

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Acquittal Appeal No.S-181 of 2024.

Appellant: Muhammad Haroon s/o Muhammad Ibrahim Bhatti through Mr. Shahzeb Abbasi, Advocate.

Respondents: (1). Ahmed Bux s/o Abdul Jabbar Panhwar and (2). Abdul Razzaque s/o Allah Warayo Panhwar.

The State: Through Ms. Sana Memon, Assistant P.G.

Date of Hearing: 07.11.2025.

Date of Decision: 07.11.2025.

J U D G M E N T

Muhammad Hasan (Akber), J.- Assailed in this Appeal, is the Judgment dated 22.11.2024 passed by learned Sessions Judge, Dadu in Sessions Case No.484/2024, 'The State v. Ahmed Bux and another' arising out of F.I.R No.16/2024 of PS Phulji Station, for the offences under Sections 462-B, 462-C, 427-PPC, whereby Respondents/accused have been acquitted under Section 265-H(i) Cr.P.C.

2. Brief allegations as recorded in the FIR are that on 07.07.2024 complainant Muhammad Haroon appeared at Police Station Phulji Station and got his FIR registered, wherein he alleged that he is Security Officer in PARCO Company and posted at PS-2 Boobak Station. The PARCO is a sole source as well as department of distribution of oil from PARCO pipeline to Sheikhpura Lahore to the public and to industries. On 06.07.2024 at 10:00 hours complainant along with Security Supervisor Wazir Ali, Security Guard Jameel Ahmed left PARCO station Boobak along with driver Bisharat Hussain in official vehicle No.SA-2646 for patrolling. During checking of pipeline at 13:30 hours they reached at ROW KM 46+500, PARCO Tower MW06 near Phulji Station where they saw signs of digging. On checking they saw a black color high pressure pipe, which was adjacent to the pipeline, and it was coming from the earth. Such information was conveyed to Police Station Phulji Station so also to PARCO station Boobak. The police arrived at the spot on police mobile, while PARCO maintenance in-charge Zahid Qambrani also arrived along with his team. Then in the presence of police, the PARCO team started digging and found an iron clip installed in PARCO pipeline, wherein a high pressure pipe of one inch and 109 feet in length was found, which felt to be installed for some time. The complainant came to know that owner of said land is Ahmed Bux son of Abdul Jabbar, and his peasant is Abdul Razzaque son of Allah Warayo, both Panhwar by caste and residents of village Sher

Muhammad Ladhani Panwhar. The clip cannot be installed without consent of the land owner and his peasant, hence they both (accused) in collusion with accused Muhammad Yousif son of Raheem Bux Panhwar and some unknown persons have installed the clip in PARCO pipeline and have committed theft of oil, caused destruction to the supply of oil, there was apprehension of spreading of fire. Accordingly, the FIR was registered.

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.

5. Heard learned counsel, learned APG and perused the record with their able assistance. Sections 462-B and 462-C 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.

462C. Tampering with auxiliary or distribution pipelines of petroleum:

(1) *Any person who willfully does tampering or attempts to do tampering or abets in tampering with any auxiliary or distribution pipeline of petroleum not being a main transmission and transportation pipeline but includes a distribution system, distribution pipeline or any other related system and equipment, as the case may be,*

of petroleum is said to commit tampering with auxiliary or distribution pipelines of petroleum.

(2) Any person who commits or abets in tampering with auxiliary of distribution pipeline of petroleum for the purpose of,-

(a) theft of petroleum; or

(b) disrupting supply of petroleum,

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

6. The prosecution's case is that on 06.07.2024 at about 1330 hours, the complainant and security personnel discovered a clandestine tapping operation at ROW KM 46+500, PARCO Tower MW06, near Phulji Station. A high-pressure pipe was found connected to the PARCO pipeline via an iron clip, indicating theft of oil. The accused, Ahmed Bux and Abdul Razzaque, as landowner and peasant, respectively, are alleged to have colluded with Muhammad Yousif and others to install the clip and commit oil theft since it is not possible to install such a clip except with the help of the landlord and the peasant, which disrupted the oil supply.

7. After framing of charge, to prove the Charge against the Respondents, the prosecution produced five witnesses including PW-1, complainant Muhammad Haroon, PW-2 Wazir Ali, PW-3 WASI Sadruddin Soomro, PW-4 I.O / ASI Ali Akbar and PW-5 Himat Ali. The Statement of the accused under section 342 Cr.PC. was recorded, wherein the accused denied the allegations. Upon conclusion of evidence, the learned trial court acquitted the respondents/accused. PW Muhammad Haroon (**complainant**) claimed that:

“...In my assessment such theft by making connection with our main pipeline could not have been possible except with the help of owner of the land and his Hari/caretaker of the land. The owner Ahmed Bux, Abdul Razak and Muhammad Yousif son of Abdul Rahim were in collusion with each other for committing this theft from our main pipeline. Some other unknown persons were also involved in this theft. I say that all accused persons in collusion with each other have damaged our main pipeline and created a danger of a blaze which could have occurred at any time into leakage from the clamp point. They also created disturbance in our smooth supply of gasoline. I pray for legal action against all culprits...”

8. The PW-2/ Mashir Wazir Ali deposed that “It is correct that we did not see any person while fixing the clip with our main gasoline pipeline or committing theft of gasoline from our main supply.” He also admitted that there is no standing crop over the land of Ahmed Bux but it had been made ready for ploughing some crop. PW-4 I.O./ ASI Ali Akbar in his cross-examination also admitted that he relied upon the

statements of the complainant and prosecution witnesses regarding the allegation of tampering against the accused, as alleged in the FIR. The complainant and witnesses in their statements alleged that the land belonged to Ahmed Bux Panhwar and the other co-accused was his peasant/hari. He admitted that it was their statements that he submitted the charge sheet against the accused persons. He also admitted that there is a police picket near the place of occurrence just at the distance of about 100 to 150 feet away. The sole reason for raising allegation against the accused Ahmed Bux Panhwar, was that the alleged pipeline damage occurred on his land. However, the prosecution has failed to adduce any direct or circumstantial evidence to substantiate this allegation. The prosecution's reliance on the accused's ownership of the land as the sole basis for implicating him is misplaced. Mere ownership or proximity to the locus delicti is insufficient to establish criminal liability. The mere fact that a crime has been committed on a person's property does not, ipso facto, render them criminally liable; rather, evidence directly implicating them in the commission of the offence is imperative. Furthermore, the implication of Abdul Razzaq, Yousif, and other unnamed individuals as co-accused appears to be arbitrary, as the prosecution has failed to establish a prima facie case against them. A thorough review of the record reveals a dearth of independent witnesses, forensic evidence, or other corroborative material that could establish the accused's complicity in the alleged offence. No credible evidence has been presented to demonstrate the accused's involvement in tampering with auxiliary or distribution pipelines of petroleum or committing theft, rendering the prosecution's case bereft of probative value.

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 is also not confirmed. No tools have been recovered from the possession of the accused. Even no allegation of theft of petroleum

has been made. 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. The quantification of the alleged loss, if any, is also missing. No corroborative material was produced to substantiate the allegations. No complaint of the alleged offence was ever received from the said nearby police picket. It is not even alleged or established if anything was stolen nor sale of the property was alleged. Hence, neither *mens rea* nor *actus reas* could be established against the accused by the prosecution. 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.

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.”

13. The guidelines enunciated by the Honourable Supreme Court for decisions in acquittal appeals are that:

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

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 07.11.2025. The citation and the assistance provided by the learned Assistant Prosecutor General and learned counsel for the appellant, are appreciated.

JUDGE