

*JUDGMENT SHEET*

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

Cr. Acquittal Appeal No.S-11 of 2023

---

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE(S)</b>
-------------	---

---

For orders on office objections.  
For hearing of main case  
For hearing of MA-321/23 (u/s 427 Cr.P.C)

**11.08.2023**

Appellant Mst. Yasmeen is present in person.  
Mr. Imran Ahmed Abbasi, A.P.G for the State.  
None present for the respondents.

===

**JUDGMENT**

**ZULFIQAR ALI SANGI,J:-** Through this Criminal Acquittal Appeal, appellant / complainant has impugned the judgment dated 10.01.2023 passed by learned Sessions Judge, Sanghar (Trial Court) in Sessions Case No.193/2021 (re: The State v. Muhammad Aslam alias Ahmed Raza & and others) arising out of Crime No.60 of 2021 registered at P.S Tando Adam City for offences under Sections 376, 511, 147, 148, 149, 457, 337-A(i) and 337-F(i), PPC, whereby respondents / accused Muhammad Aslam @ Ahmed Raza, Rasheed alias Sheeda Talli and Arshad have been acquitted of the charges.

2. Brief facts of the prosecution case are that complainant Mst. Yasmeen widow of Muhammad Shah Nawaz by caste Malak resident of Bungla road Tando Adam lodged FIR on 03.04.2021 at P.S Tando Adam City alleging therein that on 28.03.2021 she along with her daughters was present at the house and at about 9:00 p.m. while she was busy in cooking, she heard knocking at the door when she opened the door, five persons entered into her house forcibly and accused Muhammad Aslam alias Ahmed Raza grabbed her and directed to Rasheed alias SheedaTali and Arshad and two unknown accused persons to hurry up and fall

her down on the ground for raping her, therefore, all the accused persons forcibly got down her and accused Muhammad Aslam alias Ahmed Raza attempted to commit rape and she resisted then they tortured and caused serious injuries. Upon hue and cry, her neighbors Anwar Ali and Ashraf Ali and other people of the vicinity came in running and upon seeing people of the vicinity, the accused persons fled away by issuing death threats. Thereafter, she appeared at P.S and alleged that accused persons attempted to commit zina upon her and caused injuries to her, hence complainant lodged FIR as stated above.

3. A formal charge at Ex:2, u/s 376, 511, 147, 148, 149, 457, 337-A(i), F(i) PPC was framed against the accused, to which they pleaded not guilty and claimed their trial vide their pleas at Ex:3 to Ex:5.

4. At the trial, prosecution examined PW.1 complainant Mst. Yasmeen, at Ex:6, who produced FIR and photocopy of letter addressed to RPO, Hyderabad and SSP, Sanghar for registration of FIR, at Ex:6/A and B respectively. PW.2 Maryam, daughter of complainant at Ex:7. PW.3 Iqra another daughter of complainant at Ex:8. PW.4 mashir Ashraf Ali at Ex:9. PW.5 I.O/SIP Muhammad Sharif at Ex:10, who produced memo of inspection of place of incident and his departure and arrival entries on one page at Ex:10/A and B respectively. PW.6 SIP Raheem Bux at Ex:12, who produced entry No.42 and memo of injuries at Ex:12/A and B respectively and PW.7 Dr. Mehwish Anjum at Ex:13, who produced police letter and final medical certificate at Ex:13/A and B respectively. Thereafter, learned ADPP for the State closed its side vide statement at Ex:14.

5. Statements of accused / respondents were recorded u/s 342 Cr.P.C at Ex:17 to Ex:19 respectively, in which, they denied the allegations of prosecution case and pleaded their innocence.

Accused Muhammad Aslam alias Ahmed Raza produced certain documents. However, they did not examine themselves on oath in disproof of the allegations as required u/s 340 (2) Cr.P.C nor produced any witness in their defence.

6. After hearing the parties at length, learned trial Court acquitted the accused/respondents from the charge by extending the benefit of doubt under section 265-H(ii), Cr.P.C vide impugned judgment as stated (supra).

7. Appellant present in person submits that impugned judgment of the learned trial Court is contrary to law, facts and circumstances of the case because the trial Court has erred in applying judicious mind while acquitting the accused/respondents; that prosecution has proved its case against accused persons to have attempted to commit rape with the complainant and such fact was also corroborated by eyewitnesses/her daughters, but the learned trial Court has wrongly acquitted the accused persons without considering the material facts being available on record including the medical certificate; that PWs did not make any major or material contradiction as to the ocular account and corroborated with each other, but trial Court has failed to consider the material available on record; that the allegations in FIR were serious in nature allegedly attributed by the appellant/complainant regarding attempt to commit zina with her by entering into her house during night hours in presence of her two minor daughters, but learned trial Court has failed to consider such material at the time of passing the impugned judgment; that there is no malafide on the part of complainant to involve the accused persons falsely and delay in lodging the FIR has been explained by her as the victim had received four (04) injuries, which are corroborated by medical evidence, hence prima facie case appears a reasonable ground for believing that accused/respondents have committed that offence, but learned trial Court has wrongly given its finding; that PWs have fully implicated the accused persons in their statements under section 161, Cr.P.C. She lastly submits that the

minor contradictions in evidence of PWs was a natural thing and such contradictions should have been ignored by the learned trial Court while administering justice as per well reckoned authorities of apex courts, but the learned trial Court created mountain out of mole of such contradictions while acquitting the accused-respondents, which is sheer injustice with the prosecution side, therefore, prayed that impugned judgment may be set aside and accused-respondents be punished.

8. Mr. Imran Ahmed Abbasi A.P.G appearing for the State after going through the impugned judgment as well as opposing instant criminal acquittal appeal has drawn attention of this Court to Paragraphs Nos.13, 14,15,16 and 17 of the impugned judgment, which reads as under:-

“13. Complainant deposed that she was cooking at the time of incident in her house and her daughters were lying on two cots in the courtyard whereas, younger daughter of complainant Iqra (PW.3) deposed that she and her sister was sleeping whereas, her mother was cooking while elder daughter of complainant Maryam (PW.2) contradicted complainant and her sister by deposing on this point that she was eating Allo and Palak in dinner (potato and spinach), her sister Iqra was also eating dinner along with her as her mother also eating dinner. According to the elder daughter of complainant (Maryam), they had gone to the police station along with younger sister and Mst. Yasmeen, Anwar and Ashraf firstly at P.S and then after obtaining letter reached at hospital whereas, according to Iqra (younger daughter) her mother (Yasmeen) along with Anwar and Ashraf had gone to P.S and hospital whereas, they (both sisters) were staying at home. In this regard, mashir/eyewitness deposed contrary to above witnesses that he had taken her (complainant) to police station city Tando Adam and police issued a medical letter and sent to the Taluka Hospital whereas, he was staying at P.S. Regarding daughters of complainant being companion to her upto police station, SIP Raheem Bux, who kept entry of Mst. Yasmeen regarding alleged incident and gave her letter for treatment, admitted a suggest that both daughters of Mst. Yasmeen did not come at P.S along with her. Further, complainant deposed that she received injuries on her hand, neck and lower part of the body whereas, younger daughter of complainant Iqra (PW.3) deposed contrary that she do not know where her mother received injuries, however, blood was oozing from shoulder whereas, elder daughter Maryam (PW.2) has deposed differently regarding injuries of complainant. She deposed that her mother sustained injuries on waist, face, legs and blood was oozing from all

the wounds. Furthermore, complainant and her daughters (P.W.2 and 3) are inconsistent regarding shifting in the house (alleged place of incident) and leaving the same. According to complainant, she was residing to this house for about one month when such incident occurred and she left the house after some time because there was an attack at her house by the people of Ahmed Raza and both co-accused as their wives and relatives attacked on her house, she left the house in the month of Ramzan 2021 whereas, her daughter Maryam (PW.2) deposed contradictory that they had shifted in that house one week ago from this incident. She further deposed that they were still living there whereas, younger daughter Iqra (PW.3) also contradicted statement by deposing that after 2 or 3 days of incident they had left the house because of this incident against her mother. Complainant deposed that on their hue and cry accused Ahmed Raza had slapped her daughters whereas, (PW.2) Maryam the elder daughter of complainant, deposed that no one had beaten her at the time of incident. According to complainant, police visited her house for inspection on 03.04.2021 at about 4:00 p.m. whereas, her younger daughter Iqra (PW.3) deposed that police never visited her house later on (after incident). PW.2 Maryam deposed that Anwar and Ashraf tried to apprehend the accused persons but the accused persons fled away. This version of PW.2 was not supported by mashir/eyewitness Ashraf Ali while deposing that there were a lot of people but no one followed the accused persons. He further deposed that he was also sick person how could he run and there was same position of his health at the time of incident. (Demeanor of this witness observed that he was sick, unable to walk, unable to attend and sometimes show that he was unable to talk.

14. Furthermore, according to complainant, she deposed that Dr. Mehwish at Taluka Hospital Tando Adam had medically checked her up in between 9:00 p.m. to 11:45 p.m. It does not come to the prudent mind that alleged incident took place at 2100 hours (9:00 p.m.) thereafter according to complainant, she approached to P.S, obtained letter for medical treatment and then reached at hospital whereas, complainant herself created dent to the prosecution story by deposing that she was medically checked up between 9:00 p.m. to 11:45 p.m. on the day of alleged incident. In this regard, WMO Dr. Mehwish deposed that victim (complainant) appeared before her along with police letter bearing No.700 at about 11:45 p.m.

15. Furthermore, FIR No.74/2021 lodged by Anwar Ali, one of witness regarding murder of his wife in the same place of occurrence where Mst. Yasmeen has been shown to be residing, as admitted by I.O SIP Muhammad Sharif when photocopies of mashirnama of crime No.74/2021 of P.S Tando Adam City and mashirnama of place of incident of this case were confronted to him and he admitted that both were same place but the dates were different. According to Mst. Yasmeen, she has shifted in that house one month prior to incident that occurred on 28.03.2021 whereas as

per FIR No.74/2021 lodged by her witness Anwar Ali, who stated in that FIR that the occurrence of murder was taken place in the same house on 23.03.2021, meaning thereby Anwar Ali was residing along with his family and question is that how Mst. Yasmeen was residing there on 23.03.2021 whereas, there are certain contradictions in the testimonies of Mst. Yasmeen and her eyewitnesses/daughters as discussed above. No doubt, both the girls are minors and studying in 6<sup>th</sup> and 5<sup>th</sup> standards but they were fully oriented to give evidence before this court and in this modern era of technology child witness cannot be overlooked. Furthermore, Mst. Yasmeen lodged N.C bearing No.42 on 28.03.2021 at about 2330 hours at P.S Tando Adam City produced at Ex:12/A and in that entry, she did not mention the name of any accused and stated straightaway that during the physical fight she sustained injuries and wanted letter for medical examination and after five days Mst. Yasmeen lodged the FIR and she nominated accused persons by leveling allegations of attempt of rape against the accused persons. Further, FIR No.74/2021 described another story regarding incident of murder of Mst. Zubaida wife of witness Anwar Ali in the same house on 23.03.2021 and create serious doubt regarding the allegations of complainant for the incident dated 28.03.2021. Further, I.O in his examination in chief deposed that during investigation, he found that no attempt of rape was committed but only dispute arose between the parties over the house.

16. Keeping the above facts and circumstances, I am of the view that the prosecution case is stuffed with material contradictions/ discrepancies. The requirement of a criminal case is that prosecution is duty bound to prove its case beyond any reasonable doubt. As per dictum of the Honourable apex Court, there is no need of so many doubts in the prosecution case, rather any reasonable doubt arising out of the prosecution evidence, pricking the judicial mind is sufficient for acquittal of the accused. Reliance can be placed on case titled as "TARIQ PERVEZ VERSUS THE STATE" reported in 1995 S C M R 1345 and case titled as "MUHAMMAD AKRAM VERSUS THE STATE" report in 2009 SCMR 230. In the above judgments, it has been observed by the Honourable apex Court that it is an axiomatic principle of law that in case of doubt, the benefit thereof must occur in favour of the accused as a matter of right and not of grace, which principles are in consonance with a famous maxim that "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".

17. The cumulative effect of the above discussion is that the prosecution has miserably failed to prove the case against the accused persons and the prosecution story in the instant case is full of doubts from beginning to end and conviction cannot be based on such doubtful story, therefore, the point under discussion stands decided as "Doubtful".

9. Keeping in view the evidence as referred to above, I am of the considered opinion that evidence as brought on record was not sufficient to prove the case of prosecution and the same 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 to interfere 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 vs. The State (PLD 1994 Supreme Court 301).

10. In view of above legal position, instant acquittal appeal fails and dismissed along with listed application.

JUDGE