

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Acquittal Appeal No.S-77 of 2024.

Appellant: Zafar Iqbal s/o Muhammad Ashraf Arain through Mr. Mehmood Alam Abbasi, Advocate.

Respondents: (1). Zulfiqar Shah s/o Muhammad Hashim.  
(2). The State through Ms. Sana Memon, Assistant P.G.

Date of hearing: 06.11.2025.

Date of Decision: 06.11.2025.

Date of Reasons: 18.11.2025.

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

**Muhammad Hasan (Akber), J.-** Assailed in this appeal, is the Judgment dated 02.04.2024 passed by learned Additional Sessions Judge-I, Tando Muhammad Khan in Sessions Case No.194/2023, 'The State v. Zulfiqar Shah' arising out of F.I.R No.63/2023 of PS Tando Ghulam Hyder, for the offences under Sections 462-B, 379, 34-PPC, whereby Respondent /accused has been acquitted under Section 265-H(i) Cr.P.C.

2. Brief allegations in the FIR are that the complainant Zafar Iqbal being a security supervisor posted at Kashkheli UEP field, Kario Ghanwar, Taluka Golrachi, District Badin, lodged the FIR alleged therein that on 21.06.2023 at about 12:00 p.m., he received a telephone call from Khamiso, a line walker, of their main transmission petroleum pipeline and informed him that the earth had been excavated and a portion of the petroleum pipeline was missing and footprints and vehicle marks are visible at the scene. The complainant, accompanied with the line walker Muhammad Saleh Chandio, proceeded to the pointed place and found that about 650 meters of pipeline was missing. It is alleged that unknown persons had attempted to steal oil from the pipeline but, finding it empty, had removed the 650 meters of pipeline. The complainant subsequently informed his superiors and, upon receiving instructions from the company, lodged the present FIR against unknown persons at PS Tando Ghulam Hyder.

3. Learned counsel for the Appellant/ complainant has contended that the impugned Judgment is opposed to facts, law and material available on record; that the impugned Judgment is based upon non-reading and misreading of the evidence; that the learned Trial Court failed to consider the version of complainant who fully

supported the prosecution story; that the complainant had clearly deposed in his examination in chief that such theft cannot be possible except with the help of owner of land and its caretaker, but the learned Trial Court did not appreciate the same fact and had acquitted the Respondents; that the prosecution had fully established the case against the Respondent / accused, but learned Trial Court did not consider the same. Lastly, he prayed for setting aside the impugned judgment and convicting the respondents.

4. Learned APG supported the Judgment impugned on the ground that the complainant utterly failed to prove its case in evidence beyond reasonable doubt.

5. Heard learned counsel, learned APG and perused the record with their able assistance. Sections 462-B PPC provide as under:

***“462B. Tampering with petroleum pipelines, etc.***

*(1) Any person who willfully does tampering or attempts to do tampering or abets in tampering with a facility, installation or main pipeline for transmission or transportation, as the case may be, of petroleum, is said to commit tampering with petroleum pipelines.*

*(2) Any person who commits or abets in tampering with petroleum pipelines for the purpose of:*

*(a) theft of petroleum; or*

*(b) disrupting supply of petroleum,*

*shall be punished with rigorous imprisonment which may extend to fourteen years but shall not be less than seven years and with fine which may extend to ten million rupees.*

6. Heard and perused the record which reflects that after framing of charge, the prosecution examined four witnesses, including PW-1 Zafar Iqbal, PW-2 Khamiso Ghirano, PW-3 I.O/SHO Sarfaraz Ahmed Talpur and PW-4 WHC Zulfiqar Ali. The Statement of the accused under section 342 Cr.PC. was recorded wherein the accused denied the prosecution allegations. Upon conclusion of evidence, the learned trial court acquitted the Respondent /accused, while the case against the remaining accused persons, namely 01. Muhammad Ali S/o Deeno Chang & 02. Moharram S/o Khuda Bukhsh Chang, was kept on dormant file, until their arrest or production before the Court.

7. The prosecution's case is that on 21.06.2023 the complainant Zafar Iqbal received a telephone call from Khamiso, a line walker, of their main transmission line and informed that the earth had been excavated and a portion of the petroleum pipeline is missing. Upon such information, complainant accompanied with line walker Muhammad Saleh Chandio, proceeded to the pointed place and found that

about 650 meters of pipeline was missing; therefore, the complainant on apprehension that few unknown persons had attempted to steal oil from the pipeline but, finding it empty, had removed the 650 meters of pipeline. Subsequently on 23.06.2023 complainant recorded further statement, in which he disclosed that his real theft / culprit were Zulfiqar Ali Shah, Muhammad Ali Chang and Moharam Chang.

8. Upon examination of the record, particularly the evidence of the complainant, Zafar Iqbal, and PW Khamiso, it is evident that the prosecution has utterly failed to establish a case for conviction against the accused persons, beyond a reasonable doubt. Both of them are employees of the oil company, while the other two witnesses are police officials. The failure to produce any independent, private witnesses raises concerns about the credibility of the prosecution's case. The Investigation Officer / SHO Sarfaraz Ahmed Talpur claimed during his deposition that on 04.07.2023 when he reached at Machari Mori, he found one Suzuki Mehran car having silver color in which two persons were seated on the front seat and one was seated on the back seat from who were identified as Zulfiqar Shah, Muhammad Ali and Mohram Chang. He claimed that accused Mohammad Ali and Mohram were succeed in a running while he arrested one accused Zulfiqar Ali shah under mashirnama in presence of Mashir Muhammad Saleh, Khamiso; and from the back side of the car, he found 09 pieces of green color pipes 06 inches in depth however length is 2.50 feet and mashir disclosed that same pipes belongs to their oil company. It is strange to note that the date of alleged incident of theft is not known at all, whereas the date of knowledge of the alleged incident is 21.06.2023 whereas the alleged date of recovery by the investigation officer is 04.07.2023. The story appears to be completely made up and unconvincing to common sense and to a prudent mind, because as per the story, 14 days after the date of alleged knowledge, the said accuse persons were still present at the crime scene sitting in their car and carrying 22.5 feet of the stolen pipe, waiting for the investigation officer to come and arrest them. No independent witness of the alleged recovery was available or examined. No evidence has been produced to establish as to, the alleged recovered 22.5 feet pipe was the same, as was allegedly stolen. The total alleged quantity of stolen pipe was 650 m whereas the allegedly recovered pipe was 22.5 feet. The story creates serious doubts. In light of these circumstances, the benefit of doubt must be extended to the accused persons, as it is a fundamental principle of law that any doubt should be resolved in favor of the accused.

9. The legal scheme governing various principles of the 'burden of proof' is contained in Articles 117 to 122 of the Qanun-e-Shahadat Order 1984, which requires the complainant to discharge its burden of proof to prove its case beyond reasonable doubt, which also attracts the rule, **incumbit probatio qui dicit, non qui negat**, i.e. the burden of proving a fact rests on the one who asserts the affirmative and not upon the party who denies it. In the case in hand, the primary burden was on the complainant to prove his case beyond a reasonable doubt that the accused/ respondents, being the landowner and his peasants, tampered with the auxiliary or distribution pipelines of the complainant Company.

10. In the present case, there are no eyewitnesses to the alleged offence of tampering with auxiliary or distribution pipelines of petroleum or committing theft. The exact day and time of the alleged offence of theft is also not known. No tools have been recovered from the possession of the accused. Moreover, the mashirs/ prosecution witnesses were employees of the same company, hence no independent witnesses were available. No forensic evidence was produced to establish any disruption or damage or loss to the company. The alleged date of recovery of 22.5 feet out of the total 650 feet is 14 days after the date of knowledge. The story created by the investigation officer, in the absence of any independent witnesses, is also unconvincing. No forensic report has been produced to the effect that the allegedly recovered pipe was the same pipe for which the theft was committed. Even to substantiate the very existence of any loss to the complainant company, if any, due to the alleged theft, no material has been produced by the complainant company to even remotely suggest that any claim for recovery of the alleged loss to the complainant company at any forum (with the insurance company or before the Court etc.) was ever initiated by the company. In view of the above, neither *mens rea* nor *actus reas* could be established against the accused by the prosecution. Based upon the above evidence, the learned trial Court rightly concluded that the prosecution failed to prove the charge against the accused persons, beyond reasonable doubt.

11. In the case of '**Karamat Arain and another v. The State**' (2018 PCr.LJ 669), under section 462-B PPC., where identical allegations of putting a clip on the pipeline after digging a ditch over the pipeline; and tampering and theft of pipeline and oil were alleged, the accused were acquitted of the Charge and it was held that,

“if the allegations are that the accused were digging the earth, some tools like shovel, spade, scoop, trowel or any other

similar tool must be recovered from the possession of the accused persons or found at the place of incident. It is also important to note that the police did not find empty barrels or any other container for storing stolen oil as well as no vehicle was shown to be seen by police for transporting the stolen oil. In such a situation, the only recovery of a clip and a screw wrench is not sufficient to connect the appellants with the commission of the alleged offence.”

12. Two principles, which have been consistently followed by the superior Courts while dealing with appeals against acquittals, are: (i) that an appeal against an acquittal, being an extraordinary remedy, has distinct features from that of an appeal against conviction; and (ii) that to reverse an order of acquittal, it will have to be established that the acquittal order is unreasonable, perverse and manifestly wrong.

13. The third principle applicable to the present case is that even if a single circumstance exists, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the benefit of such doubt shall be extended to the accused, not as a matter of grace and concession, but as a matter of right. Reliance in this regard is placed upon **‘Tariq Pervez v. The State’** (1995 SCMR 1345) and **‘Muhammad Akram v. The State’** (2009 SCMR 230). As already discussed above, in the present case, multiple contradictions, deficiencies and flaws exist, which will go to the benefit of the accused.

14. The fourth principle of criminal jurisprudence applicable to this case is that if there is even a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to its benefit, not as a matter of grace and concession, but as a matter of right, whereas in the present case there are multiple contradictions, deficiencies and flaws as discussed above, which will go to the benefit of the accused. Reliance in this regard is placed upon **‘Tariq Pervez v. The State’** (1995 SCMR 1345); and **‘Muhammad Akram v. The State’** (2009 SCMR 230).

15. The fifth principle which will apply to the present appeal is that an Order of acquittal carries with it a double presumption of innocence in favour of the accused and in such cases, the Court is required to act slowly before interfering with such order of acquittal, unless the grounds for acquittal were perverse, wholly illogical or unreasonable. These principles have been settled in **‘The State v. Abdul Khaliq and others’** (PLD 2011 SC 554); **‘Ghulam Sikandar v. Mamrez Khan’** PLD 1985 SC 11; and **‘Tariq Pervez v. The State’** (1995 SCMR 1345); **‘Muhammad Asghar and**

*another v. The State*' (PLD 1994 SC 301); '*Mirza Noor Hussain v. Farooq Zaman and 2 others*' (1993 SCMR 305); '*Yar Mohammad and 3 others v. The State*' (1992 SCMR 96).

16. Applying all the above principles to the facts of the present case, no illegality, infirmity, perversity or jurisdictional error could be pointed out against the Judgment impugned; nor any case is made out calling for interference therein. Accordingly, the Judgment impugned is upheld; and this Criminal Acquittal Appeal is **dismissed**. These are the reasons for my short order dated 06.11.2025.

Before parting with this Judgment, the able assistance provided by the learned Assistant Prosecutor General and learned counsel for the appellant is appreciated.

**JUDGE**