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JUDGMENT SHEET

LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI

JUDICIAL DEPARTMENT

W.P. No.1837 of 2023

Mohsin Ali *vs.* Mst. Sidra Bibi, etc.

J U D G M E N T

Date of Hearing:	12.10.2026
Petitioner by:	Malik Adnan Khalid, Advocate.
Respondents No.1 and 2 by:	Mr. Zahid Ahmad Raja, Advocate.

Anwaar Hussain, J. The question arising in this constitutional petition is whether a decree for recovery of the gold ornaments can be sustained upon proof, or an apparent admission, of their having been given to the wife, without independently establishing that they were subsequently taken away or retained by the husband or his family. The distinction assumes significance where the Courts below have concurrently decreed recovery of six *tola* of gold ornaments, notwithstanding the dispute concerning their quantity and the evidence of their alleged snatching.

2. Briefly, respondent No.1 ("**the respondent**") instituted a suit on 17.05.2019 ("**the First Suit**") seeking dissolution of marriage through *Khula*, maintenance for herself and respondent No.2 ("**the minor**"), and recovery of dowry articles. Although she alleged that her gold ornaments had been snatched, neither their quantity was specified nor was their recovery expressly

sought. The petitioner, while contesting the suit, maintained that he had given the respondent gold ornaments weighing 17 grams 250 milligrams, which she was liable to return upon seeking *Khula*. Subsequently, on 17.10.2019, the respondent instituted another suit ("**the Second Suit**") for recovery of six *tola* of gold ornaments, alleging that they had been given in the presence of witnesses and subsequently snatched, without identifying such witnesses. A petition concerning custody (*Hizanat*) of the minor was also filed by the petitioner. The proceedings were consolidated and, after recording evidence, the Trial Court, *vide* judgment and decree dated 19.10.2022, granted, *inter alia*, recovery of six *tola* of gold ornaments to the respondent. The parties preferred separate appeals. The Appellate Court below dismissed the respondent's appeal and partly allowed that of the petitioner by modifying the visitation schedule of the minor, while maintaining the decree concerning the gold ornaments.

3. At the outset, learned counsel for the petitioner states that he does not press the petition in respect of maintenance, dowry articles, custody and other ancillary reliefs. He has confined his challenge to the recovery of the gold ornaments. He submits that the Courts below failed to distinguish between the quantity of the ornaments allegedly given and their subsequent snatching. Contends that the Trial Court inferred snatching principally from the petitioner's failure to establish his absence from the matrimonial home when the respondent left, whereas the Appellate Court below affirmed that finding without independently examining the evidence.

4. Conversely, learned counsel for the respondent supports the impugned judgments, submitting that the petitioner did not enter the witness box and instead got examined his mother as special attorney. Adds that during her cross-examination, a suggestion concerning six *tola* of gold ornaments having been given to the respondent was put to her, which she denied that indicates that the petitioner acknowledges such settlement. According to the learned counsel, the suggestion establishes the quantity of the ornaments and the allegation of snatching remained materially unchallenged in cross-examination.

5. Arguments heard. Record perused.

6. This Court is conscious of the limitations governing its constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, particularly in family matters, where the legislative scheme contemplates expeditious adjudication and accords finality to the factual determinations made by the statutory forums. The High Court cannot assume the role of a second appellate forum merely because another view of the evidence is possible. Yet, such judicial restraint cannot be mistaken for the judicial abdication. Finality presupposes findings reached through a legally sustainable process of adjudication; it cannot immunise conclusions resting on conjecture, material misreading or non-reading of evidence, or a manifestly erroneous application of the burden of proof. Equally, the relaxation of technical rules of evidence in respect of the family litigation in terms of Section 17 of the Family Courts Act, 1964, does not dispense with the obligation to evaluate the material before the

Courts below, and draw conclusions rationally supported by it. The distinction is between reappraising evidence to substitute a different factual conclusion and examining whether the conclusion already reached has a legally sustainable evidentiary foundation. The former is impermissible; the latter remains an exceptional exercise of the judicial review where the defect is so patent and material that allowing the finding to stand would occasion a miscarriage of justice. The question, therefore, is whether the concurrent finding concerning recovery of six *tola* of gold ornaments satisfies this standard.

7. Having above legal analysis in sight, the factual matrix and evidentiary resume of the case mandates scrutiny. The First Suit contained an allegation of snatching, without specifying the quantity of the gold ornaments or seeking their recovery. The petitioner, in response, acknowledged giving her ornaments weighing 17 grams 250 milligrams and claimed their return, on account of *Khula*. It was only through the Second Suit that the respondent claimed six *tola* of gold, alleging that the ornaments had been given in the presence of witnesses and were later snatched. The distinction is material. The petitioner's acknowledgment concerning 17 grams 250 milligrams of the gold ornaments could not, without further evidence, establish delivery of six *tola*. Nor could the proof that the ornaments had been given establish that they were subsequently taken away. The quantity of the ornaments and their alleged deprivation were separate facts in issue, each requiring determination upon the evidence.

8. The suggestion put during cross-examination to the petitioner's mother, who appeared as his special attorney, does not resolve either question. A suggestion denied by a witness does not, merely by being put, constitute an admission by that witness of the fact suggested. Its evidentiary significance must be assessed in the context of the testimony and the case advanced by the party putting it. Even assuming that the suggestion lends support to the assertion that six *tola* of gold ornaments had been given, it does not establish their subsequent snatching or retention by the petitioner or his family. The distinction between the giving of ornaments and their alleged deprivation cannot be displaced by treating a suggestion concerning one as proof of the other.

9. Gold ornaments given to a wife ordinarily constitute her personal property and it is presumed that those are always possessed by her. Their recovery from the husband, however, requires a factual foundation establishing that they came into his possession or were wrongfully taken or retained by him or persons for whose conduct liability is sought to be fastened upon him. The principles recognised in cases reported as *Javed Iqbal v. Additional District Judge, Faisalabad and another* (**2017 CLC Note 25**) and *Muhammad Saeed v. Additional District Judge and others* (**2019 CLC 1008**) are referred to in this regard. There is no cavil that the respondent was not required to prove snatching through any particular form of evidence; nevertheless, the conclusion had to emerge from a rational appraisal of the testimony and the surrounding circumstances and the burden of proof was heavily on the respondent.

10. The Trial Court, instead of identifying affirmative material establishing the alleged snatching, attached decisive significance to the petitioner's failure to prove that he was absent from the matrimonial home when the respondent left. This approach reverses the proper sequence of the inquiry. The petitioner could be called upon to answer evidence of snatching once a sufficient factual foundation had been laid; his inability to establish an *alibi* could not itself supply that foundation. The Appellate Court below, while maintaining the decree, to the extent of gold ornaments, did not adequately address this distinction or independently examine the evidentiary basis for the alleged snatching.

11. As examined hereinabove, the relaxation of evidentiary rules concerns the manner of proving a claim; it does not dispense with the elementary obligation to identify, with reasonable particularity, the property claimed or the factual basis of the liability asserted. Equally, a presumption may bridge an evidentiary gap where the established circumstances reasonably support the inference; it cannot create the foundational fact upon which the inference itself depends. Thus, while the recovery of the jewellery or the dowry articles need not invariably be supported by the purchase receipts or an exhaustive inventory, the claim must possess sufficient specificity to permit a rational determination of entitlement and liability. In the present case, the respondent, in the First Suit, alleged snatching without specifying the quantity of the gold ornaments or seeking their recovery. Even in the Second Suit, while claiming six *tola* of gold ornaments, she did not mention the names of witnesses allegedly

present when the ornaments were given or subsequently snatched. When confronted, learned counsel for the respondent had no explanation as to why detail of gold ornaments was not given in the First Suit, more-so, when these ornaments are neither claimed on strength of the *Nikahnama* nor as part of the dowry articles. While an item-wise description is not an indispensable requirement in family proceedings, the absence of even a general identification of the jewellery assumes significance where its quantity and subsequent deprivation are both seriously disputed.

12. No doubt, the respondent entered the witness box, however, her testimony remained the sole evidence supporting the alleged snatching. This did not, by itself, render her testimony insufficient, but required its evaluation in the light of above referred omissions and the attending circumstances. The petitioner's acknowledgment remained confined to 17 grams 250 milligrams, whereas the disputed quantity was sought to be inferred from a suggestion in cross-examination. Likewise, the failure to establish absence of the petitioner from the matrimonial home could not supply affirmative proof of snatching. Even assuming that six *tola* of gold ornaments had been given, their subsequent deprivation remained a distinct fact requiring a sustainable evidentiary foundation. The Courts below failed to maintain this essential distinction. This Court is of the opinion that the exclusion of strict rules of evidence from family proceedings does not authorize findings upon conjectures or an inversion of burden of proof.

13. The cumulative effect of the pleadings, evidence and conduct of the parties establishes that six *tola* of gold ornaments were neither proved to have been given to the respondent nor subsequently snatched by the petitioner. The only quantity acknowledged by the petitioner was 17 grams and 250 milligrams, admittedly given as a bridal gift, whose return was sought in lieu of dower upon dissolution of the marriage through *Khula*. Such a gift, however, cannot be converted into dower or ordered to be returned in lieu thereof merely because the marriage was dissolved through *Khula*. Consequently, neither the claim for six *tola* of gold ornaments nor the alternative claim for return of the acknowledged bridal gift is made out.

14. The concurrent findings concerning six *tola* of gold ornaments thus suffer from a material defect in the appreciation of evidence. The respondent's claim could not be decreed merely upon an inference concerning the quantity of ornaments without a sustainable finding that they were subsequently taken away or retained by the petitioner. The Appellate Court below's general affirmation did not cure that deficiency. Interference is, therefore, warranted not because this Court prefers another possible view of the facts, but because the inference supporting the decree lacks the necessary evidentiary foundation.

15. Consequently, this constitutional petition is partly accepted. The impugned judgments and decrees, to the extent they grant recovery of six *tola* of gold ornaments to the respondent, are set aside. The remaining findings and reliefs concerning maintenance, dowry articles, custody (*Hizanat*) and

other ancillary matters, having not been pressed before this Court, remain undisturbed.

16. **Disposed of** in above terms.

(**ANWAAR HUSSAIN**)
JUDGE

Approved for reporting.

Judge

Announced in open court and,
dictated on the same date, however,
finalized on 22.10.2026.

Maqsood/Akram