trial court, he earns presumption of double innocence, first, arising from the foundational principle that every person is deemed to be innocent until proven guilty; and second, strengthened by the judicial finding of acquittal rendered in his favour by the competent court,

therefore, Interference with such an acquittal is justified only where the impugned order appears to be arbitrary, capricious, perverse, or vitiated by misreading or non-reading of material evidence. In the instant case, no such infirmity has been demonstrated in the impugned judgment which otherwise appears to be based on sound reasons and firmly anchored in the evidence on record as well as in the settled canons of criminal jurisprudence. I, therefore, find no cogent ground to disturb the acquittal. Reliance is placed in the case of **Muhammad Riaz versus Khurram Shehzad and another (2024 SCMR 51)** has held as under:-

*“10. 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.”*

15. The Honourable Supreme Court in another case of **Shamoon alias Shamma v. The State (1995 SCMR 1377)**, held as under:

"The prosecution must prove its case against the accused beyond reasonable doubts irrespective of any plea raised by the accused in his defence. Failure of prosecution to prove the case against accused, entitles him/them to an acquittal. The prosecution cannot fall back on the plea of an accused to prove its case. Before, the case is established against the accused by prosecution, the question of burden of proof on the accused to establish his plea in defence does not arise. " Reliance is also placed on case of **Naveed Asghar and 2 others v. The State (PLD 2021 SC 600)**.

16. It is a cardinal principle of criminal jurisprudence that the prosecution must prove its case beyond reasonable doubt, and if a single reasonable doubt arises, it must be resolved in favour of the accused, not as a concession but as a right. Reliance is placed on **Tariq Pervaiz v. The State (1995 SCMR 1345)**, **Muhammad Akram v. The State (2009 SCMR 230)**, and **Muhammad Zafar and another v. Rustam and others (2017 SCMR 1639)**.

17. For what has been discussed above, the instant Criminal Acquittal Appeal is dismissed. The impugned judgement dated 19.9.2019 passed by the learned Model Trial Magistrate Court/XVIIIth Judicial Magistrate, Karachi South acquitting respondents/accused No.2 to 4, is hereby maintained. The respondents/accused shall stand acquitted accordingly.

These are reasons of my short order dated 30.10.2025 whereby instant criminal appeal was dismissed.

**JUDGE**