

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Acquittal Appeal No. D-29 of 2022

Before,

Mr. Justice Mehmood A Khan, J.

Mr. Justice Khalid Hussain Shahani, J.

- Appellant** : Mst. Zulekhan Jagherani wd/o Gul Bahar Jagerani
Through Mr. Shakeel Ahmed Ansari, Advocate.
- Respondents 1 to 8** : Ali Bux Shar and others
Through Mr. Muhammad Ali Napar, Advocate.
- Respondent** : The State
Through Aftab Ahmed Shar, Additional Prosecutor
General
- Date of Hearing** : 24.02.2026
- Date of Short Order** : 24.02.2026
- Date of Reasons** : 25.02.2026

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. — This Criminal Acquittal Appeal, instituted under Section 417(2-A) Cr.P.C., impugns the judgment dated 01.06.2022 of the learned Additional Sessions Judge (Hudood), Sukkur, rendered in Sessions Case No.168 of 2022 arising from Direct Complaint No.17 of 2021, whereby respondents/accused, Ali Bux Shar, Qalandar Bux Soomro, ASI Jameel Ahmed Rajpar, Head Constable Darya Khan Jatoi, Head Constable Faiz Muhammad Junejo, PC Zahoor Ahmed Mahar, Head Constable Bakhtullah Tunio and PC Naeem Ahmed were acquitted of the charge under section 265-H(i) Cr.P.C.

2. The prosecution case, as crystallised in the direct complaint and the ocular testimony, is that on 22.05.2021 at about 10:00 a.m., whilst the complainant and her companions Mst. Hamedan, Abdul Razzaq (deceased), Mumtaz and Daim alias Dilbar were travelling by car from village Bux Khan Jagherani towards Sukkur, the accused, purportedly armed and deployed in police mobiles, intercepted the vehicle near Sindhri Hotel, forcibly removed Abdul Razzaq, Mumtaz and Daim therefrom, and subsequently caused the death of Abdul Razzaq through firearm injuries under the guise of a police encounter. Upon the refusal of the local police to register an FIR, the complainant invoked section 200 Cr.P.C. before the learned trial Court, which, by order dated 17.02.2022, found sufficient prima facie material and summoned the accused. Charge was framed on 11.04.2022. The complainant examined herself and Mst. Hamedan in support of the accusation.

3. The learned trial Court framed three determinative points: (i) whether Abdul Razzaq died an unnatural death due to firearm injuries; (ii) whether on 22.05.2021 the accused forcibly abducted Abdul Razzaq, Mumtaz and Daim from Sindhri Hotel and thereafter murdered Abdul Razzaq in a staged encounter; and (iii) the resultant finding. The first point was held proved; the second was found doubtful; acquittal consequently followed under section 265-H(i) Cr.P.C.

4. Learned counsel for the appellant urged misreading and non-reading of evidence; contended that the testimony of the complainant and Mst. Hamedan was sufficient to connect the accused with the crime; and criticised the learned trial Court for rendering judgment on the very day the evidence concluded and statements under section 342 Cr.P.C. were recorded, characterising the acquittal as founded upon surmise rather than faithful appraisal.

5. The accused, through their statements under section 342 Cr.P.C., raised categorical denial, averring that the deceased met his end in a bona fide police encounter registered as FIR No.77 of 2021 of P.S. Kandhra; that the matter had already undergone judicial and magisterial scrutiny; and that the present complaint was a post-inquiry, retaliatory resort to private prosecution.

6. This Court has heard learned counsel for the appellant and undertaken an independent reappraisal of the record within the settled parameters governing acquittal appeals. The governing principle is well-entrenched: an acquittal recorded by a competent Court reinforces the presumption of innocence, and interference therewith is not warranted merely because an alternative view is also possible on the same evidence. Appellate intervention is permissible only where the impugned view is arbitrary, capricious, perverse, or demonstrably the product of misreading or non-reading of evidence resulting in a miscarriage of justice. If the view adopted by the trial Court constitutes a possible and plausible reading of the record, it commands judicial deference.

7. The unnatural death of Abdul Razzaq by firearm injuries was not in controversy; that point was found proved by the trial Court and is not agitated. The real forensic burden lay upon the prosecution to establish, beyond reasonable doubt, that these specific respondents abducted Abdul Razzaq from Sindhri Hotel on the morning of 22.05.2021 and thereafter procured his murder in a fabricated encounter. It is on that central question that the prosecution case faltered, and the trial Court's adverse holding on that issue is neither legally infirm nor factually unwarranted.

8. The complainant's examination-in-chief nominates the accused and attributes to them the alleged interception at Sindhri Hotel. However, her cross-

examination inflicts material damage upon that assertion: she conceded that multiple criminal cases had previously been lodged against the deceased at different police stations; that an inquiry addressed to the Inspector General of Police had concluded adversely to her version with a recommendation she never challenged; that FIR No.77 of 2021 pertaining to the encounter had been registered and she had not contested it before any police officer or Court; and, most critically, that she was not an eyewitness to the occurrence in the encounter case. These admissions sever the evidentiary continuum between the alleged abduction and the subsequent death, rendering her testimony insufficient to discharge the prosecution's burden on the determinative issue.

9. Mst. Hamedan's evidence suffers from cognate infirmities. She corroborated the abduction allegation in examination-in-chief but conceded in cross-examination the existence and unrebutted subsistence of FIR No.77 of 2021, acknowledged that Abdul Razzaq was killed in an encounter within P.S. Kandhra limits at approximately 2320 hours on 22.05.2021, and could point to no application or challenge to that encounter FIR filed before any forum. Her testimony remained unfortified by any independent or neutral corroboration from witnesses present at Sindhri Hotel, the alleged scene of abduction. The trial Court's circumspection towards such interested testimony was not only rational but legally sound.

10. A further infirmity of probative consequence is the total absence of corroboration from two surviving alleged abductees Mumtaz and Daim whose testimony would have been indispensable to the prosecution case. Additionally, no independent witness from Sindhri Hotel, a public locale, was produced to confirm the interception. In cases alleging open abduction by multiple named police officials from a public thoroughfare in broad daylight, such evidentiary lacuna assumes compelling significance, particularly where both examined witnesses are admittedly interested and belonged to a faction historically at variance with the accused party.

11. The complaint was prosecuted through the section 200 Cr.P.C. route rather than through a contemporaneous FIR. Whilst the mode of complaint is not, per se, fatal, the sequence here, the occurrence, representation to higher police authorities, adversely concluded inquiry, non-challenge to inquiry report, registration of encounter FIR, non-challenge to encounter FIR, and then a belated direct complaint discloses a pattern which the trial Court was justified in treating as a circumstance demanding particular caution before accepting the prosecution story at face value.

12. The charge framed by the trial Court named Abdul Razzaq and Bakhtullah as persons taken away, whereas the prosecution witnesses deposed to the abduction of Abdul Razzaq, Mumtaz and Daim. This discrepancy, though not independently

decisive, underlines the internal imprecision pervading the prosecution case. More fundamentally, the prosecution failed to bridge, through direct evidence, the temporal and factual lacuna between the alleged interception at 10:00 a.m. and Abdul Razzaq's death at 2320 hours. The inferential leap from abduction to managed encounter unsupported by direct, independent and confidence-inspiring proof was precisely what the trial Court was disinclined to make, and rightly so.

13. The defence version, contextually corroborated by the prosecution witnesses' own admissions regarding FIR No.77 of 2021 and the concluded inquiry, was not bereft of a rational foundation. Where prosecution evidence is inherently wavering and the defence version derives contextual reinforcement from the prosecution's own concessions, the extension of benefit of doubt cannot be faulted. The burden of proof never migrates from the prosecution; suspicion, however acute, is constitutionally insufficient to ground criminal liability.

14. The complaint regarding expedition in disposal warrants brief attention. Expedition in adjudication, however undesirable forensically, does not per se vitiate a judgment. The dispositive test is whether the conclusion recorded is demonstrably contrary to evidence or has occasioned a miscarriage of justice. Having exhaustively reviewed the complaint, depositions, cross-examination, and defence statements, we find the impugned conclusion that the complicity of the present respondents in the alleged encounter murder remained doubtful to be a plausible, legally sustainable and evidence-based view, insulated from appellate interference.

15. For the foregoing reasons, this Criminal Acquittal Appeal is **dismissed**. The judgment dated 01.06.2022 passed by the learned Additional Sessions Judge (Hudood), Sukkur, in Sessions Case No.168 of 2022 arising out of Direct Complaint No.17 of 2021, acquitting the respondent-accused under section 265-H(i) Cr.P.C., is **maintained**. These are the reasons for the short order announced on 24.02.2026.

J U D G E

J U D G E