

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**Cr. Acquittal Appeal No.S-31 of 2024.**

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

Respondents: (1). Shehzad Ahmed s/o Bashir Ahmed Kashmiri.
(2). Muhammad Yousif s/o Allahdino Baber.

Cr. Acquittal Appeal No.S-60 of 2024.

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

Respondent: Ahmed s/o Siddique Khore.

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.- Through this consolidated Judgement, both the subject appeals are being decided, which emanate from the common FIR No.37/2023 of PS Khorwah, District Badin for the offences under Sections 462-B, 379, 427-PPC. Vide Judgment dated 27.01.2024 and Order dated 02.03.2024 passed by the learned Sessions Judge, Badin in Sessions Case No.496 of 2023 and Sessions Case No.496/A of 2023 respectively, the Respondents/ accused in both these Appeals have been acquitted under section 245(i) Cr.P.C and 265-K Cr.P.C respectively.

2. Brief allegations in the FIR are that on 12.05.2023 complainant Zafar Iqbal lodged FIR stating therein that he is working as Senior Security Supervisor in Askari Guard Limited and posted at UEP Khaskheli Oil Field Kario Ganwhar. On 06.05.2023, in the morning, he returned after checking the pipeline area situated in Deh Simiki. On 07.05.2023, in the evening time, the complainant alongwith Abdul Ghafoor Community Support Officer and Aslam Mallah Land Man went together for checking pipeline at different places, when at about 04:30 hours reached in the agricultural land of Saindino Jat in Deh Samki, they saw that land was excavated and petroleum line was opened and also noticed footprints of people and wheel marks of vehicles and machines. They also found that the petroleum pipeline for about 03 kilometres was excavated and

stolen away. The complainant party inquired from different people of the vicinity and came to know that one Inayat Jarwar, Shehzad Kashmiri, Ahmed Khor and Yousif Babar used to make demand bribe/ bhatta from UEP company but on refusal they had tried to commit theft of oil, but due to low pressure and closure of gas transmission by the UEP Company, they could not succeed in committing theft of oil and stolen pipeline along with 9/ 10 other persons.

3. It was vehemently argued by the limited Council for the complainant/appellant that the impugned Judgment and order passed by learned Sessions Judge, Badin are opposed to the facts, law and material available on record; that the complainant's version was not considered by the learned trial Court; that pimple evidence was produced to support the prosecution case, which fully established the charge. Lastly, prayers were made for reversing the impugned Judgment and the Order and conviction of the accused were made.

4. The learned APG supported the Judgment impugned on the premise that the complainant utterly failed to prove its case in evidence, beyond reasonable doubt and also referred to various Judgments of the superior Courts, which will be discussed in the latter part of this Judgment.

5. Heard learned counsel, learned APG and perused the record with their able assistance.

6. The record reflects that after framing of charge, the prosecution examined six witnesses. PW-1, the Complainant Zafar Iqbal, PW-2 ASI Ghulam Shabbir Chandio, PW-3 PC Manzoor Ali, PW-4 WHC Salah Muhammad, PW-5 Aslam and PW-6 Abdul Ghafoor. The Statements of the accused Shehzad Ahmed and Muhammad Yousif under Section 342 Cr.PC were also recorded, whereby they denied the allegations against them.

7. Upon conclusion of evidence, the learned Court acquitted the respondents/ accused Shehzad Ahmed and Muhammad Yousif vide Judgment dated 27.01.2024, while the case against the absconding accused Inayat son of Allah Bux *alias* Haji Jarwar, and Ahmed son of Muhammad Siddique Khor was kept on a dormant file till their arrest.

8. Subsequently, Respondent/ accused, Ahmed son of Siddique Khor appeared before the learned trial Court and filed an Application under section 265-K Cr.PC., which was allowed vide Order dated 02.03.2024, and he was acquitted. Being

aggrieved by such decisions, the Appellant/ complainant has preferred both the above Appeals against Judgment dated 27.01.2024 and the Order dated 02.03.2024. Since, the Appeal No.S-31 of 2024 was filed earlier against the acquittal of Respondents/ Accused Shehzad Ahmed and Muhammad Yousif, such appeal is therefore being discussed first.

9. Gist of the prosecution case is that on 07.05.2023 the complainant, Abdul Ghafoor and Aslam Mallah, inspected the pipeline passing from the agriculture land of Sain Dino Jat, where they discovered that the land had been excavated and the petroleum pipeline had been breached. Footprints and tyre marks of vehicle were also seen and approximately 3 kilometers of pipeline was stolen. Upon inquiry, they were informed that accused Inayat Jarwar, Shehzad Kashmiri, Ahmed Khor, and Yousif Babar had previously demanded money from UEP company and upon refusal, they attempted to steal oil but remained unsuccessful, hence they stole the pipeline along with 9-10 accomplices.

10. Section 462-B PPC provides as under;

“462-B. 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.”

11. Articles 117 to 122 of the Qanun-e-Shahadat Order 1984, require the allegor to discharge its burden to prove its case beyond reasonable doubt, as also required under 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 this case, therefore, the primary burden was on the complainant to prove its case beyond reasonable doubt that the accused/ respondents committed theft of petroleum pipeline of about 3 kilometers. The alleged previous demand of money from the Company was also a fact required to be established.

12. To prove the charge against the Respondents/ accused, the prosecution produced six witnesses. The complainant during his cross examination claimed that he knew the accused persons prior to the incident. However, during his evidence, the

complainant while describing the names of accused persons was looking to his left hand time and again, which he was asked to show to the court and it was found that names of accused persons were written on his left hand with blue ink and he was giving names of those accused persons after reading the same from his hand, which clearly suggests that the accused persons were not known to the complainant prior to incident and such conduct of complainant casts serious doubt on the credibility of his evidence. The witnesses Aslam Mallah and Abdul Ghafoor, who also acted as mashirs of the crime scene did not support the complainant's version and also shattered the entire prosecution case during their evidence and were ultimately declared as hostile witnesses. The FIR and testimony show that the accused were nominated solely based on suspicion. Moreover the names of the villagers who provided the information about names of the accused who allegedly stole the pipeline were not produced as witnesses. The complainant also admitted in his cross examination of not registering any complaint against the accused for allegedly demanding "Bhatta" from the company.

13. 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 and committing theft. The exact day and time of the alleged offence is also not known. Huge quantity of 3 kilometer (3000 meters) of pipeline has been alleged to be stolen, however sale thereof or alleged purchasers of the stolen property have neither been investigated, nor any stolen property been recovered. The persons who informed the complainant about the names of the accused persons and about their stealing, were neither mentioned in the FIR, nor were they examined as witnesses by the prosecution. The footprints and marks of tyres were also not investigated. The two prosecution witnesses did not support the complainant's version and were declared hostile by the prosecution. These 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. No tools were recovered from the accused's possession. The mashirs/prosecution witnesses were employees of the complainant company. No forensic evidence was produced to establish any disruption or damage, or loss to the pipeline. The quantification of the alleged loss, if any, was not even alleged. 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 *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.

14. 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.”

15. It has been consistently held by the Honourable Supreme Court that an appeal against an acquittal, being an extraordinary remedy, has distinct features from that of an appeal against conviction; and that to reverse an order of acquittal, it will have to be established that the acquittal order is unreasonable, perverse and manifestly wrong. In **'Tariq Pervez v. The State'** (1995 SCMR 1345) and **'Muhammad Akram v. The State'** (2009 SCMR 230), the apex Court has held 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. As already discussed above, in the present case, multiple contradictions, deficiencies and flaws exist, which will go to the benefit of the accused. The accused would not be entitled to such benefit, as a matter of grace and concession, but as a matter of right. Multiple contradictions, deficiencies and flaws have already been pointed out, which will go to the benefit of the accused.

18. It is by now a well-settled principle of law that an Order of acquittal carries with it double presumption of innocence in favour of the accused, and in such cases, the Court shall act slowly before interfering with such order, unless the grounds for acquittal were perverse, wholly illogical or unreasonable. Reliance in this regard is placed upon, **'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).

19. Turning to the Order dated 02.03.2024 for acquittal of absconding accused Ahmed son of Siddique Khor under section 265-K Cr.PC., against which Acquittal Appeal bearing No.S-60 of 2024 was preferred, it is observed that since the prosecution has failed to establish its case against the main accused persons, as discussed above in detail, and since the case of the absconding accused Ahmad Khor is also on same footing, hence would also be entitled to the same relief, as being extended to the main accused persons.

20. Considering the prosecution evidence; and both the Judgment and Order of acquittal by the learned trial Court; and applying all the above legal principles to the facts of the present case, no illegality, infirmity, perversity, or jurisdictional error could be pointed out against both the Judgments impugned; nor any case is made out calling for interference therein. Accordingly, both the Judgments impugned are upheld; and these Criminal Acquittal Appeals are **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