

**ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

Criminal Acquittal Appeal No. S-96 of 2023

Abdul Latif Vs The State and another

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on Office Objection.
2. For Orders on MA No. 5792/2023 (Leave to appeal)
3. For hearing of main case.

Mr. Hamayoun Shaikh, Advocate for appellant.
Mr. Qurban Ali Memon, Advocate for Respondent No.2
Syed Naved Ahmed Shah Deputy Attorney General for Pakistan
Mr. Mansoor Ahmed Shaikh, Deputy Prosecutor General, Sindh for State.

Date of Hearing: 14-04-2025 & 19-06-2025
Date of Decision: 19-06-2025
Date of Reason: 23-06-2025

JUDGMENT

Ali Haider "Ada"-I Through the instant Criminal Acquittal Appeal, the appellant has assailed the legality and propriety of the judgment dated 09.08.2023, passed by the learned Sessions Judge, Naushahro Feroze, in Sessions Case No. 388 of 2020, titled The State vs. Ahmed Ali Shaikh (Respondent No.2). By the said judgment, Respondent No.2 was acquitted of the charge in Crime No. 29 of 2020, registered at Police Station Phull, for offence punishable under Sections 15 and 17 of the Gas (Theft Control and Recovery) Act, 2016. The impugned verdict has been challenged before this Court primarily on the ground of misreading and non-appreciation of material evidence available on record.

2. Briefly stated, the facts of the case are that on 12.08.2020, the complainant Fayaz Ahmed, serving as Deputy Manager at Sui Southern Gas Company, proceeded from the Nawabshah office to the Naushero Feroze office and after reached, accompanied by office staff Abdul Latif Larik and Kaleemullah, he departed for routine patrolling to inspect gas meters and supply lines in various areas. As, at about 11:00 a.m., upon reaching the premises of the accused, they observed a heavy generator in operation. Upon noticing the presence of the

inspection team, the accused fled the scene. The team found that the generator was illegally connected and was being used for supplying electricity to others. The complainant immediately informed the Zonal office, secured and recovered the relevant material from the site; and ensured that the unauthorized connection to the main gas pipeline was sealed by welding. Subsequently, after reporting the matter to the higher authorities and obtaining the requisite permission, the FIR was lodged on 24.08.2020 under Sections 15 and 17 of the Gas (Theft Control and Recovery) Act, 2016.

3. Upon completing of the investigation, the Investigating Officer submitted the final report (challan) before the competent Court having jurisdiction. The report reflected that various items were seized, including a generator, a (Dina) with plates, a wooden switch, three cut-outs, six meters, four gas pipes, and twelve photographic evidences. Respondent No.2 was accordingly arrayed as an accused and charged to face trial in connection with the offence under the relevant provisions of law.

4. After furnishing the requisite copies of documents to the accused in compliance with Section 265-C, Cr.P.C, the learned trial Court framed the charge on 04.11.2020. The accused (Respondent No.2) denied the allegations and claimed trial. Thereafter, the prosecution was called upon to substantiate its case through evidence, pursuant to which the following witnesses were examined:

PW-1 Abdul Latif, who appeared as an eyewitness and also served as mashir to the memo of inspection and recovery, duly exhibited the same.

PW-2 Gul Hassan, the Investigating Officer, produced on record the letter for lodging the FIR issued by the relevant officer of the SSGC, along with a copy of the FIR.

PW-3 Fayaz Ahmed, the complainant, tendered into evidence the damage assessment report detailing loss to the national exchequer due to unauthorized gas usage, the memo of photographs, and supporting photographic evidence.

5. Following the conclusion of examination-in-chief and cross-examination of the above witnesses, the prosecution closed its side through a statement submitted by the learned District Public Prosecutor on 09.08.2023.

6. Subsequently, the statement of the accused under Section 342, Cr.P.C, was recorded, wherein he categorically denied the allegations and professed innocence. Final arguments were advanced by both parties through their respective counsel. Thereafter, the learned trial Court rendered the impugned judgment, acquitting Respondent No.2 of the charge leveled against him. The said verdict has been brought under scrutiny through the present Criminal Acquittal Appeal.

7. Learned counsel for the appellant assailed the impugned judgment on the ground that it rests upon conjectures and lacks proper appreciation of the evidence adduced by the prosecution. He submitted that the prosecution successfully established its case through consistent and reliable oral as well as documentary evidence, which, if evaluated in its correct perspective, was sufficient to bring home the charge against Respondent No.2. However, the learned Trial Court failed to assign any cogent or plausible reason for discarding such evidence. It was further contended that in statement of accused recorded under Section 342, Cr.P.C, the accused himself admitted ownership of the recovered articles, thereby unequivocally connecting himself with the commission of the offence. Despite such an admission, the learned Trial Court overlooked this crucial aspect, which materially impacted the case. On these premises, it was argued that the impugned judgment is flawed in law and fact and thus, merits interference by this Court.

8. Conversely, learned counsel for Respondent No.2 defended the impugned judgment and submitted that the prosecution miserably failed to discharge its burden of proof. He argued that the accused was falsely implicated due to mala fide intentions and ulterior motives, and no incriminating evidence was brought on record to establish the guilt of the respondent beyond reasonable doubt. As for the alleged recovery, learned defence counsel submitted that the purported admission by the accused during his statement under Section 342, Cr.P.C, was not a voluntary acknowledgment of guilt but merely an response, likely attributable to lack of understanding. It was further contended that the said recovery, even if presumed, does not independently establish the offence unless duly corroborated by other credible evidence, which was lacking in the present case. Therefore, he prayed for

dismissal of the appeal, maintaining that the acquittal recorded by the learned Trial Court was well-founded and in accordance with law.

9. On the other hand, the learned Deputy Prosecutor General did not support the impugned judgment and submitted that the same is vitiated by serious legal and factual infirmities. He argued that the judgment demonstrates an instance of misreading and non-reading of material evidence, thereby occasioning a miscarriage of justice. It was pointed out that, quite erroneously, the learned trial Court referred to the alleged involvement of the accused under the Manpuri Gutka Act, 2019, a statute which has no nexus whatsoever with the facts or legal framework of the present case. More alarmingly, the learned trial Court proceeded to discredit the prosecution's case on the ground that two prosecution witnesses, namely Zubair Ahmed and Ashique Hussain, were declared hostile and did not support the case. However, neither of the said individuals were ever cited as witnesses by the prosecution nor did they participate in any manner in the investigation or trial proceedings relating to the instant case. As such, the observation of the learned trial Court in this regard is not only factually incorrect but also legally untenable. Extending the benefit of doubt to the accused on the basis of witnesses who were never part of the record constitutes a grave violation of the principles of natural justice. In view of the above serious procedural and legal anomalies, the learned Deputy Prosecutor General urged that the impugned judgment cannot be sustained in the eyes of law and the matter ought to be remanded to the learned trial Court for a fresh decision, after thoroughly reappraising the evidence in its true legal context. The learned Deputy Advocate General adopted the same arguments advanced by the Deputy Prosecutor General.

10. Arguments have been heard and the entire record has been meticulously examined.

11. The learned trial Court framed points for determination, wherein Point No.1 was the principal and foundational issue. For ready reference, it is reproduced as under:"

Whether the accused Ahmed Ali Shaikh tampered with Gas meter and distribution pipelines of Gas and committed theft of Gas by installing direct connection for Generator on the date, time and place as alleged ?

12. A lacuna arises when it is noted that neither PW Zubair Ahmed nor Ashique Hussain is mentioned in any part of the prosecution's case, attendance sheet, or witness roster. Their names do not appear in the FIR, the investigation file, the charge sheet, or even in the list of witnesses tendered before the learned trial Court. Consequently the designation of these individuals as prosecution witnesses is factually incorrect.

13. In conclusion, the declaration of witnesses Zubair Ahmed and Ashique Hussain as hostile, despite their absence from the record, highlights a critical breakdown in judicial reasoning and legal propriety. This failure constitutes both misreading and non-reading of evidence and cast doubt on the correctness of the acquittal.

14. This conclusion draws strength from the principles enunciated by the superior judiciary in *Mst. Gulshan Bibi v. Muhammad Sadiq and others* (PLD 2016 SC 769), *Mst. Naseema Bibi v. Murad and others* (2021 YLR 1243-FSC), and *Aijaz Ahmed Bhatti v. Muhammad Uris Meerani and others* (2024 YLR 1233 - Sindh).

15. It is a cardinal principle of criminal justice that every accused is entitled to a fair trial and every complainant is entitled to a fair adjudication. Where the process is vitiated by oversight, misapplication of law, or factual inaccuracies, appellate intervention becomes not only warranted but necessary.

16. For the forgoing reason and discussion above, this matter is remanded to the learned trial Court with the following directions:

(a) The learned Trial Court shall re-appraise the entire evidence afresh, both oral and documentary, in its true legal context.

(b) All parties shall be afforded a full and fair opportunity to advance their arguments, in accordance with the principles of natural justice.

(c) The learned Trial Court shall thereafter render a speaking, well-reasoned judgment, without influenced by the earlier findings and applicable legal standards.

17. Consequently, this Criminal Acquittal Appeal is partly allowed. The impugned judgment dated 09.08.2023, passed by the learned trial Court is hereby **set aside** only to the extent of remanding the case for a fresh decision. Respondent No. 2 is directed to appear before the learned trial Court on

12.07.2025. He shall continue on the same surety, if not yet discharged. However, in the event the surety stands discharged, he shall furnish a fresh surety to the satisfaction of the learned trial Court. These are the reasons for the short order passed on 19.06.2025.

J U D G E