

ORDER SHEET  
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR  
Cr. Acq. Appeal No.S-48 of 2022

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Date	Order with signature of Judge
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Appellant : Abid Hussain Shaikh  
Through Mr.Rukhsar Ahmed Junejo  
Advocate.

Respondents: The State  
Through Mr.Imran Mubeen Khan A.P.G.  
Nizamuddin Malik and Tanveer Hussain  
Through Mr.Abdul Shakoor Shaikh  
Advocate.  
Abid @ Abid Hussain through Mr.Saif-ur-  
Rehman Advocate.

**Date of Hearing: 22.06.2023**

**JUDGMENT**

**AMJAD ALI BOHIO, J.** Appellant has filed this appeal against the judgment dated 02.03.2022, passed by the III-Civil Judge & Judicial Magistrate Sukkur whereby the accused was acquitted in case arising out of Crime No. 64/2021 of Police Station Site Area Sukkur for offences under sections 380, 406 and 408 of the Pakistan Penal Code (PPC).

2. Complainant Abid Hussain, a Warehouse Officer at China Mobile Pakistan Zong Company, lodged an FIR on 14.07.2021 at 1750 hours wherein, he stated that on 09.07.2021 at around 10.00 a.m., he visited the Warehouse and discovered the following items missing and stolen:

1. 21 Air-conditioners valued at Rs. 206,500/-,
2. 576 Batteries valued at Rs. 3,387,918/-,
3. 1090 meters of wire cables valued at Rs. 615,307/-,
4. 41 fire extinguishers valued at Rs. 70,011/- and
5. 22 RRU units valued at Rs. 158,070/-.

3. Upon inquiry, the Warehouse employees, namely Tanveer Hussain, Abid Bugti, and Nizamuddin, provided inadequate explanations. This information was

then communicated to higher authorities, and upon receiving instructions, the complainant registered the aforementioned FIR on 14.07.2021.

4. After the usual investigation, report under section 173 of the Criminal Procedure Code (Cr.P.C) was submitted against the accused/respondents 2 to 4.

5. On 16.09.2021, a formal charge was framed, and in response, the accused/respondents No. 2 to 4 pleaded not guilty and opted for a trial, as indicated in pleas at Ex.2-A to 2-C.

6. During the trial, prosecution side examined complainant Abid Hussain (PW1) at Ex.3 and ASI Ghulam Shabbir (PW-2) at Ex.4. However, the complainant did not appear to provide his evidence, resulting in the closure of the prosecution's side as per the order passed 24.02.2022.

7. In their statement under section 342 of the Cr.P.C, respondents/accused denied the allegations leveled against them. They neither testified under section 340(2) of the Cr.P.C nor, presented any evidence in their defense.

8. After hearing the arguments from the parties, trial court acquitted the accused/respondents from charges in the impugned judgment, leading to the filing of this appeal.

9. I have considered the arguments urged by the counsel for the appellant, respondents No. 2 to 4, as well as Additional Prosecutor General (APG) and carefully reviewed the record.

10. Complainant while lodging FIR has accused the employees who were incharge of the warehouse. Although accused were indeed employees of the company and no departmental or fact finding enquiry was conducted. During trial, complainant in his evidence at Ex.3, deposed that he found some articles misplaced in the warehouse. He further deposed during his examination-in-chief that accused Tanveer informed him later that he was unaware of the misplaced articles. Upon receiving advice from his superiors, he lodged the F.I.R. However, during cross-examination, the complainant admitted that he did not mention in the F.I.R. that PW Kamran was with him at the time of the incident. Notably, nothing was recovered from the accused. The prosecution failed to examine PW Kamran to corroborate the complainant's evidence. The Investigating Officer (I.O.) produced mashirnamas, but no mashir (witness) was examined to corroborate the evidence. The I.O. also admitted that nothing was recovered from the place of incident. Thus, admittedly the prosecution has withheld the evidence of P.W Kamran and mashir of inspection of place of incident giving rise to presumption that the aforementioned witnesses if

produced, they would have deposed against the prosecution in the light of Article 129(g) of the Qanoon-e-Shahadat, 1984 which reads as under:-

**“129(g).**that evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it.”

Further reliance in this regard may be placed upon case of Ahmed v The State (2023 P.Cr.L.J 702) [Sindh].

11. Consequently, trial Court has rightly observed that the complainant failed to produce the important witnesses, and even otherwise there were no eyewitnesses to the occurrence. The respondents/accused were only implicated based on presumption, particularly when no departmental inquiry was conducted by the company to address any alleged negligence on their part as employees. The trial Court's findings were based on valid reasons, as the prosecution's case lacked material evidence to establish the connection between the respondents/accused and the alleged offense. Therefore, the impugned judgment does not warrant any interference, and this appeal, lacking merit, is dismissed.

JUDGE