

**JUDGMENT SHEET**

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

Cr. Acquittal Appeal No.S-85 of 2021

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE(S)</b>
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1. For orders on office objections.
2. For orders on MA-2867/2022
3. For hearing of main case.

**12.12.2022.**

None present for appellant.

Mr. Muhammad Ali Noonari, Deputy Prosecutor General.

**JUDGMENT**

Through this Criminal Acquittal Appeal, the appellant / complainant has impugned the judgment dated 03.03.2021 passed by learned IIIrd Additional Sessions Judge, Shaheed Benazirabad (Trial Court) in Sessions Case No.342 of 2017 (Re: The State v. Ghulam Sarwari and others) arising out of Crime No.123 of 2016 registered at P.S A-Section, Nawabshah for offences under Sections 365-B, 337-H(ii) PPC, whereby respondents /accused Ghulam Sarwar, Fayaz, Mst. Zarina, Mst. Pyari, Misree, Akram Tunio, Rashid and Rajab have been acquitted of the charges.

2. Perusal of record it reflects that this appeal against acquittal was presented in the office on 13.04.2021 and it was initially fixed before the Court on 23.04.2021 when none was present on behalf of appellant; hence, urgent application was dismissed. On next date viz. 24.09.2021 appellant and his Counsel were called absent and matter was adjourned with direction to the appellant to comply with the office objections. Right from 24.09.2021 to date none has been appearing before the Court to pursue this appeal diligently.

3. Mr. Muhammad Ali Noonari, learned Deputy Prosecutor General present in Court in connection with other cases, waives notice of appeal and after going through the impugned judgment and opposing instant acquittal appeal has drawn attention of the Court to Paragraphs Nos.14 to 19 of the impugned judgment, which reads as under:-

*“14.....It is noteworthy that though Mst. Sobia is alleged to be victim of abduction for compelling forcible marriage but all the PWs have deposed that no marriage was contracted by accused Sarwar with Mst. Sobia. However, it is noteworthy that*

*neither in the application u/s 22-A Cr.P.C. nor in the FIR there is any allegation of commission of rape/Zina by accused with PW Mst. Sobia though it is admitted by all of them that she had returned home prior to filling application u/s 22-A Cr.P.C. It is also noteworthy that the medical examination of alleged abductee Mst. Sobiawas never conducted nor it was prayed by the complainant with her application u/s 22-A Cr.P.C., hence, there is no medical evidence at all to support the allegations of words of the alleged abductee Mst. Sobia regarding commission of her rape. It would not be out of context to mention here that neither complainant nor PW Gul Muhammad had ever deposed any single word regarding allegation of commission of rape/zina by any accused with Mst. Sobia in their evidence before this Court. The PW Mst.Sobia had admitted that they did not move any application for conducting her medical examination.*

*15. As a matter of fact and record neither the medical examination has been conducted nor the DNA Testing has been conducted to match with the profile of the accused. In the cases of rape DNA Testing is necessary to arrive at just conclusion of the case. Swabs are to be taken within 24 hours of happening of the incident, else according to the Medical Jurisprudence the same wash away with the passage of time. In the case reported as **“2013 SCMR 203”** the Hon’ble Supreme Court was pleased to hold that **“In rape cases police is bound to conduct DNA Testing for connecting the accused with the commission of such offence.”***

*16. In another case of **MUHAMMAD SIDDIQU v. THE STATE and others (2019 S C M R 1048)**, relevant page at 1051, the Honorable Supreme Court has held as under:*

*“It is the case of Mst. Nasreen Siddique (PW1) that she was subjected to rape by the petitioner and his co-accused Akbar and Abdul Rehman after her abduction. She claimed that she was intoxicated by the accused and was confined for 17 days. In her medical examination, no trace of intoxication was found. The medical examination of Mst. Nasreen Siddique (PW1) was conducted on 04.07.2010 i.e. after about four months of the alleged occurrence. Though the doctor stated that the vaginal swabs were stained with semen but the fact remains that according to complainant Muhammad Siddique(PW2), after her recovery, Mst. Nasreen Siddique was divorced by her husband Muhammad Waheedafter two months of the occurrence; that afterwards she solemnized marriage with one Latif and she was living with him. In these circumstances, there is little significance of the report of chemical examiner that the vaginal swabs were stained with semen particularly when, admittedly, no DNA test of the abductee and the petitioner was conducted. The investigating officer Muhammad Irshad SI (PW6) stated in his cross examined that despite repeated summons, the victim Mst. Nasreen Siddiquedid not come for DNA Test. The doctor*

*who medically examined Mst. Nasreen Siddique did not find any mark of violence on her body.”*

*17. In the present case it is admitted position that neither the medical examination of the alleged victim Mst. Sobia was conducted nor the DNA Test of Mst. Sobia and the accused Ghulam Sarwar was conducted nor even the complainant or alleged victim Mst. Sobia moved any application neither before the Honorable Court of Session nor before the Learned Magistrate if the police/I.O. was neglecting their duties. Therefore, the case of the prosecution becomes highly doubtful.*

*18. In these circumstances and on the basis of material available on the record I am of the humble opinion that a reasonable doubt into the guilt of accused has been created. At this point of time, I am fortified with case law reported as **SBLR 2015 Sindh 1096**, wherein it has been held that **“Single doubt, if any created should go in favour of the accused”**. Same view has been affirmed in another case law reported as **2016 MLD 230**, wherein it has been held that **“benefit of circumstantial evidence should go in favour of accused”**. Yet another case law **2016 P.Cr.L.J. 549** affirmed the same view.*

*19. Keeping in view the above discussed facts, position and circumstances, I am of the considered view that the prosecution has failed to discharge the burden of proof through convincing, coherent and trustworthy evidence to establish its case against the accused beyond shadow of any reasonable doubt.*

4. After having examined the evidence whatsoever brought on record, I am of the considered view that case against respondents/accused was not proved by the prosecution and the evidence adduced by prosecution does not inspire confidence; hence, no illegality and infirmity has been committed by the trial Court in the impugned judgment while acquitting the respondents, which may warrant interference by this Court. It is also settled principal of law that after getting acquittal, the accused always earns double presumption of his innocence and Superior Courts have avoided interfering with such acquittal findings. There is no cavil with the legal proposition that an acquittal appeal stands on a different footings than an appeal against conviction. In acquittal appeal, the Superior Courts generally do not interfere with unless they find that miscarriage of justice has taken place. The factum that there can be a contrary view on re-appraisal of the evidence by the Court hearing acquittal appeal simpliciter would not be sufficient to interfere with acquittal judgment. Reliance can be placed upon case of **MUHAMMAD ASGHAR and another v. The STATE (PLD 1994 Supreme Court 301)**.

5. In view of above legal position, it appears that instant appeal has wrongly been filed, even the basic ingredients for initiating appeal against acquittal, as laid down by the Honourable Supreme Court of Pakistan in the case of **GHULAM SIKANDAR and another v. MUMARAZ KHAN and others (PLD 1985 Supreme Court 11)**, are also lacking in this case. Accordingly, instant appeal against acquittal is dismissed alongwith pending application(s), if any.

JUDGE

Shahid

