

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD
Criminal Acquittal Appeal No.S-186 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE
	For order on office objection. For order on MA No.13031/2024. For order on MA No.13632/2024. For hearing of main case.

07.09.2026

Mr. Abdul Rasheed Abro advocate for appellant.

ZULFIQAR ALI SANGI, J: - The appellant/complainant has preferred the instant Criminal Acquittal Appeal under Section 417(2-A), Cr.P.C., calling in question the judgment dated 21.11.2024 passed by learned Sessions Judge/Gas Utility Court, Hyderabad in Sessions Case No.09 of 2021, arising out of Crime No.103 of 2021, Police Station Hatri, Hyderabad, whereby respondents/accused Niaz Ali and Bahar Ali were acquitted of the charges under Sections 15, 17 and 24 of the Gas (Theft Control & Recovery) Act, 2016. The appellant seeks setting aside of the impugned judgment and conviction of the respondents.

2. Learned counsel contends that the prosecution witnesses supported the occurrence; that the illegal gas connection was detected at the hotel allegedly owned by the respondents; that clamp and rubber pipe were recovered and photographs were produced; and that the learned trial Court misread and non-read the prosecution evidence while extending benefit of doubt to the respondents. He, therefore, prayed that instant criminal acquittal appeal may be allowed, impugned judgment be set-aside and the respondents/accused may be convicted and sentenced in accordance with law.

3. I have heard the learned counsel for the appellant and perused the record. The record, however, does not support the contention that the learned trial Court acquitted the respondents without considering the material available on record. Rather, the impugned judgment reflects that the learned trial Court examined the prosecution evidence and recorded specific reasons for arriving at the conclusion that the charge had not been established beyond reasonable doubt.

4. It is by now a settled principle that an appeal against acquittal stands on a different footing from an appeal against conviction. An accused having once been acquitted enjoys a strengthened or double presumption of innocence. The appellate Court is not required to interfere merely because another view of the evidence is possible. Interference is warranted only where the findings of the trial Court are shown to be perverse, arbitrary, fanciful, capricious, based on misreading or non-reading of material evidence, or otherwise suffering from a serious legal infirmity resulting in miscarriage of justice.

5. In the present case, no such infirmity has been demonstrated. The learned trial Court has principally relied upon circumstances emerging from the prosecution's own evidence. Most significantly, the alleged occurrence took place on 07.07.2021 at about 11:30 a.m., whereas the FIR was lodged on 15.07.2021, after an unexplained delay of eight days. The complainant admittedly returned to the SSGC office on the very day and a letter directing him to lodge the FIR had also been issued on 07.07.2021. Nevertheless, the FIR was not lodged until eight days thereafter. No satisfactory explanation for this intervening period has been furnished. The learned trial Court was, therefore, justified in treating the delay as a circumstance requiring cautious appraisal of the subsequent prosecution version and in observing that the possibility of deliberation and consultation could not safely be ruled out. Further, the alleged detection took place during broad daylight in a populated locality and, according to the complainant himself, several persons were present at the spot. Yet no independent person from the locality was associated either with the alleged raid or the recovery proceedings. Although non-association of a private witness is not, by itself, sufficient to discard otherwise confidence-inspiring evidence, in the facts of the present case it assumes considerable importance because the ocular and corroborative evidence produced by the prosecution comes exclusively from its own officials. The learned trial Court was thus justified in considering this omission while assessing the overall credibility of the prosecution case.

6. I have also noted the material discrepancy with regard to the presence of PW-2 Pir Bux. In the FIR, the complainant stated that he had proceeded to detect the theft along with Qamaruddin Mangi

and Abdul Qadir Bhurgri. However, Pir Bux was subsequently produced as a member of the raiding party and as a mashir. Significantly, PW-2 himself admitted in cross-examination that his name and role were not mentioned in the FIR. The issue is not merely one of an insignificant omission; rather, it concerns the very presence of a material prosecution witness at the alleged occurrence. The learned trial Court, therefore, committed no illegality in treating this divergence as a circumstance creating doubt. Furthermore, the photographs also fail to provide the corroboration claimed by the appellant. As admitted by the complainant and PW-2, neither the hotel in question nor the respondents are visible in the photographs. Thus, the photographs do not establish the identity of the premises, presence of the respondents thereat, or their connection with the alleged illegal gas connection. Their production, therefore, does not cure the deficiencies appearing in the ocular account. Likewise, the alleged recovery of the clamp and rubber pipe does not furnish dependable corroboration. The complainant admitted that such articles were commonly available in the market. More importantly, the alleged case property remained in the custody of the complainant for several days before being handed over to the police and admittedly remained unsealed. The Investigating Officer also admitted that it was not in sealed condition. In such circumstances, the evidentiary value of the alleged recovery was rightly viewed with caution, particularly when there was no reliable circumstance independently connecting those commonly available articles with the respondents. Another important aspect is that the prosecution was required to establish the individual criminal liability of each respondent by proving the ingredients of the offences charged through reliable evidence. The mere detection of an alleged illegal connection at a commercial premises, without dependable evidence establishing that the respondents had installed, operated, maintained or otherwise participated in the alleged theft in the manner contemplated by the relevant provisions of law, could not automatically result in their conviction.

7. It is pertinent to mention that the burden of proving the charge beyond reasonable doubt always remained throughout upon the prosecution. Failure of an accused to establish a defence cannot substitute for proof of guilt by the prosecution, nor can it repair material deficiencies in the prosecution evidence. The impugned judgment, in particular, paragraphs 14 to 18, demonstrate that the

learned trial Court reached its conclusion after considering the material deficiencies in the prosecution evidence and assigning reasons therefor. The findings cannot be characterized as based upon mere surmises and conjectures. Rather, the doubts noticed by the learned trial Court arise from the prosecution's own evidence and admissions elicited during cross-examination. The appellant has failed to identify any material piece of evidence which was ignored by the learned trial Court and which, if considered, would necessarily lead to a conclusion of guilt.

8. It is also settled that where the evidence gives rise to two possible views, the view favourable to the accused is to be preferred, particularly in an appeal against acquittal. In the present case, the view of the learned trial Court is not only a possible view but a reasonable view flowing from the certain deficiencies; therefore, it cannot be substituted merely because the prosecution seeks a different appreciation of the same evidence. Consequently, learned counsel for the appellant has failed to point out any perversity, arbitrariness, gross illegality, misreading or non-reading of material evidence in the impugned judgment which could justify interference with the acquittal of the respondents. The benefit of doubt extended by the learned trial Court is available to the respondents as a 'matter of right' and not of grace.

9. For the foregoing reasons, I am of the considered view that the appellant has failed to make out any case warranting interference with the well-reasoned judgment dated 21.11.2024. The findings recorded by the learned trial Court are supported by the evidence on record and do not suffer from any jurisdictional or legal infirmity requiring interference by this Court. Accordingly, the instant Criminal Acquittal Appeal is **dismissed** in limine along with listed applications. The impugned judgment dated 21.11.2024 passed by learned Sessions Judge/Gas Utility Court, Hyderabad in Sessions Case No.09 of 2021 is **maintained**.

JUDGE