IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Acquittal Appeal No.S-203 of 2023.

Appellant: Abdul Sattar s/o Rato Khan through Mr. Mehmood Alam Abbasi, Advocate.

Respondents: (1). Alam s/o Mitho Wassan.
(2). Mehboob Ali s/o Muhammad Soomar.
(3). The State, through Ms. Sana Memon, Assistant P.G.

Date of hearing: 31.10.2025.

Date of short Order: 31.10.2025.
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 30.11.2023 passed by learned Sessions Judge, Badin in Sessions Case No.443/2023, 'The State v. Alam and another' arising out of F.I.R No.78/2023 of PS Matli, for the offences under Sections 462-B, 379, 427, 147, 148-PPC, whereby Respondents/accused have been acquitted under Section 265-H(i) Cr.P.C.

2. Brief allegations in the FIR lodged by complainant Abdul Sattar Khaskheli on 20.04.2023 at PS Matli are that the complainant being a Security Supervisor in Askari Security Company was posted at Khaskheli field UEP Kario Ganwhar. On 13.04.2023 complainant accompanied with contractor supervisor Nazar Ali s/o Ghulam Hussain Ghhalgri and Muhammad Ashraf son of Jan Muhammad Halepoto, as per routine, left for checking oil pipe lines and when at about 1000 hours they reached near Mazari well No.12, they saw that oil transmission pipe line passing through the land of Haji Hashim Sahito bearing S. No.259/3 and 151 situated in Deh Sonharo, Taluka Matli under the lease of UEP was excavated, pipe lines were tampered, removed and were stolen away. They further checked through the distance meter of the vehicle and found that the oil transmission pipeline was removed and stolen for a distance of 0.46 kilometers, worth rupees one Million. The complainant informed his superior officers regarding theft of oil transmission pipe

line and thereafter complainant searched himself / personally for the culprits and during inquiry, he came to know that accused persons Alam Wassan and Mehboob Khaskheli alongwith 3 / 4 unknown accused persons tried to commit theft of oil but since there was no oil scheduled in the said pipe line, they committed theft of oil transmission pipe line.

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. On the other hand, learned APG supported the Judgment impugned on the premise that the complainant utterly failed to prove its case in evidence, beyond reasonable doubt. Reliance was also placed on various decisions of the Honourable Supreme Court, which are discussed in the latter part of this Judgment.

5. Heard learned counsel, learned APG and perused the record with their able assistance. Sections 462-B PPC. provides 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. After framing of charge, the prosecution examined four witnesses, including PW-1 Muhammad Ashraf, PW-2 Nazar Ali, PW-3 complainant Abdul Sattar and PW-

4 I.O / ASI Asghar Ali. The Statement of the accused under section 342 CRPC was recorded, wherein the Respondents / accused denied the prosecution's allegations. Upon conclusion of evidence, the learned trial court acquitted the respondents/accused. The prosecution's case is that on 13.04.2023 at an unknown time, the accused, Alam Wasan and Mehboob Ali Khaskheli, along with 3/ 4 unknown accused persons, in furtherance of their common intention, tampered with the oil transmission pipeline of UEP Company, which traverses from the land of Haji Muhammad Hashim Sahito bearing Survey Nos. 259/3 and 151 of Deh Sonharo, Taluka Matli. Under Article 117 of Qanun-e-Shahadat Order 1984, the primary burden was therefore on the complainant to prove its case beyond reasonable doubt that the accused/ respondents Alam Wasan and Mehboob Ali Khaskheli on the intervening night of April 12th and 13th, at an unknown time tampered with oil transmission pipe line of UEP company and attempted to commit theft of oil, but since there was no oil in the oil transmission pipe line of UEP Company, accused persons willfully cut/removed and stolen away oil transmission pipe line for a distance of about 0.46 kilometers worth rupees one Million.

7. The *mashir* (Muhammad Ashraf Halepoto) during his cross-examination admitted that chowkidars are appointed by the concerned company for the security of functional as well as non-functional oil wells. The complainant during his cross-examination denied that officials are deployed at the transmission pipeline of the oil Company. The *mashir* Muhammad Ashraf Halepoto admitted during his cross-examination that in the surrounding area of crime scene, houses of Kolhi and Halepoto communities are situated, whereas the same version was denied and contradicted by the complainant during his cross-examination. The complainant also admitted during his evidence that *"…It is correct that oil transmission pipeline lies 3 to 4 feet under the surface of land. It is correct that two persons cannot dig 3 to 4 feet deep land for 0.46 kilometer in one night."* The complainant further admitted during cross that the persons who informed him about the accused persons are not cited as witnesses in this case. PW-4 ASI Asghar Ali (Investigation Officer), during his cross-examination, admitted that they went for site inspection on police mobile, but the same was not mentioned in the Entry No.25 (Exh. 6/B) nor was it recorded in the memo of site inspection. He also admitted that in the FIR it is recorded that oil pipeline was stolen by digging the ground, however such fact was not mentioned in the memo of site inspection that the land or ground at the place of incident was dug. He also admitted that chowkidars are employed at the oil wells however statement of

such chowkidars were not recorded during investigation, nor any inquiry was conducted from them.

8. Another important aspect of the matter is that Investigation Officer, during his examination-in-chief has claimed that the accused persons disclosed to him that they had committed the alleged theft of the oil pipeline on different dates and then sold the stolen pipeline to various individuals. The principle settled by the Federal Shariat Court in the case of ***'Iqbal alias Malang and others v. The State'*** (2015 YLR 203) is that the commission of robbery or theft is an offence which is altogether different from the receiving of stolen property. If a person is charged for robbery or theft, any recovery of the articles from him is a proof of the robbery or theft and it is a matter of common sense that the recovery of stolen property from a thief simply comes to prove that he is a thief guilty of the commission of theft and to be punished accordingly. On the other hand, the receiver of stolen property is the one who dishonestly receives or retains any property already stolen by someone else. In that case too, the necessary ingredient is that the receiver should either have knowledge or have reason to believe that the property received by him is a stolen one. Hence, a person charged with robbery or theft cannot be labelled as a receiver of the stolen property, even if the stolen articles are subsequently recovered from him. It should always be somebody else, other than the one who stole or extorted the articles. Apparently, no ocular evidence is available on the record to connect the Respondent / accused with the commission of the offence since the incident is unseen.

9. In the present case, the IO claims that the accused persons disclosed to him that they had committed the alleged theft of the oil pipeline on different dates and then sold the stolen pipeline to various individuals. Firstly, such an extra-judicial confession carries no weight in the eyes of law. Secondly, even for the sake of argument, if such a statement is considered true, it was the duty of the investigation officer to have investigated such purchasers as accused persons, for purchasing stolen property, which would have further facilitated recovery of the stolen pipeline. On the contrary, the record reflects that no investigation was conducted with respect to such alleged purchasers.

10. 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 to prove its case beyond reasonable doubt. This 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 its case beyond reasonable doubt that the accused/ respondents, being the landowner and his peasants, tampered with the auxiliary or distribution pipelines of the complainant Company.

11. From the evidence discussed above, it appears that in the present case, the incident is unseen, and there are no eyewitnesses to the alleged offence of tampering with the auxiliary or distribution pipelines of petroleum or committing theft or of the sale of the allegedly stolen property. The exact day and time of the alleged offence is also not known. The alleged purchasers of the stolen property have neither been investigated nor any stolen property been recovered from any purchaser. The company's chowkidars have not been investigated. No evidence has been produced to establish this unseen alleged offence of theft, as to how the complainant's officer came to know that it was the accused persons who stole the subject pipeline. the No tools have been recovered from the accused's possession in the presence of independent witnesses/mashirs. The mashirs/ prosecution witnesses were employees of the complainant company. No evidence was produced to establish any disruption or damage, or loss to the pipeline. The quantification of the alleged loss, if any, is also not substantiated. Even to substantiate the very existence of any loss to the complainant company 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 *actus reas nor mens rea* could be established against the accused by the prosecution. Based upon the above evidence, I am unable to disagree with the learned trial Court, which rightly concluded that the prosecution utterly failed to prove the charge against the accused persons, beyond reasonable doubt. Finally, significant discrepancies in the testimonies of the prosecution witnesses completely damaged the prosecution's case and raised serious concerns about the credibility of their evidence.

12. 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."

13. While deciding an acquittal appeals, the guidelines provided by the Honourable Supreme Court are that:

(i) an appeal against an acquittal, being an extraordinary remedy, has distinct features from that of an appeal against conviction; and

(ii) to reverse an order of acquittal, it will have to be established that the acquittal order is unreasonable, perverse and manifestly wrong. '***Muhammad Sohail Haroon V. Shoukat Ali and 2 others***' (2024 YLR 2804), ***'Kim Seon Bae v. The State and 2 others'*** (2021 YLR 114), ***'Muhammad Yasin V. Muhammad Zubair Farooqui and another***' (2022 YLR Note 98), ***'Raja Abdul Hameed V. Mashooq Ali Rajpar and 2 others***' (2022 YLR Note 54), '***Amanullah Khan V. Ahtisham Khan and 3 others***' (2020 PCr.LJ 152) and ***'Mehdi Hassan V. Muhammad Sajid and 2 others***' (2018 MLD 1349).

(iii) 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 is to 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.

(iv) 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).

14. Applying all the above guidelines to the facts of the present case, no illegality, infirmity, perversity, or jurisdictional error could be established which would call for interference in the impugned Judgment. Accordingly, the Judgment impugned is upheld; and the instant Criminal Acquittal Appeal is **dismissed** along with the pending application. These are the reasons for my short Order dated 13.11.2025.

The able assistance provided by the learned Assistant Prosecutor General is appreciated.

JUDGE