

IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI  
(APPELLATE JURISDICTION)

Criminal Acquittal Appeal No. 226 of 2010

1. Mano Bheel  
Son of Kheero,  
Adult, Hindu,  
presently resident at Piler Centre,  
ST-001, Sector X, Sub-Sector V,  
Gulshan-e-Maymar,  
Karachi

2. Anwer  
Son of Hameer and Dharmi,  
Adult, Hindu,  
presently resident at Piler Centre,  
ST-001, Sector X, Sub-Sector V,  
Gulshan-e-Maymar,  
Karachi.....

Appellants

Versus

1. The State
2. Abdul Rehman  
Son of Ahmed Khan Mari  
Muslim, Adult,
3. Hashim  
Son of Haji Sodho Khan  
Muslim, Adult,
4. Nathu  
Son of Piru Bheel  
Hindu, Adult,
5. Jummo  
Son of Achar Bheel  
Hindu, Adult,
6. Ibrahim  
Son of Piyaro  
Muslim, Adult,
7. Lal Bux alias Lalu  
Son of Bhalediino Hingoro  
Muslim, Adult,
8. Mansingh  
Son of Ambio Bheel

PRESENTED

17-05-2010

M. A. M. / 17/5/2010  
Sr. Registrar (Civil)

1838

Gulshan-e-Maymar, Karachi

9. Hindu, Adult,  
Raju  
Son of Herji Bheel  
Hindu, Adult,
10. Shabbir Ahmed  
Son of Feroz Kaim Khani  
Muslim, Adult,
11. Manzoor Ahmed  
Son of Muhammad Hassan Chandio  
Muslim, Adult,
12. Nangar  
Son of Muhammad Ramzan Nizamani  
Muslim, Adult,
13. Abdul Jabbar  
Son of Ahmed Khan Marti  
Muslim, Adult,
14. Muhammad Azam  
Son of Hadi Bux  
Muslim, Adult,
15. Abdul Jabbar  
Son of Abdul Shakoor  
Muslim, Adult,

All the persons named at Serial No.2 to No.15  
reside at village Ahmed Khan Mari, Taluka and District  
Sanghar, Sindh.....

Respondents

**CRIMINAL ACQUITTAL APPEAL UNDER SECTION 417(2-A), CRIMINAL  
PROCEDURE CODE, 1898**

It is most respectfully and most humbly submitted that being aggrieved and dissatisfied by the Judgment dated: April 17<sup>th</sup>, 2010 [a certified copy was received by the Appellants on May 5<sup>th</sup>, 2010. Herein after referred to as the 'Impugned Judgment'], passed by the First Additional Session Judge, Mirpurkhas, in Session Case No.71 of 2006 ['The State Versus Hashim & Others'] under Sections 365, 34, P.P.C., 1860, through which Impugned Judgment the accused persons have been acquitted from the offences in Session Case No.71 of 2006. Therefore, the Appellants above-named most respectfully and most humbly prefer this Appeal on the following, inter alia, facts and grounds:

*A copy of the abovementioned Impugned Judgment dated: April 17<sup>th</sup>, 2010, is annexed and marked as Annex 'A'.*

### FACTS

1. That it is submitted that the subject matter of Session Case No.71 of 2006 is the kidnapping, abduction and disappearance, of Kheero, Ako, Jalal, Motan, Jabo/Chaman, Khanji, Makhto and Deeli. The Appellant No.1 is the son of Kheero and Ako, brother of Jalal, husband of Motan, father of Jabo/Chaman, Khanji, Makhto and Deeli [Kheero, Ako, Jalal, Motan, Jabo/Chaman, Khanji, Makhto and Deeli, are herein after referred to as the 'Victims']. It is further submitted that the Appellant No.2 is the son of the Dharmi, who was the complainant in F.I.R. No.35/1998, Dated: 11-5-1998 (Police Station: Jhudo, District: Mirpur Khas), which aforementioned F.I.R. was the subject matter of Session Case No.71 of 2006. It may be noted here that the aforementioned complainant [i.e. Dharmi] was a relative of the Appellant No.1 and the complainant [i.e. Dharmi] passed away and is no longer alive. For the purposes of this Acquittal Appeal, it is important to state the following relevant facts.
2. That in May, 1998, the father, mother, brother, two sons and two daughters [i.e. the Victims] of the Appellant No.1 were kidnapped and abducted by the accused persons named in Session Case No.71 of 2006. It is submitted that there were three eyewitnesses to the kidnapping and abduction incident namely (a) Appellant No.1 (b) Madho son of Moni and (c) Togo son of Kheero.
3. That in view of the abovementioned kidnapping and abduction, an F.I.R. No. 35/1998, Dated: 11-5-1998 (Police Station: Jhudo, District: Mirpur Khas).

was initiated by the complainant [i.e. Dharmi] against the accused persons named in Session Case No.71 of 2006. It is important here that Section 161, Cr.P.C., 1898, statements of the abovementioned three eyewitnesses were recorded by the police officials.

*A copy of the F.I.R. No.38/1998, alongwith it's translation, is annexed and marked as Annex 'B'.*

4. That after the abovementioned incident of Kidnapping and Abduction, the Appellants had become displaced persons. It is submitted that in view of the kidnapping and abduction of the Victims and the protest and token hunger strike of the Appellant No.1, this issue was widely reported in the newspapers. It is submitted that this issue was also taken up by the Honourable Supreme Court as a Human Rights Suo Motto case.

*A copy of the Newspaper reports is annexed and marked as Annex 'C' to 'C-12' respectively.*

5. That after the passing of the Impugned Judgment, the Appellants have come to know that in 2006-2007, Challan was submitted in Session Case No.71 of 2006. It is submitted that after the passing of the Impugned Judgment, the Appellants have come to know that the Charge was framed against the accused persons in the year, 2008.
6. That after the passing of the Impugned Judgment, the Appellants have come to know that in the year, 2007, two of the accused persons namely Ibrahim son of Piaro and Jumro son of Achar had made confessional statements before the Civil Judge & Judicial Magistrate II, Sanghar, Sindh.

*A copy of the abovementioned confessional statements is annexed and marked as Annex 'D' & 'D-1' respectively.*

7. That it is important to note that the Appellants have never received any summons in Session Case No.71 of 2006 calling upon them to appear in that case. It is further submitted that no official persons has ever informed the Appellants to appear in Session Case No.71 of 2006.
8. That it is important to note here that Kheero, Ako, Jalal, Motan, Jabo/Chaman, Khanji, Makhto and Deeli [i.e. the Victims] have yet to be recovered and are still missing. It is also important to note that the Appellants donot know the whereabouts of the Victims since they were kidnapped and abducted by the accused persons named in Session Case No.71 of 2006.
9. That after the passing of the Impugned Judgment, the Appellants were informed by a friend that a news item had appeared in the Dawn Newspaper that the accused persons in Session Case No.71 of 2006 had been acquitted. It is submitted that after the passing of the Impugned Judgment, the Appellants came to know that the accused persons had moved in quashment application in Session Case No.71 of 2006.

*A copy of the abovementioned Quashment Application is annexed and marked as Annex 'E'.*

10. That after April 17<sup>th</sup>, 2010, the Appellant has now come to know that the learned trial court through Judgment Dated: April 17<sup>th</sup>, 2010, in S.C. No.71 of 2006 acquitted the accused persons from the charged offences.

11. That it is most respectfully and most humbly submitted that the Appellants are aggrieved and dissatisfied by the Impugned Judgment through which Impugned Judgment the accused persons have been acquitted. Therefore, the Appellants challenge the abovementioned Impugned Judgment on the, inter alia, following grounds:

#### GROUND

- A. That it is respectfully submitted that the Impugned Judgment is clearly contrary to the law and the facts of this case. It is further respectfully submitted that the Impugned Judgment is clearly contrary to the settled law as laid down by the Honourable Supreme Court and the Honourable High Courts.
- B. That it is a fact that Kheero, Ako, Jalal, Motan, Jabo/Chaman, Khanji, Makhto and Deeli [i.e. the Victims] have yet to be recovered and are still missing. It is submitted that the Impugned Judgment is silent about the recovery of the Victims, which clearly shows a complete misapplication of mind because the trial court is not even aware of the non-recovery of the Victims. It is further submitted that in view of the non-recovery of the Victims and in view of the specific allegation of kidnapping and abduction against the accused persons, there was no legal basis for the acquittal of the accused persons. Therefore, the Impugned Judgment is clearly illegal and liable to be set aside.
- C. That it is a fact that Kheero, Ako, Jalal, Motan, Jabo/Chaman, Khanji, Makhto and Deeli [i.e. the Victims] have yet to be recovered and are still missing. It is submitted that the Impugned Judgment is silent about the recovery of the

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Victims, which clearly shows a complete misapplication of mind because the trial court is not even aware of the non-recovery of the Victims. It is further submitted that in view of the presence of eyewitnesses to the kidnapping and abduction incident and in view of the presence of the confessional statements of two of the accused persons, there was no legal basis for the acquittal of the accused persons. Therefore, the Impugned Judgment is clearly illegal and liable to be set aside.

D. That it is a fact that the Appellant are displaced persons. It is also a fact that the Appellant has been constantly in the media to highlight the kidnapping and abduction of his father, mother, brother, sons and daughters. It is also a fact that even the Honourable Supreme Court has taken Suo Moto notice of this kidnapping and abduction. It is submitted that in view of the aforementioned facts and high publicity of this case, how is it possible for the police or court officials not to have located the Appellant and other witnesses. This clearly shows the malafides of the police and court officials concerned with the service of summons. It is further submitted that the trial court has failed to consider the fact that how could witnesses not be served upon in such a high profile and high publicity case, which clearly shows the misapplication of the mind on the part of the trial court. Even otherwise, the legal requirements of service on the witnesses were not fulfilled. Therefore, the Impugned Judgment is clearly illegal and liable to be set aside.

E. That it is fact that there are two confessional statements of two of the accused persons. It is submitted that the Impugned Judgment is completely silent about these confessional statements. It is further submitted that in view of the presence of the confessional statements of two of the accused, there was no legal basis for the acquittal of the accused persons. Therefore, the Impugned Judgment is clearly illegal and liable to be set aside.



- F. That it is fact that Kheero, Ako, Jalal, Motan, Jabo/Chaman, Khanji, Makhto and Deeli [i.e. the Victims] have yet to be recovered and are still missing. It is submitted that in view of the presence of eyewitnesses to the kidnapping and abduction incident and in view of the presence of the confessional statements of two of the accused, there was no legal basis for the acquittal of the accused persons. It is categorically stated here that two of the eyewitness [i.e. the Appellant No.1 and Madho son of Moni] to the incident, are available and will give evidence whenever required by this Honourable Court. It is settled law that cases cannot be decided on mere technicality and the non-presence of the witnesses for some time is a mere technicality especially since no real effort has been made to serve the witnesses. Therefore, the Impugned Judgment is clearly illegal and liable to be set aside.
- G. That it is most respectfully and most humbly submitted that the Appellants seeks the permission of this Honourable Court to raise further facts and grounds at the time of the hearing of this Appeal.

#### **PRAYER**

It is most respectfully and most humbly prayed that in view of the abovementioned, inter alia, facts and grounds, this Honourable Court may be pleased to graciously pass orders in the following terms:

- (i) Allow this Appeal by setting aside the Impugned Judgment dated: April 17<sup>th</sup>, 2010 (Annex 'A'), passed in Session Case No.71 of 2006.
- (ii) Pass any other Order, or further Order, as may be just and proper in the facts of this Appeal and case.



منون

APPELLANT NO.1



APPELLANT NO.2

A handwritten signature in black ink, appearing to be 'Khalid' or similar, written in a cursive style.

ADVOCATE FOR THE APPELLANTS

Karachi:

Dated: 17-5-2010

**IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI  
[APPELLATE JURISDICTION]**

Criminal Acquittal Appeal No. \_\_\_\_\_ of 2010

Mano Bheel & Another.....Appellants

Versus

The State.....Respondent

**AFFIDAVIT IN SUPPORT OF THE MEMO OF THE APPEAL**

I, Mano Bheel, son of Kheero, Hindu, Adult, presently resident at Piler Centre, ST-001, Sector X, Sub-Sector V, Gulshan-e-Maymar, Karachi, do hereby state on oath as under:

1. I am the Appellant No.1 and I am well conversant with the facts of this case.
2. That the accompanying Appeal has been drafted and filed under the instructions of the Appellant No.1 and for the sake of brevity, the whole of the contents of the accompanying memo of Appeal may be read as a part of this Affidavit.
3. That unless the accompanying Appeal is allowed, the Appellant No.1 and the interest of justice will be irreparably prejudiced.
4. That whatever is stated above is true and correct to my knowledge and belief and the law as stated in the accompanying Appeal is believed to be correct in view of the advice received from my counsel.



DEPONENT

The deponent above named is known to me and is identified by me to the Commissioner for taking affidavits.



ADVOCATE

Solemnly affirmed before me at Karachi, this \_\_\_\_ day of \_\_\_\_\_, 2010, by the deponent above-named who has been identified to me by Mr. Nadeem Ahmed, Advocate, who is personally known to me.

COMMISSIONER FOR TAKING AFFIDAVITS

The contents of the abovementioned Affidavit has been truly and audibly read over to the deponent in my presence in his native language, as the deponent is not well conversant in the English language and is also blind. He appears perfectly to have understood the contents of the abovementioned Affidavit and affirmed these contents in my presence.

COMMISSIONER FOR TAKING AFFIDAVITS

**IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI  
[APPELLATE JURISDICTION]**

Criminal Acquittal Appeal No. \_\_\_\_\_ of 2010

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**AFFIDAVIT IN SUPPORT OF THE MEMO OF THE APPEAL**

I, Anwer, son of Hameer and Dharmi, Hindu, Adult, presently resident at Piler Centre, ST-001, Sector X, Sub-Sector V, Gulshan-e-Maymar, Karachi, do hereby state on oath as under:

1. I am the Appellant No.2 and I am well conversant with the facts of this case.
2. That the accompanying Appeal has been drafted and filed under the instructions of the Appellant No.2 and for the sake of brevity, the whole of the contents of the accompanying memo of Appeal may be read as a part of this Affidavit.
3. That unless the accompanying Appeal is allowed, the Appellant No.2 and the interest of justice will be irreparably prejudiced.
4. That whatever is stated above is true and correct to my knowledge and belief and the law as stated in the accompanying Appeal is believed to be correct in view of the advice received from my counsel.



DEPONENT

The deponent above named is known to me and is identified by me to the Commissioner for taking affidavits.

ADVOCATE

Solemnly affirmed before me at Karachi, this \_\_\_\_ day of \_\_\_\_\_, 2010,  
by the deponent above-named who has been identified to me by Mr. Nadeem Ahmed,  
Advocate, who is personally known to me.

COMMISSIONER FOR TAKING AFFIDAVITS

The contents of the abovementioned Affidavit has been truly and audibly read over to the deponent in my presence in his native language, as the deponent is not well conversant in the English language and is also blind. He appears perfectly to have understood the contents of the abovementioned Affidavit and affirmed these contents in my presence.

COMMISSIONER FOR TAKING AFFIDAVITS