IN THE HIGH COURT OF SINDH CIRCUIT COURT AT HYDERABAD

Criminal Appeal No. S-42 of 2025

Criminal Appeal No. S-45 of 2025

Criminal Appeal No. S-46 of 2025

For Appellants:	Munawar Hussain son of Ghulam Qadir Rajpar, 2) Muhammad Luqman son of Abdul Ghani Mahar, 3) Shoukat Ali son of Dhani Bux Wassan, 4) Ali Nawaz son of Muhammad Siddique Dahri, 5) Kirshan Chand son of Neto Bheel and 6) Muhammad Nadeem son of Shahmeer Khan Kumbhar through M/s. Ishrat Ali Lohar, G.M. Laghari, Zulfiqar Ali and Jaleel Ahmed Memon, Advocates
For the Respondent/State:	Ms. Sana Memon, A.P.G.
Date of hearing:	12-08-2025
Date of Judgment:	28-08-2025

JUDGMENT

Jan Ali Junejo, J. --- This consolidated judgment addresses three criminal appeals, namely Criminal Appeal No.S-42 of 2025, Criminal Appeal No.S-45 of 2025, and Criminal Appeal No.S-46 of 2025, all stemming from the judgment dated 30.06.2025 (hereinafter referred to as the *"Impugned Judgment"*) passed by the learned 1st Additional Sessions Judge/MCTC Tando Adam (hereinafter referred to as the *"Trial Court"*) in Sessions Case No.934/2023. The appellants, all police officials, were convicted under Section 223 of the Pakistan Penal Code (PPC) and sentenced to two years' simple imprisonment with a fine of Rs.10,000/- each. The fine shall be recoverable as arrears of land and in case of failure they shall undergo for one month S.I and benefit of section 382-B PPC is extended to all accused.

2. The prosecution case, in brief, is that on the night intervening 01/02.09.2023, two under-trial prisoners namely Wazeer and Soomar, confined in the police lockup of Police Station Jam Nawaz Ali in connection with Crime No.24/2023 under Sections 302, 201, 34 PPC, allegedly escaped by breaking an iron rod of the lockup between 01:30 a.m. and 02:30 a.m. The Appellants, being duty officials at the police station, were accused of negligence in allowing such escape, while co-accused Wazeer and Soomar were charged with resistance to lawful custody. The FIR was lodged by ASI Allah Bux, who claimed that upon his return from patrol he found the lockup broken and the prisoners missing. After usual investigation, the Appellants were sent up for trial under Section 223 PPC, and the prisoners under Section 224 PPC.

3. Thereafter, a formal charge was framed against them, to which they pleaded not guilty and claimed to be tried. In order to discharge its burden of proof, the prosecution examined the following witnesses and produced documentary evidence as under:

- **PW-1 ASI Allah Bux (Complainant at Exh.11):** He reiterated the version set forth in the FIR and produced Roznamcha entries Nos.22, 23 and 9 (Exh.11/A & Exh.11/B), as well as the FIR (Exh.11/C). He stated that when he returned from patrolling duty he found the lockup broken and the accused Wazeer and Soomar missing. In cross-examination, he admitted that all duty officials were present at the police station at the relevant time but denied the suggestion that the accused were concealed by police in bushes during a protest outside the police station. He admitted that he was not available at PS when offence was committed.

- **PW-2 PC Abdul Haleem (Exh.12):** He deposed that he was present on duty and generally supported the prosecution version, but failed to name the mashirs of the memos. On being declared hostile by the learned DDPP, he admitted that accused Wazeer and Soomar were confined in the police lockup in Crime No.24/2023 and that he signed the memo of the broken lockup. In cross-examination by defence, he admitted that he was the only mashir, acknowledged that a protest rally was going on, and further admitted that the boundary wall of the police station was broken and vehicles were parked inside.

- **PW-3 PC Lakhadino (Exh.13):** He stated that on 01.09.2023 he accompanied SHO Munawar for patrolling and returned to the police station at about 0100 hours. At about 0215/0230 hours he again left for patrolling with ASI Allah Bux when he received a call that the accused had escaped from the lockup. Upon returning, he observed that the prisoners had fled away. He also stated that no police official was available at the lockup except one constable. He was not cross-examined by either side.

- **PW-4 SIP Umed Ali (Investigating Officer at Exh.14):** He produced the memo of place of offence (Exh.14/A), daily diary entries Nos.11 & 16 (Exh.14/B), entry No.7 (Exh.14/C), and entry No.10 (Exh.14/D). He stated that memos were written by PC Dileep Kumar on his dictation. In cross-examination, he admitted that a protest rally was held outside the police station, that negotiations were conducted, and that the boundary wall of the police station was broken. He, however, denied that the lockup was already broken prior to the incident.

After the above evidence, the prosecution closed its side vide statement at Exh.15.

4. The statements of all accused were recorded under Section 342 Cr.P.C. at Exh.16 to 23. They denied the allegations, asserted false implication, and claimed innocence. None of the accused opted to examine themselves on oath under Section 340(2) Cr.P.C. nor did they lead any defence evidence. The learned trial Court, after hearing both sides, convicted the Appellants namely HC Kirshan Chand, HC Shoukat Ali, PC Ali Nawaz, PC Nadeem, SHO SIP Munwar Hussain and WHC Muhammad Luqman under Section 223 PPC and sentenced them to two years' simple imprisonment with fine of Rs.10,000/- each, while co-accused Soomar and Wazeer were convicted under Section 224 PPC. The benefit of Section 382-B Cr.P.C. was extended to all convicts.

5. Learned counsel for the Appellants argued that the impugned judgment is opposed to facts and law, having been passed without proper appreciation of evidence. He submitted that the prosecution witnesses are

contradictory and unreliable: PW-2 was declared hostile and admitted facts favouring the defence, while PW-3 gave a version inconsistent with PW-1 regarding the presence of duty officers. He emphasized that the Investigation Officer admitted the protest rally, broken boundary wall, and negotiations, all of which were ignored by the trial Court. It was further urged that material witnesses, namely WPC Zulfiqar Ali (present at the police station at the relevant time) and PC Dileep Kumar (scribe of the memos), were withheld, which vitiates the prosecution case. Learned counsel argued that Roznamcha entries were unendorsed in violation of Rule 22.49(c) of Police Rules, 1934, and hence inadmissible. He further submitted that the trial Court unlawfully relied on an inquiry report of SSP Sanghar dated 30.10.2024, which was never supplied to the Appellants under Section 265-C Cr.P.C., never produced or exhibited in prosecution evidence, nor confronted in statements under Section 342 Cr.P.C., thereby violating Article 10-A of the Constitution. He contended that the defence plea is plausible, supported by admitted facts of protest and broken wall, and cannot be brushed aside. It is further argued that even a single reasonable doubt entitles acquittal. On these grounds, acquittal of the Appellants was prayed for.

6. On the other hand, Ms. Sana Memon, learned Assistant Prosecutor General, supported the impugned judgment and argued that the prosecution has successfully proved its case beyond reasonable doubt. She contended that it is an admitted fact that accused Soomar and Wazeer escaped from police custody, which itself constitutes the offence, and that the Appellants, being duty officials, are liable for negligence under Section 223 PPC. She further argued that the evidence of police officials is as good as that of any independent witness, and in the absence of any allegation of malafide or enmity, their testimony cannot be discarded. Learned A.P.G. submitted

that documentary evidence, such as Roznamcha entries and memos, corroborates the ocular account, and that the trial Court rightly convicted the accused upon proper appraisal of evidence. She, therefore, prayed for dismissal of the appeal.

7. I have given due consideration to the submissions advanced by the learned counsel for the Appellants as well as the learned A.P.G. for the State, and have carefully and thoroughly examined the entire evidence available on record. The most critical procedural infirmity in the trial Court's proceedings is its reliance on the inquiry report from the SSP Sanghar, dated 30.10.2024. It is an undisputed fact that this report, which was explicitly used by the trial Court to hold police officials responsible and declare them delinquent was never supplied to the appellants in terms of Section 265-C, of the Code of Criminal Procedure, 1898 (Cr.P.C.). Section 265-C, Cr.P.C. is succeeded by Section 265-D, Cr.P.C., which pertains to the framing of charge after the Court has perused the police report or, as the case may be, the complaint together with all other documents and statements filed by the prosecution. For a proper appreciation of the scheme and intent of these provisions, the text of Sections 265-C and 265-D, Cr.P.C. is reproduced hereunder:

> ***"265-C. Supply of statements and documents to accused. (1) In all cases instituted upon police report, copies of the following documents shall be supplied free of cost to the accused not later than seven days before the commencement of the trial, namely:***
>
> ***(a) the first information report;***
>
> ***(b) the police report;***
>
> ***(c) the statements of all witnesses recorded under S.161 and 164, and***
>
> ***(d) the inspection note recorded by an investigating officer on his first visit to the place of occurrence and the note recorded by him on recoveries made, if any:***
>
> ***Provided that, if any part of a statement recorded under section 161 or section 164 is such that its disclosure to the accused would be inexpedient***

in the public interest, such part of the statement shall be excluded from the copy of the statement furnished to the accused.

(2) In all cases instituted upon a complaint in writing:

(a) the complaint shall;

(i) state in the petition of complaint the substance of the accusation, the names of his witnesses and the gist of evidence which is likely to adduce at the trial, and

(ii) within three days of the orders of the Court under section 204 for issue of process to the accused, file in the Court for supply to the accused, as many copies of the complaint and any other document which he has filed with his complaint as the number of the accused; and

(b) copies of the complaint and any other documents which the complainant has filed therewith and the statements under section 200 or section 202 shall be supplied free of cost to the accused not later than seven days before the commencement of the trial".

"265-D. When charge to be framed: If, after perusing the police report or, as the case may be, the complaint, and all other documents and statements filed by the prosecution, the Court is of opinion that there is ground for proceeding with the trial of the accused it shall frame in writing a charge against the accused".

Section 265-C Cr.P.C. mandates the supply of all documents and statements on which the prosecution proposes to rely, including any material that may be incriminating to the accused. The purpose of this provision is to ensure a fair trial by providing the accused with adequate opportunity to prepare their defense and to challenge the evidence against them. The non-supply of an incriminating document, especially one that the trial court explicitly relies upon for conviction, constitutes a grave violation of this mandatory provision. Section 265-D, Cr.P.C. provides that when a case is registered on a police report and the accused is brought before the Court, a formal charge shall be framed in writing after compliance with Section 265-C, Cr.P.C., which requires supply of the police report and all relevant documents to the accused. The expression ***"…and all other documents and statements filed by the prosecution"*** occurring in Section 265-D, Cr.P.C. carries significant legal weight. It requires the trial Court to not only the police report but also the complete set of documents and

statements forming the foundation of the prosecution case and relied upon to establish the charge. Such comprehensive perusal ensures that the Court applies its judicial mind to the entirety of the incriminating material before determining whether sufficient grounds exist to proceed with the trial. Failure to examine these documents in their entirety renders the framing of charge mechanical and contrary to the spirit of Section 265-D, Cr.P.C., besides undermining the guarantee of fair trial enshrined under Article 10-A of the Constitution. It is well-settled principle of law that any material used against an accused must be brought on record in accordance with the law, and the accused must be afforded an opportunity to rebut or explain such material. Reliance on a document that is *dehors* the record and has not been subjected to the rigors of a fair trial process is an alien procedure to the Code of Criminal Procedure and renders the conviction unsustainable.

8. Furthermore, this incriminating document was neither produced nor exhibited during the prosecution evidence, thereby depriving the appellants of their fundamental right to cross-examine the contents and the maker of the inquiry report. Crucially, the contents of this inquiry report were also not confronted to the appellants while recording their statements under Section 342 Cr.P.C. Moreover, Section 342 Cr.P.C. requires that all incriminating evidence and circumstances appearing against the accused in the prosecution evidence must be put to them during their examination, enabling them to offer an explanation. The failure of the trial court to confront the appellants with the contents of the SSP Sanghar's inquiry report during their Section 342 Cr.P.C. statements further vitiates the trial. This omission directly impinges upon the appellants' right to a fair trial, as enshrined in Article 10-A of the Constitution of the Islamic Republic of Pakistan. Article 10-A unequivocally guarantees every person the right to a fair trial and due process in the determination of civil rights and obligations

or in any criminal charge. A trial where incriminating material is withheld from the accused and not confronted to them cannot, by any stretch of imagination, be considered fair or in accordance with due process. In similar circumstances, the Honourable Supreme Court of Pakistan, in Case of ***Muhammad Shah v. The State (2010 SCMR 1009)***, held that: *"It is not out of place to mention here that both the Courts below have relied upon the suggestion of the appellant made to the witnesses in the cross-examination for convicting him thereby using the evidence available on the record against him. It is important to note that all incriminating pieces of evidence, available on the record, are required to be put to the accused, as provided under section 342, Cr.P.C. in which the words used are "For the purpose of enabling the accused to explain any circumstances appearing in evidence against him" which clearly demonstrate that not only the circumstances appearing in the examination-in-chief are put to the accused but the circumstances appearing in cross-examination or re-examination are also required to be put to the accused, if they are against him, because the evidence means examination-in-chief, cross-examination and re-examination, as provided under Article 132 read with Articles 2(c) and 71 of Qanun-e-Shahadat Order, 1984. The perusal of statement of the appellant, under section 342, Cr.P.C., reveals that the portion of the evidence which appeared in the cross-examination was not put to the accused in his statement under section 342, Cr.P.C. enabling him to explain the circumstances particularly when the same was abandoned by him. It is well-settled that if any piece of evidence is not put to the accused in his statement under section 342, Cr.P.C. then the same cannot be used against him for his conviction. In this case both the Courts below without realizing the legal position not only used the above portion of the evidence against him, but also convicted him on such piece of evidence, which cannot be sustained".* The principle established by the Honourable Supreme Court of Pakistan in ***Muhammad Saddique v. State (2018 SCMR 71)*** is also relevant, wherein the Apex Court held that: *"Law on the subject is very much clear and settled that any peace of incriminating evidence must be put to accused in his*

statement under section 342, Cr.P.C. otherwise the same cannot be used against him".

9. Apart from the fatal procedural flaw and the violation of the right to a fair trial in relation to the inquiry report, the prosecution's case is marred by significant contradictions and inconsistencies. The testimonies of the prosecution witnesses (PWs) were mutually contradictory. For instance, PW-2 admitted hostile facts, including a broken boundary wall and ongoing public protest, while PW-3 provided a different account regarding the presence of duty officers. The Investigating Officer (IO) also confirmed the existence of a protest and a broken wall. These inconsistencies were not reconciled by the trial court and cast serious doubt on the veracity of the prosecution's narrative. It is a settled principle of criminal jurisprudence that contradictions and inconsistencies in material particulars, if not satisfactorily explained, weaken the prosecution case and entitle the accused to the benefit of doubt.

10. The prosecution also failed to examine crucial material witnesses, such as WPC Zulfiqar Ali, who was present at the police station at the relevant time, and PC Dileep Kumar, the alleged scribe of the memos. The unjustified withholding of material witnesses attracts an adverse presumption against the prosecution under Article 129(g), of the Qanun-e-Shahadat Order, 1984. It is inferred that had such witnesses been produced, their testimony would not have supported the prosecution's case. Reliance is placed on the dictum of the Honourable Supreme Court of Pakistan in ***Muhammad Qasim and others v. The State and others (2025 SCMR 880)***, wherein it was held that: *"The failure to produce such witnesses casts doubt on the veracity of the complainant's version and raises reasonable suspicion about the nature of the incident. The non-production of the above named material witnesses also amounts to withholding of best available evidence, therefore, an adverse inference*

within the meaning of Article 129 (g) of the Qanun-e-Shahadat Order, 1984 would be drawn against the prosecution that had these witnesses been produced they would not have supported the prosecution's case. Reliance in this regard is placed on the case of Mst. Saima Noreen v. The State (2024 SCMR 1310)".

11. The defense advanced a plausible plea that the accused prisoners were hidden in bushes during a public protest to avoid mob violence, a version supported by the admitted facts of a broken boundary wall, a rally, and protest negotiations. The trial Court failed to adequately consider this probable defense version, which is contrary to the settled law that a plausible defense plea, if supported by circumstances, must be given due weight. The mechanical reproduction of the prosecution version and the disregard for the defense plea indicate a lack of independent judicial mind applied to the facts of the case.

12. The cumulative effect of the aforementioned procedural irregularities, contradictions in evidence, non-examination of material witnesses, defective documentary proof, and the disregard for a plausible defense plea, leads this Court to conclude that the prosecution has failed to prove its case against the appellants beyond a reasonable doubt. It is a well-established principle of criminal law, reiterated in numerous judgments of the superior courts, that any single reasonable doubt in the prosecution's case entitles the accused to the benefit of doubt, not as a matter of grace or concession, but as a matter of right. In the present case, multiple doubts have arisen, all of which must be resolved in favor of the appellants.

13. In light of the foregoing, this Court finds that the impugned judgment of the learned trial Court suffers from grave legal and procedural infirmities. The conviction and sentence passed against the appellants cannot be sustained, primarily due to the non-supply and non-confrontation of the

incriminating inquiry report, which constitutes a fundamental violation of their right to a fair trial. The prosecution's evidence, riddled with contradictions and inconsistencies, further fails to inspire confidence. The benefit of doubt, therefore, must be extended to the appellants. The Hon'ble Supreme Court of Pakistan has, in a catena of judgments including case of ***Muhammad Riaz and others v. The State (2024 SCMR 1839)***, reiterated the principle that if a single circumstance creates reasonable doubt in the prosecution case, the benefit must go to the accused, for the presumption of innocence is a fundamental right. It was observed that: *"To extend the benefit of doubt it is not necessary that there should be so many circumstances… if one circumstance is sufficient to discharge and bring suspicion in the mind of the court that the prosecution has faded up the evidence to procure conviction then the court can come forward for the rescue of the accused person. Denial Boyd (Muslim name Saifullah) and another versus the State 1992 SCMR 196. Mst. Asia Bibi versus the State and others (PLD 2019 SC 64) and Muhammad Imran versus the State (2020 SCMR 857)".*

14. In view of the findings and reasons recorded hereinabove, and having examined the entire evidence and legal position in their proper perspective, the present Criminal Appeals are decided in the following terms:

(i) Criminal Appeal No.S-42 of 2025 is allowed. The impugned judgment dated 30.06.2025 passed by the learned 1st Additional Sessions Judge/MCTC Tando Adam in Sessions Case No.934/2023, so far as it pertains to Appellants Munawar Hussain and Muhammad Luqman, is hereby set aside. They are acquitted of the charge under Section 223 PPC and shall be released forthwith if not required in any other case;

(ii) Criminal Appeal No.S-45 of 2025 is allowed. The impugned judgment dated 30.06.2025 passed by the learned 1st Additional Sessions Judge/MCTC Tando Adam in Sessions Case No.934/2023, so far as it pertains to Appellants Shoukat Ali, Ali Nawaz, and Kirshan Chand, is hereby set aside. They are acquitted of the charge under Section 223 PPC and shall be released forthwith if not required in any other case;

(iii) Criminal Appeal No.S-46 of 2025 is allowed. The impugned judgment dated 30.06.2025 passed by the learned 1st Additional Sessions Judge/MCTC Tando Adam in Sessions Case No.934/2023, so far as it

pertains to Appellant Muhammad Nadeem, is hereby set aside. He is acquitted of the charge under Section 223 PPC and shall be released forthwith if not required in any other case.

Copies of this judgment shall be transmitted to the learned trial Court and the concerned jail authorities for immediate compliance.

JUDGE