IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Appeal No.S-29 of 2025

Before:-
Mr. Justice Ali Haider 'Ada'.

Appellant	:	Ashok Kumar son of Dassi Ram, *Through* Mr. Athar Abbas Solangi, Advocate.
The State	:	Through Mr. Sardar Ali Solangi, Deputy Prosecutor General. Mr. Oshaque Ali Sangi, Assistant Attorney General, Pakistan.
Complainant	:	Mutiullah son of Amanullah Awan, *Through* Mr.Asif Hussain M. Nawaz Chandio, Advocate.
Date of Hearing	:	17.08.2026.
Date of Decision	:	17.08.2026.
Date of Reasons	:	21.08.2026.

JUDGMENT

Ali Haider 'Ada' J:- Through the instant criminal appeal, the appellant has assailed the judgment dated 27.08.2024, passed by the learned Additional Sessions Judge, Kashmore, in Sessions Case No.14 of 2025, arising out of Crime No.236 of 2024, registered at Police Station Kashmore, for an offence punishable under Section 462-I, P.P.C., whereby the learned trial Court, however, framed the charge under Section 462-K, P.P.C. The appellant was convicted and sentenced to suffer rigorous imprisonment for a period of three years. Being aggrieved by the said judgment of conviction and sentence, the appellant has preferred the instant appeal.

2. The prosecution case, in brief, is that on 03.12.2024, the complainant, being a Sub-Divisional Officer of M/s Sukkur Electric Power Company (SEPCO), visited the premises of the accused/appellant, where a crushing machine was installed. During

inspection, alleged theft of electricity and tampering with the electricity meter and supply line were detected. The complainant informed the Inspection Team (M.N.T.), which thereafter inspected the site. Subsequently, the complainant lodged the FIR on 08.12.2024.

3. After registration of the FIR, the usual investigation was carried out and, upon completion thereof, a challan was submitted before the learned trial Court. After taking cognizance of the offence and supplying the requisite documents to the accused, the learned trial Court framed the charge against the appellant on 06.03.2025. The appellant pleaded not guilty to the charge and claimed trial.

4. In support of its case, the prosecution examined the complainant, who produced and exhibited the inspection report prepared by the inspection team, as well as the letter addressed to the concerned police authorities, and finally produced the copy of the FIR. The prosecution thereafter examined ASI Muhammad Bux, the author of the FIR, who produced the relevant Roznamcha entries. It further examined Himat Ali, who acted as a mashir of the place of incident and produced the mashirnama. Subsequently, an application was moved by the learned State Counsel for summoning the members of the inspection team. The said application was allowed by the learned trial Court, whereafter Irfan Ali and Manzoor Ali, members of the inspection team, were examined by the prosecution. Upon completion of the said evidence, the prosecution submitted its statement for closure of evidence.

5. Thereafter, the statement of the appellant was recorded under Section 342, Cr.P.C, wherein he professed his innocence and pleaded false implication. However, he neither opted to make a statement on oath under Section 340(2), Cr.P.C, nor produced any evidence in his defence. After hearing the learned counsel for the parties and examining the evidence available on record, the learned trial Court passed the impugned judgment and convicted and sentenced the appellant as stated above.

6. Learned counsel for the appellant contended that the prosecution has failed to establish its case against the appellant beyond reasonable doubt. He submitted that the prosecution evidence suffers from material contradictions and discrepancies which go to the root of the case. He further contended that the Investigating Officer was not examined by the prosecution, and such omission has materially prejudiced the prosecution case. Learned counsel also argued that the alleged tampered electricity meter, being the principal case property and the basis of the allegation, was neither secured nor recovered from the spot and, therefore, the allegation of tampering remained unsubstantiated. He accordingly prayed that the impugned judgment be set aside and the appellant be acquitted of the charge.

7. Conversely, learned counsel for the complainant, learned Assistant Attorney General, as well as learned Deputy Prosecutor General, appearing for the State, supported the impugned judgment. They contended, in one voice, that the prosecution had successfully established the appellant's involvement in tampering with the electricity meter, thereby causing loss to the public exchequer. They placed reliance upon the inspection report and the statements of the prosecution witnesses and submitted that the learned trial Court had rightly appreciated the evidence available on record and had lawfully convicted and sentenced the appellant. They, therefore, prayed for dismissal of the appeal and maintenance of the impugned judgment.

8. Heard the learned counsel for the parties and perused the record with their assistance.

9. From the very inception, the prosecution case was that, during the site inspection, the complainant, being a functionary of the electric supply company, detected theft of electricity at the business premises of the appellant through alleged tampering with the electricity meter. In such circumstances, the alleged tampered meter constituted a material piece of evidence, particularly when the

allegation of theft was founded upon its alleged tampering. It was, therefore, incumbent upon the prosecution to secure the said meter, so that its condition could be examined and the allegation of tampering could be independently verified by the technical expert. However, no such further examination or analysis of the meter was undertaken by the Investigation Officer, who instead confined the case to the inspection report. Reliance is placed upon the case of **ABDUL RAHEEM DAYO versus State 2024 YLR 1157.**

10. More importantly, the alleged tampered electricity meter was neither secured nor recovered from the spot, either by the inspection team or by the Investigating Officer, nor was it produced before the learned trial Court as case property. The prosecution, having alleged that the appellant had tampered with the meter, was under a duty to establish the identity and existence of the very object allegedly tampered with and to produce the same before the Court. The non-production of such material case property, without any plausible explanation, creates a serious dent in the prosecution case, particularly where the allegation of tampering constitutes the very foundation of the charge.

11. It is a settled principle that where the prosecution relies upon a particular article as the basis of the offence, it must ordinarily produce and exhibit the same before the Court, to establish that the article recovered or inspected was the very same property allegedly connected with the commission of the offence. In the present case, the prosecution has failed to discharge this obligation. Mere reliance upon the inspection report, in the absence of production of the alleged tampered meter or any credible technical examination thereof, cannot by itself conclusively establish the charge against the appellant. Guidance in this regard may be derived from the judgment of the Honourable Supreme Court in **Ahmed Ali and another v. The State (2023 SCMR 781)**, wherein it was held that:

> *5. In light of the above, the main questions for consideration before this court are: why is the case property to be produced and exhibited during the trial? under which provisions of law? and*

which provisions of law deal with the proposition. For that purpose, first we need to examine the relevant provisions of law and rules as to the case property and exhibition of the same in a court of law.

Rule 22.16 of the Police Rules, 1934 ("the Police Rules") deals with the "case property". Sub-rule (1) thereof provides, inter alia, that in certain circumstances, police shall seize weapons, articles and property in connection with criminal cases, and take charge of property which is unclaimed. Sub-rule (2) thereof provides, inter alia, that each weapon, article or property (not being cattle) seized under the above sub-rule shall be marked or labelled with the name of the person from whom, or the place where, it was seized, and reference to the case diary or other report submitted from the police station. If articles are made up into a parcel, the parcel shall be secured with sealing wax, bearing the seal impression of the responsible officer, and shall similarly be marked or labelled. Such articles or parcels shall be placed in safe custody, pending disposal as provided by law or rule. Sub-rule (3) thereof provides, inter alia, that the police shall send to headquarters or to magisterial outposts all weapons, articles and property connected with cases sent for trial, as well as suspicious, unclaimed and other property, when ordered to do so by a competent Magistrate. Sub-rule (4) thereof provides, inter alia, that motor vehicles detained or seized by the police in connection with cases or accidents shall be produced before a Magistrate after rapid investigation or by means of in-complete challan. The evidence relating to the identity or condition of the vehicle should be led and disposed of at an early date, and the Magistrate should then be invited to exercise the discretion vested in him by section 516-A, Code of Criminal Procedure, to order that the vehicle be made over to the owner pending conclusion of the case on security to be produced whenever demanded by the Court.

Rule 22.18 of the Police Rules deals with "custody of property". Sub-rule (1) thereof provides, inter alia, that property exceeding in value of Rs.500/-, whether appertaining to cases or seized on suspicion, or taken as unclaimed, shall be forwarded as soon as possible to district headquarters for deposit in the treasury in accordance with Police Rule 27.18(2) or, in the case of property connected with a case to be tried at an outstation or Tahsil, to the Tahsil Treasury, where it shall be placed in the Tahsil strong-room under the charge of Tahsildar. Sub-rule (2) thereof provides, inter alia, that all case property and unclaimed property, other than cattle, of which the police have taken possession, shall, if capable of being so treated, be kept in the store-room. Otherwise, the officer in-charge of the police station shall make other suitable arrangements for its safe custody until such time as it can be dealt with under sub-rule (1) above. Each article shall be entered in the store-room register and labelled. The label shall contain a reference to the entry in the store-room register and description of the article itself and, in the case of articles of case property, a reference to the case number. If several articles are contained in a parcel, a detail of the articles shall be given on the label and in the *store-room register. The officer in-charge of the police station shall examine, government and other property in the store-room, at least twice a month and shall make an entry in the station diary on the Monday following the examination to the effect that he has done so.*

Rule 22.70 of the Police Rules provides that Register No. XIX shall be maintained, wherein, with the exception of articles already included in Register No. XVI, every article placed in the store-room shall be entered and the removal of any such article shall also be noted in the appropriate column.

Rule 27.11 of the Police Rules provides that the head of the legal branch shall, with the help of his assistants, maintain the Registers, including Register of case property and unclaimed property in Form 27.11(1), which may be destroyed three years after being completed.

Rule 27.12 of the Police Rules provides that at headquarters, the Deputy Superintendent of Police (Legal), with the assistance of his staff, shall take charge of weapons, articles and property connected with their safe custody until the case is decided. When final orders are passed in the case, such weapons, articles and property shall, if not made over to the owner, be made over to the District Nazar. The Deputy Superintendent of Police (Legal) shall similarly take charge of, and be responsible for, the safe custody of suspicious property until the issue of the proclamation under section 523 of the Code of Criminal Procedure, when such property be made over to the District Nazar.

Thus, the Police Rules mandate that case property be kept in the Malkhana and that the entry of the same be recorded in Register No. XIX of the said police station. It is the duty of the police and prosecution to establish that the case property was kept in safe custody, and if it was required to be sent to any laboratory for analysis, to further establish its safe transmission and that the same was also recorded in the relevant register, including the road certificate, etc. The procedure in the Police Rules ensures that the case property, when is produced before the court, remains in safe custody and is not tampered with until that time. A complete mechanism is provided in Police Rules qua safe custody and safe transmission of case property to concerned laboratory and then to trial Court.

6. Now adverting to the Lahore High Court Rules and Orders (Civil and Criminal) ("High Court Rules"), it is to be noted that Part B of Chapter 24 of Volume III thereof deals with the trial of the Sessions cases. Rule 14-E thereof provides, inter alia, that care is often required in tracing the custody of a prisoner's substances, personal food, bloodstained clothes, etc. The evidence should never leave it doubtful as to what person or persons have had charge of such articles throughout the various stages of the inquiry, if such doubt can be cleared up. This is especially necessary in the cases of articles sent to the chemical examiner. The person who packs, seals and dispatches such articles should invariably be examined.

Rule 14-F of the High Court Rules provides that clothes, weapons, *money, ornaments, food and every article which forms a part of the circumstantial evidence should be produced in Court and their connection with the case and identity should be proved by witnesses. Rule 14-H thereof provides, inter alia, that all exhibits should be marked with a letter or number. Articles which are produced in evidence should have a label attached to them bearing a number, and that number should be quoted throughout the record wherever any such article is referred to and should be distinctly marked as "admitted or not admitted". If the exhibits have already been assigned numbers by the police, then that series of numbers should be mentioned to avoid confusion. A printed label should be affixed or attached to each exhibit containing, number of exhibit, produced by, admitted (signature of court), date, case and description of exhibits. The Sessions Judge is responsible to see that these entries are properly made.*

The above rules are reproduced as under:-

"14-E. Custody of other articles.---Similar care is often required in tracing the custody of prisoner's substances, personal food, blood-stained clothes etc. The evidence should never leave it doubtful as to what person or persons have had charge of such articles throughout the various stages of the inquiry if such doubt can be cleared up. This is especially necessary in the cases of articles sent to the Chemical Examiner. The person who packs, seals and dispatches such articles should invariably be examined.

14-F. Every article to be produced.---Clothes, weapons, money, ornaments, food and every article which forms a part of the circumstantial evidence should be produced in Court and their connection with the case and identity should be proved by witnesses.

14-H. Exhibits.---All exhibits should be marked with a letter or numbers, Articles which are produced in evidence should have a label attached to them bearing a number, and that number should be quoted throughout the record wherever any such article is referred to and should be distinctly marked as "admitted or not admitted". If the exhibits have already been assigned numbers by the police, that series of numbers should be mentioned to avoid confusion.

A printed label should be affixed or attached to each exhibit containing the following particulars:-

(i) Number of exhibit

(ii) Produced by

(iii) Admitted (Signature of Court)

(iv) Date

(v) Case

(vi) Description of exhibits.

The Sessions Judge, should see that these entries are property made.

> *Thus, under the Police Rules and the High Court Rules, mentioned above, in all cases, especially in the cases of articles sent to the chemical examiner, it is necessary that there be no doubt as to what person or persons have had charge of such articles throughout various stages of the inquiry. Besides, the person who packed, sealed, and dispatched such articles should invariably be examined. Further, the clothes, weapons, money, ornaments, food and every other article that forms a part of the circumstantial evidence has to be produced in court, and their connection with the case and identity should be proved by witnesses.*

12. Furthermore, the evidence on record discloses material infirmities with regard to the alleged inspection and the manner in which the alleged tampering was sought to be established. The complainant, in his deposition, stated that photographs of the box, which was referred to as an "ATP Box", had been taken during the inspection. However, despite this assertion, no such photographs were produced before the learned trial Court to corroborate the allegation of tampering. More significantly, the complainant admitted that the inspection report was silent with regard to the removal of any seal or bond from the said box. It is also significant that no inventory of the electrical appliances or equipment allegedly installed or being used at the appellant's premises was prepared or produced by the inspection team. The prosecution failed to establish through any reliable evidence that the prescribed procedure was followed, in letter and spirit, for determining the appellant's liability towards alleged electricity theft or outstanding dues. There is no material to show that such liability was assessed on the basis of the actual electrical load after physical inspection, verification and recording of all appliances and equipment installed or in use at the premises. In the absence of such exercise, the mere production of an inspection report, without supporting material demonstrating the basis upon which the alleged liability was calculated or the allegation of tampering was technically verified, could not safely be treated as conclusive or as the gospel truth. In this regard, guidance may be sought from the judgment of the Honourable Supreme Court in **Sui Northern Gas Pipelines Limited, through General Manager, Rawalpindi v. Muhammad Arshad (2024 SCMR 122)**.

13. Another important circumstance which creates doubt in the prosecution case is the unexplained delay in registration of the FIR. According to the prosecution itself, the alleged incident was detected on 03.12.2024 and the inspection report was also prepared on the same date. Despite this, the FIR was not registered until 08.12.2024, resulting in an unexplained delay of about five days. No plausible explanation has been furnished by the prosecution for such delay. Although delay in lodging an FIR is not invariably fatal to the prosecution case, an unexplained delay assumes significance where the prosecution evidence itself suffers from other material infirmities, as it creates room for deliberation, consultation and subsequent improvement in the prosecution version.

14. The prosecution evidence is further flawed by material contradictions regarding the manner in which the alleged incident was detected and documented. PW Himat Ali deposed that the complainant had made a video recording of the alleged incident; however, the complainant himself denied having made any such video recording. No such recording was produced before the trial Court. Likewise, the members of the inspection team furnished a version which materially differs from that of the complainant regarding their arrival at the premises and the initiation of the inspection. The complainant, in the FIR and in his deposition, projected the case on the footing that, after visiting the premises and allegedly noticing theft of electricity, he informed the inspection team, whereafter the team proceeded to the spot for further checking. However, the evidence of the inspection team presents an altogether different sequence of events. According to their deposition, the Regional Manager of the company had already issued directions on 02.12.2024, i.e., one day before the alleged incident of 03.12.2024, for inspection of the premises, and the inspection team thereafter visited the site on the following day pursuant to those directions. Even more significantly, the members of the inspection team denied having received any call from the complainant regarding the alleged theft. Thus, the evidence

regarding who first detected the alleged theft, who initiated the inspection and under whose directions the inspection team reached the premises is materially inconsistent. These are not minor discrepancies relating to marginal matters; rather, they concern the very beginning and manner of the alleged inspection. The prosecution witnesses have furnished materially divergent accounts on a circumstance which constitutes the foundation of the prosecution case. The principle that material contradictions and discrepancies affecting the core of the prosecution case must be given due consideration has been reiterated in **P.C. Veeram Khan v. The State (2024 YLR 2323)** and **Karamat Arain v. The State (2018 PCr.LJ 669)**.

15. There is yet another material omission on the part of the prosecution. The FIR and other prosecution documents disclose that SIP Mashooq Ali Lashari was the Investigating Officer of the case and had conducted the investigation. Despite this, the prosecution failed to examine him as a witness and no satisfactory explanation for his non-production has been furnished. Reliance in this regard may be placed upon **Asif v. The State (2025 YLR 757).**

16. It is a settled principle of criminal jurisprudence that the prosecution is required to prove its case beyond reasonable doubt and that the accused cannot be convicted merely on the basis of suspicion, conjectures or departmental assertions. Even a single circumstance creating reasonable doubt in the prosecution case is sufficient to entitle an accused to its benefit as a matter of right, and in the present case, the record contains several circumstances cumulatively creating serious and reasonable doubt regarding the prosecution version.

17. In view of the foregoing discussion, the prosecution has failed to prove the charge against the appellant beyond reasonable doubt. Consequently, the appellant is entitled to the benefit of doubt and to acquittal. Accordingly, the instant criminal appeal was allowed vide short order dated 17.08.2026, whereby the appellant was acquitted of

the charge. The impugned judgment dated 27.08.2024, passed by the learned Additional Sessions Judge, Kashmore, whereby the appellant was convicted and sentenced, was set aside. His bail bond was cancelled and the surety was discharged. These are the detailed reasons for the short order.

JUDGE