

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

*Crl. Acquittal Appeal. No.S- 98 of 2023*

Date of hearing: 02.02.2024  
Date of judgment: 02.02.2024

Mr. Hamayoon Shaikh, Advocate for appellant.

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

**ZULFIQAR ALI SANGI, J;** Through captioned acquittal appeal the appellant/complainant Sik Ali Jagirani has impugned the judgment dated 15.08.2023 passed by Sessions Judge, Naushehro Feroze in Sessions Case No.75/2023 (*Re-The State v. Ahmed Ali Memon*) culminating from Crime No.488/2022 for offence punishable u/s 15,17 of Gas Theft Act, 2016 registered at Police Station, Moro whereby the respondent Ahmed Ali Memon was acquitted by extending benefit of doubt. Being aggrieved by the aforesaid judgment of acquittal, appellant filed captioned Criminal Acquittal Appeal.

2. The crux of prosecution case, as unfolded in the FIR lodged by complainant Sik Ali Jagirani on 13.11.2022 at Police Station, Moro is that he was working as Deputy Manager in Gas Department and is posted at Nawabshah Region. On 19.10.2022 he alongwith another staff namely Nisar Ahmed, Ali Imran and Zulfiqar Ali left office for checking the Gas connection and they reached at Old Zabzi Market Sweet Karkhana of accused, where accused Ahmed Ali tampered with Gas meter and distribution pipelines of Gas and committed theft of Gas by installing direct connection at his sweet Karkhana. Thereafter he alongwith other staff came back to office, narrated such facts to higher authority, and received a letter for registration of FIR. Thereafter, complainant appeared at Police Station and lodge FIR.

3. After usual investigation, the Investigation Officer submitted challan against the accused/respondent before the competent Court of law. The learned trial Court completed all legal formalities and framed charge against the accused/respondent, to which he pleaded not guilty and claimed trial.

4. The prosecution has examined 05 witnesses who all produced certain documents and items in support of their evidence. Thereafter, the side of the prosecution was closed. The accused/respondent was examined under section 342 Cr.PC, wherein he denied the allegations leveled against him and pleaded his innocence.

5. Trial court after hearing the learned counsel for the parties and on assessment of evidence, by judgment dated 15.08.2023 acquitted the accused/respondent as stated above. Hence, this acquittal appeal.

6. Mr. Hamayoon Shaikh, Counsel appearing on behalf of the appellant contended that the learned trial Court has passed the impugned judgment without application of judicious mind; that *mens rea* of accused/respondent is very well established but learned trial Court has failed to consider the same and acquitted him; that according to respondent No.2 FIR lodged against him was on the ground of enmity but he has failed to produce a single evidence in support of such enmity and the same has not considered by the trial Court nor apprise the evidence on record properly and has erred while acquitting the accused by giving him benefit of doubt; there is sufficient incriminating material available against the accused/respondent on record for awarding conviction; that the appellant has fully proved his case on record by way of evidence but trial Court did not give weight to the evidence brought by the prosecution; that the complainant has witnessed the incident and his evidence is sufficient to convict the accused/ respondent. He further contended that the trial Court did not appreciate the evidence according to the settled principles of law therefore, this acquittal appeal may be allowed and the respondent may be convicted.

7. I have heard learned counsel for the appellant and have gone through the material available on the record with his able assistance.

8. For the sake of my satisfaction I have carefully examined the evidence of prosecution witnesses and the impugned judgment. The trial Court also assessed the evidence and found the same unreliable, untrustworthy and of no confidence. The appellant and the witnesses are who officials of Sui Gas Department have admitted that none of them had seen the accused while tampering the Gas meter. The learned trial Court in point No.1 clearly gave reasons for acquittal which are as under;

*“all the PWs have admitted that none of them had seen accused while tampering with the Gas meter nor there is such evidence available on record not it is also clearly mentioned that what time and date such tampering with the made with the Gas meter. Even otherwise I.O. has admitted that Gas employees themselves used to tamper with the meters and extract money from public. In addition to this I.O. has also admitted in his cross examination that he had not seen the place of wardat from which it may transpire that theft of Gas was committed.”*

9. The prosecution has failed to bring any cogent evidence in respect of tampering with the Gas meter and nobody had seen the accused/respondent while committing the alleged offence. Under such circumstances I am of the view that the prosecution has failed to produce reliable, trustworthy and confidence inspiring evidence before the trial Court. There were several other circumstances in the case which had created reasonable doubt in the prosecution case. In the cases of circumstantial evidence strong evidence is required for convicting the accused, which is lacking in this case. It is settled law that the appreciation of evidence in the case of appeal against conviction and appeal against acquittal are entirely different as has been held in the case of **Ghous Bux v. Saleem and 3 others (2017 P.Cr.L.J 836)**. In the case of **Muhammad Mansha Kousar v. Muhammad Asghar and others (2003 SCMR 477)** the Supreme Court observed in numerous cases *“that the law relating to reappraisal of evidence in appeals against acquittal is stringent in that the presumption of innocence is doubled and multiplied after a finding of not guilty recorded by a competent court of law. Such findings cannot be reversed, upset and disturbed except when the judgment is found to be perverse, shocking, alarming, artificial and suffering from error of jurisdiction or misreading, non-reading of evidence... Law requires that a judgment of acquittal shall not be disturbed even though second opinion may be reasonably possible”*.

10. For the foregoing reasons and keeping in view the dictum laid down in the cases (*supra*), I do not see any weight in the arguments advanced by learned counsel for the appellant/complainant and do not find any illegality in the impugned judgment of acquittal; as such the acquittal appeal is hereby dismissed in *limine* alongwith listed applications.

*Ihsan/\**