ORDER SHEET

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

***Criminal Acquittal Appeal No. S-97 of 2023***

*Ashique Hussain Vs The State and another*

| DATE OF HEARING | ORDER WITH SIGNATURE OF JUDGE |
|---|---|

For Order of an office objection.
For Order on MA 5566/2023 (Leave to Appeal)
For hearing of main case.

Mr. Hamayoun Shaikh, Advocate for appellant.
Mr. Qurban Ali Memon, Advocate for Respondent No.02.
Syed Naved Ahmed Shah Deputy Attorney General.
Mr. Mansoor Ahmed Shaikh, Deputy Prosecutor General,Sindh for State.

Date of Hearing: 14-04-2025, 19-05-2025 & 19-06-2025
Date of Decision: 19-06-2025.

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

***Ali Haider "Ada"-J*** Through the instant Criminal Acquittal Appeal, the appellant has impugned the judgment dated 15.08.2023, rendered by the learned Sessions Judge, Naushahro Feroze, in Sessions Case No. 119 of 2022, titled The State vs. Abdul Hafeez (Respondent No. 2), whereby Respondent No. 2 was acquitted of the charges arising out of Crime No. 17 of 2022, registered at Police Station Daras, for offences punishable under Sections 15, 17, and 24 of the Gas (Theft Control and Recovery) Act, 2016. The appellant challenges the said verdict on the grounds of alleged misreading of evidence and erroneous application of law.

2. Succinctly stated, the facts of the case are that the complainant, Sajjad Ahmed, serving as an Engineer with the Sui Southern Gas Company, along with his subordinate staff members, namely **Ashiq Hussain and Zubair Ahmed,** proceeded on 14.10.2021 to inspect Gas Meters in various localities as part of their routine patrol. Upon reaching the premises of the accused, Abdul Hafeez Rajput, the team conducted a check of the gas meter installed at his sweet shop. During the inspection, the meter was found to be tampered with, indicating unauthorized consumption of gas.

3. The meter was subsequently removed and sent to the laboratory for analysis. The laboratory report later confirmed that the meter had indeed been tampered with. Following internal correspondece and receipt of a letter from the company, the complainant lodged FIR No. 17 of 2022 at Police Station Daras on 13.01.2022 under Sections 15, 17, and 24 of the Gas (Theft Control and Recovery) Act, 2016.

4. Upon conclusion of the investigation, the Investigating Officer submitted the final challan before the competent Court of law, wherein the tampered gas meter was shown as the case property. Consequently, the accused, Abdul Hafeez (Respondent No.2), was sent up for trial in connection with the alleged offence.

5. After furnishing the requisite documents to the accused in compliance with legal formalities, the learned trial Court framed the charge on 30.03.2022. The accused pleaded not guilty and claimed trial, thereby necessitating a full-fledged trial into the matter.

6. In order to establish its case, the prosecution examined the following witnesses:

> *PW-1 Ashiq Hussain*, a member of the raiding party, who also acted as a mashir to the memo of site inspection and recovery of the gas meter. He produced the said memo as the first mashir.
>
> *PW-2 Zubair Ahmed,* another member of the raiding team, who also served as the second mashir to the same memo.
>
> *PW-3 Muhammad Saleem,* the Investigating Officer, who produced a copy of the FIR as part of the record.
>
> *PW-4 Sajjad Ahmed,* the complainant, who produced several documents in support of the prosecution's case, including letter from the Manager/Regional Incharge (SS&CGTO) addressed to the Station House Officer for lodging of the FIR, The letter of company's internal report regarding tempering of the gas meter, The laboratory report confirming tampering, The Iqrarnama signed by the accused regarding the removal of the meter and relevant photographs taken during the inspection.

7. Subsequently, the prosecution side was closed on 15.08.2023 through a statement submitted on record.

8. Thereafter, the learned Trial Court proceeded to record the statement of the accused under Section 342, Cr.P.C., wherein he denied the allegations

leveled against him and exposed his innocence. No defence evidence was led. Arguments were then advanced by both sides through their respective counsel, following which the learned trial Court passed the impugned judgment, acquitting the accused/Respondent No.2 of the charge. The present Criminal Acquittal Appeal has been instituted to call into question the legality and propriety of the said acquittal.

9. Learned counsel for the appellant assailed the impugned judgment on the ground that it is based on conjectures and surmises. He contended that the learned Trial Court failed to properly evaluate and appreciate the material evidence brought on record by the prosecution. It was submitted that the prosecution successfully established its case through credible oral and documentary evidence, including official correspondence, technical reports, and supporting photographs. According to the appellant's counsel, such evidence was sufficient to bring home the charge against the accused. However, the learned trial Court discarded the same without assigning cogent reasons. It was, therefore, prayed that the impugned judgment is legally flawed and liable to be set aside.

10. Conversely, learned counsel for Respondent No.2 supported the impugned judgment and argued that the prosecution failed to prove its case beyond a reasonable doubt. He submitted that both key prosecution witnesses, Ashiq Hussain and Zubair Ahmed, who were part of the raiding party and also served as mashirs to the memo of site inspection and recovery, turned hostile during trial and did not support the prosecution's version. Their testimony failed to corroborate the contents of the inspection memo or affirm any direct observation of gas theft or meter tempering. Given these material discrepancies, learned counsel argued that doubt was clearly cast upon the prosecution's case and in such circumstances, the benefit of doubt was rightly extended to the accused. He, therefore, submitted that the acquittal was well-reasoned and does not warrant interference.

11. Learned Deputy Prosecutor General candidly pointed out a error on the first page of the impugned judgment, where reference was made to the Manpuri Gutka Act, 2019. He clarified that after perusal, this inadvertent mention does not vitiate the reasoning of the judgment, which otherwise addressed the evidence and legal provisions relevant to the Gas (Theft Control

and Recovery) Act, 2016. The DPG further submitted that the Trial Court correctly assessed the prosecution evidence, particularly noting that both key eyewitnesses not only turned hostile but also denied essential elements of the memo and inspection. The trial Court, in his view, rightly held that the prosecution failed to establish the offence against the accused.

12. However, the learned Deputy Attorney General argued that the declaration of a witness as hostile does not automatically strip their testimony of all evidentiary value. He maintained that the prosecution had produced other documentary and circumstantial evidence that prima facie connected the accused to the commission of the offence. He therefore contended that the trial Court erred in overlooking this corroborative material and that the impugned acquittal warrants reconsideration.

13. Heard arguments and the perused the material available on record.

14. At the outset, a careful perusal of the record reveals that the laboratory report (Exhibit 8-C), produced by the complainant during his deposition, was prepared on 04.11.2021. Despite this, the First Information Report was not lodged until 13.01.2022 , almost delay of two months and eight days. This considerable delay in setting the law into motion has not been convincingly explained or justified by the prosecution. Even according to the contents of the FIR, the complainant stated that he lodged the report upon receiving a letter from the higher authorities dated 28.12.2021. However, even from that point onward, a further delay of fifteen (15) days occurred before the FIR was ultimately registered. No plausible reason or legally sustainable justification has been placed on record to explain this lapse. It is a settled principle that unexplained delay in lodging the FIR casts serious doubt on the veracity of the prosecution's version, as it provides an opportunity for deliberation, fabrication and improvement of the case. Delay, unless adequately explained, undermines the spontaneity and credibility of the prosecution's story, especially in criminal cases requiring prompt action to preserve evidence and ensure a fair trial.In this regard, reliance is placed upon the judgment of the Hon'ble Supreme Court in the case of **Ghulam Abbas and another vs. The State (2021 SCMR 23),** and **Wishal Munawar vs. The State (2025 YLR 548-DB Lahore).**

15. Another significant deficiency that weakens the prosecution's case is the failure on part of the Investigating Officer (PW-3 Muhammad Saleem) to place on record any documentary proof regarding his official movement to and from the place of occurrence. The Investigating Officer neither produced nor even alluded to any movement register entry, reflecting his departure, visit to the site, or return to the police station, as is required under Rule 22.48 of the Police Rules, 1934.

16. Turning now to the testimony of PW-1 Ashiq Hussain, who was a member of the raiding party and acted as the first mashir of the memo of site inspection and recovery of the gas meter. In his deposition, he stated that the complainant, along with one Pir Imdad, an officer of the gas company, left the office for patrolling. He further testified that it was only upon the direction of the officer that he removed the gas meter and he categorically denied any knowledge regarding the alleged theft or tempering of the gas meter. Most notably, PW-1 expressly stated that the police did not visit the site in his presence and that his signatures were obtained on the memos subsequently. In light of this deviation from the prosecution's narrative, the said witness was declared hostile and was cross-examined by the learned State Counsel. As regards PW-2 Zubair Ahmed, who was also part of the raiding team and served as the second mashir to the memo of site inspection and recovery, he too denied the prosecution's version in its entirety. He stated that the memo of site inspection was not prepared in his presence and that the police had obtained his signature without his actual involvement. Furthermore, he remained entirely silent on any act of inspection, removal of the meter, or even the presence of the complainant or other officials at the alleged scene of the offence. He did not depose about any incident of gas theft or tempering of the meter. Due to this complete lack of support to the prosecution's case, he was similarly declared hostile by the State Counsel.

17. On such aspect, the testimony of a hostile witness is not automatically rendered inadmissible, such testimony must be approached with caution. In the present case, both PW-1 and PW-2 key witnesses who were directly associated with the alleged inspection and recovery completely disowned the memos and the prosecution's version. Their testimonies, therefore, do not advance the prosecution's case and, in fact, lend support to the defence version, thereby seriously undermining the evidentiary value of the core investigative documents. It is a settled principle of law that merely declaring a witness as hostile does not ipso facto render their testimony devoid of evidentiary value. A hostile witness is one who resiles from, or contradicts, their previous statement or the prosecution's case; however, their testimony may be considered, provided it inspires confidence and is not successfully impeached during cross-examination.

18. In the present case, both Ashiq Hussain (PW-1) and Zubair Ahmed (PW-2) were declared hostile by the prosecution and were subjected to cross-examination by the learned State Counsel. However, a thorough reading of their depositions revealed that their stance could not be effectively shaken. The prosecution failed to elicit anything in cross-examination that would render their testimony unreliable or expose them to impeachment on the grounds of malafides, bias, or contradiction with material evidence. The consistent position maintained by both witnesses that they had no knowledge of the alleged gas theft, did not witness any act of tempering and were not present when the inspection memo was prepared was not rebutted with any credible contradiction or impeaching material. This lends credence to the view that their testimony, despite being adverse to the prosecution, cannot be outrightly discarded. In fact, their unshaken stance introduces serious doubt into the prosecution's version and reinforces the presumption of innocence in favour of the accused. In this regard, guidance be drawn from the authoritative pronouncement in the cases of ***KHALIL-UR-REHMAN alias BHOLOO and another Versus The STATE and others*** **(2022 P Cr. L J Note 25-DB Sindh)** held that:

> *14. In order to further evaluate the version of the parties we have also noted that the whole prosecution case revolves around the evidence of complainant Sher Muhammad and two P.Ws namely Khuda Bux and Mehboob, who are said to be eye-witnesses of the incident. Needless to mention that P.W Khuda Bux whose evidence is available on record at Ex.11 in the R&Ps, by not supporting the case of prosecution has deposed that he cannot say whether the accused present in Court (trial Court) were the same because he had seen the culprits from their backside. This witness has been declared by the prosecution as hostile and cross-examined by learned ADDP, but his stance could not be shaken, therefore, the evidence of this witness create doubt in the prosecution case.*

**HASHIM Versus The STATE and another (2020 P Cr. L J 895).**

> *13.Now adverting to statement of Muhammad Riaz, the eye-witness of the alleged occurrence, who appeared as PW-9. The second eye-witness Nazir was abandoned on his being won over. In this case, at the relevant stage when examination in chief of PW-9 was being recorded, the complainant side felt that PW is speaking in a different tone, which is not favourable to the prosecution, the learned counsel for the complainant requested that the witness may be declared hostile. After due hearing and perusing the record, he was declared hostile and the parties were given opportunity to cross-examine him. We have gone through his statement minutely to adjudge the credibility and veracity of his statement. It is by now established that statement of such witness cannot be discarded altogether and has to be considered like the evidence of any other witness, but with a caution. In this context reliance can well be placed on the judgments reported as Zahid Khan v. Gul Sher and another 1972 SCMR 597, Muhammad Sadiq v. Muhammad Sarwar 1979 SCMR 214. After perusal of the statement of Muhammad Riaz (PW-9), we came to the conclusion that despite opportunity of cross-examination this witness was not confronted with his earlier statement recorded under section 161, Cr.P.C. Furthermore, nowhere he stated that he had seen the accused Hashim committing Zina with Tahira Sarfaraz. Thus, evaluation of entire evidence available on*

*the record leads us to the irresistible conclusion that there is no corroboration to the statement of Mst. Tahira Sarfaraz.*

**Mst. FAREEDA and another Versus The STATE (2021 Y L R 1828)**

*19.As far as the credibility of the statement of said witness is concerned, that cannot be discarded out rightly; reason that despite she was declared hostile and cross-examined by prosecutor, prosecution could not shake her testimony and credibility. It is settled law that the hostile witness may be a truthful witness and a witness does not lose credibility merely on the ground that he had turned hostile. Court should take into consideration entire evidence of such witness to see whether any part of his/her evidence was worthy of belief in the light of the other evidence, and testimony of such witnesses cannot be discarded altogether and has to be considered like the evidence of any other witness, but with a caution. Reliance in this regard is placed upon the cases of Zarid Khan v. Gulsher and another 1972 SCMR 597, Muhammad Sadiq v. Muhammad Sarwar 1979 SCMR 214, Islam v. The State PLD 1962 Lahore 1053, Kaloo and 2 others v. The State 1973 PCr.LJ 334 and Muhammad Luqman v. The State 1989 MLD 1708.*

**TAIMOOR Versus The STATE (2021 Y L R 808)**

*14. So far as the evidentiary value of a hostile witness is concerned, it is a settled proposition of law that the evidence of such witness is also to be considered like evidence of any other prosecution witness but evidence of such witness requires strong corroboration through other pieces of evidence. In this context, reference may be made to the case of Abdul Wahid Bhurt and another v. Ashraf and 4 others reported in 2019 YLR 487 decided by Federal Shariat Court, wherein after discussing various case-law on this point, following dictum was laid down:*

19. In view of the foregoing discussion, when the prosecution evidence is disbelieved or remains unproved and the witnesses fail to establish the guilt of the accused beyond reasonable doubt, the legal principle of benefit of doubt must be applied in favor of the accused. This principle is a cornerstone of criminal jurisprudence, grounded in the maxim that "***In dubio pro reo", When in doubt, for the accused.*** Therefore, the benefit of such doubt cannot be ignored or discarded lightly; rather, it must operate in favor of the accused and culminate in his acquittal. In case of ***Ahmed Ali vs the state*** **(2023 SCMR 781),** The Honourable Supreme Court held that:

*12. Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right. Reliance in this regard may be placed on the cases reported as Tajamal Hussain v. The State (2022 SCMR 1567), Sajjad Hussain v. The State (2022 SCMR 1540), Abdul Ghafoor v. The State (2022 SCMR 1527 SC), Kashif Ali v. The State (2022 SCMR 1515), Muhammad Ashraf v. The State (2022 SCMR 1328), Khalid Mehmood v. The State (2022 SCMR 1148), Muhammad Sami Ullah v. The State (2022 SCMR 998), Bashir Muhammad Khan v. The State (2022 SCMR 986), The State v. Ahmed Omer Sheikh (2021 SCMR 873), Najaf Ali Shah v. The State (2021 SCMR 736), Muhammad Imran v. The State (2020 SCMR 857), Abdul Jabbar v. The State (2019 SCMR 129), Mst. Asia Bibi v. The State (PLD 2019 SC 64), Hashim Qasim v. The State (2017 SCMR 986), Muhammad Mansha v. The*

*State (2018 SCMR 772), Muhammad Zaman v. The State (2014 SCMR 749 SC), Khalid Mehmood v. The State (2011 SCMR 664), Muhammad Akram v. The State (2009 SCMR 230), Faheem Ahmed Farooqui v. The State (2008 SCMR 1572), Ghulam Qadir v. The State (2008 SCMR 1221) and Tariq Pervaiz v. The State (1995 SCMR 1345).*

20. After a careful and thorough appraisal of the entire record, coupled with an in-depth analysis of the legal principles applicable to the facts of this case, it is abundantly clear that the instant appeal is devoid of substantive merit. The prosecution in this case has not been able to establish the guilt of the accused beyond reasonable doubt and the benefit of such doubt rightly enures in favour of the accused as mandated by the principle of criminal law and established precedents.

21. In view of the above, the Criminal Acquittal Appeal is hereby dismissed in its entirety

***J U D G E***