

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
LARKANA**

Criminal Jail Appeal No.S-21 of 2024

Appellant : Khalid @ Khalid Hussain Junejo
Through Mr. Asif Ali Abdul Razak Soomro,
Advocate

Complainant: Zahid Ali Channo
Through Mr. Abdul Haseeb Khuhro,
Advocate

The State : Through Mr. Nazir Ahmed Bhangwar,
Deputy Prosecutor General, Sindh

Date of hearing: 07-05-2025

Date of Judgment: 16-05-2025

JUDGMENT

Jan Ali Junejo, J;- This Criminal Jail Appeal is directed against the judgment dated 15.04.2024 (hereinafter referred to as the "*Impugned Judgment*") passed by learned III-Additional Sessions Judge, Shikarpur (*Trial Court*), in Sessions Case No. 594 of 2021, arising out of Crime No. 28 of 2021, registered at Police Station, Gaheja, under Section 397 of the Pakistan Penal Code, whereby appellant Khalid Hussain alias Khalid was convicted and sentenced to undergo seven years' rigorous imprisonment, with benefit of Section 382-B Cr.P.C, for having committed the robbery in concert with co-accused persons.

2. Briefly stated, the prosecution case originates from an FIR registered on 17.07.2021, at approximately 1530 hours, at Police Station Gaheja, by complainant Zahid Ali Channa, wherein he has mentioned that on 16.07.2021, at around 06:00 p.m, while he alongwith PWs Khan Bahadur and Nasrullah were present at Sukkur Bus Stand, accused Yousuf and Sudheer hired his rickshaw in a fare of Rs. 900/- to travel to Gaheja. Upon reaching near to village, the complainant was asked to stop and the accused told him that their family

members were to arrive. Shortly, thereafter accused Khalid Hussain alias Khalid (present appellant) purportedly arrived on a motorcycle, duly armed with a T.T pistol, who brandished the weapon, tied the complainant's hands and threw him into nearby bushes. Accused Yousuf and Sudheer then snatched Rs.600/- and complainant's CNIC from his pocket and then went away from the scene, taking away complainant's rickshaw. The complainant then returned to his home after arranging conveyance and on the following day, he reported the incident with police.

3. After registration of FIR, the investigation officer on completion of usual investigation submitted the final report/challan under section 173 Cr.PC before the concerned Court. The present appellant pleaded not guilty to the charge framed against him before learned trial Court and claimed trial.

4. In order to prove its case, the prosecution examined four witnesses. PW-1 Complainant Zahid Ali at Exh.09, he deposed in line with the FIR and described the robbery allegedly committed by the appellant with co-accused on 16.07.2021 and produced the FIR at Exh.09/A. PW-2 eye-witness Khan Bahadur, brother of the complainant at Exh.10, corroborated his version to the extent of being informed by the complainant to post-incident and stated that he accompanied him for lodging the FIR. PW-3 Javed at Exh.11, another relative of the complainant, who acted as a mashir and testified the inspection of the place of incident and produced such memo at Exh.11/A. PW-4 Abdul Rasheed, the Investigating Officer at Exh.12, deposed regarding registration of the FIR, site inspection, recording of 161 Cr.P.C statements, and recovery of robbed case property viz. rickshaw from an open plot in Village Qubo and produced memo of recovery and memo of arrest of accused at Exh.12/A and Exh.12/B. After examining all prosecution witnesses, the learned DDPP closed the side of prosecution vide statement kept on record at Exh.13.

5. Accused/appellant in his statement recorded under Section 342 Cr.P.C at Exh.14, denied the allegations in toto and claimed his false implication at the behest of the police. He did not opt to examine himself on oath under Section 340(2) Cr.P.C nor did he led any evidence in his defence.

6. The learned trial Court after hearing parties counsels delivered the judgment dated 15.04.2024, which the appellant has impugned before this Court by preferring the instant appeal.

7. Per learned defence counsel, the impugned judgment is unsustainable in law and is passed without considering the material contradictions in the case; that the FIR was lodged with considerable delay; that all the witnesses are closely related inter-se and no independent witness was associated from the place of alleged incident; that material contradictions with regard to time of meeting at the bus stand, the time of return home by the complainant, and inconsistencies about who accompanied them, all these have rendered the prosecution version unreliable; that the recovery of robbed Rickshaw was not effected from the possession of present appellant, therefore, the prosecution has miserably failed to prove the guilt against the appellant beyond the shadow of reasonable doubt and in such circumstances the appellant is entitled to his acquittal.

8. Conversely, learned Deputy Prosecutor General who is assisted by learned counsel for the complainant while supporting the impugned judgment argued that the ocular account furnished by the complainant and his brother is totally consistent, credible, and confidence-inspiring; that the relationship between the complainant and the witnesses is no ground to disbelieve their testimony; that the delay in lodging the FIR has properly been explained by the complainant and that the recovery of the rickshaw has justified the involvement of the appellant with the commission of offence; that minor discrepancies in statements were

natural due to the lapse of time, which cannot affect the prosecution case. They lastly prayed for dismissal of the appeal.

9. On meticulous examination of the evidence brought on record and considering the arguments advanced by the counsel for the parties, it is evident that the conviction of the Appellant is primarily founded on the oral testimony of closely related witnesses and the alleged recovery of the complainant's rickshaw. However, the prosecution case is fraught with significant contradictions, inconsistencies, and procedural deficiencies that undermine its' credibility. The alleged incident took place approximately at 06:00 p.m on 16.07.2021, yet the FIR was not registered until 03:30 p.m, the following day—a delay of more than 21 hours. PW-1 (Complainant) admitted during his cross-examination that he neither reported the incident to any inhabitant of Gaheja nor he approached the nearest police station. No plausible explanation for such delay was offered. Such an inordinate delay, without justification, casted a serious doubt on the spontaneity and genuineness of the FIR and raised the possibility of deliberation or fabrication. The other contradictions emerged in the testimonies of PW-1 and PW-2 regarding the timeline. PW-1 claimed to have returned the home between 08:30 and 09:00 p.m, while PW-2 stated that the complainant came back at home after sunset prayer. Additionally, PW-1 testified that I reached at my house where PW Khan Bahadur was present while PW Nasrulah reached at house at about 10.00 or 11.00 p.m but his version is belied by PW-2, who testified that he and PW Nasrullah were present in the house when complainant reached at house and disclosed that robbery is committed from him. PW-1 further testified that he and PWs Khan Bahadur and Nasrullah reached at PS for lodging of FIR on rickshaw, which was driven by PW Khan Bahadur while the PW-2 has conflicted his version and deposed that he alongwith the complainant, PW Nasrullah and elder brother Haji Ayaz went to PS for lodging of FIR on motorcycle and Car

and that he was driving the motorcycle. During his examination-in-chief, the complainant categorically deposed that the appellant Khalid @ Khalid Hussain personally tied his hands and threw him into the bushes. However, in stark contradiction, during his cross-examination, he altered his own version by stating that it was co-accused Yousuf and Sudheer who tied his hands with a towel, while the appellant Khalid @ Khalid Hussain merely stood by his motorcycle. This material inconsistency regarding the specific role attributed to the appellant significantly undermines the reliability of the complainant's testimony and raised serious doubt about the accuracy of his narrative. Moreover, neither the complainant nor any of other prosecution witness produced or exhibited any registration documents or ownership papers of the robbed rickshaw during course of trial to substantiate the claim of the complainant. This lapse casted a serious dent in the case of prosecution. These discrepancies on material aspects have demolished the sanctity of evidence of the witnesses.

10. Turning to the point of recovery of the rickshaw, purportedly the case property, also suffers from procedural irregularities, in that the Investigating Officer candidly admitted that no independent witness was associated by him with the recovery process, and the mashirs were his subordinates. No effort was made at all to engage any local, neutral or individual despite the alleged recovery was effected from an open area adjacent to the village surrounded by number of houses. This omission violated the settled norms of criminal investigation and rendered the recovery unreliable. All the prosecution witnesses examined were blood relatives of the complainant. No independent witness was cited or produced either from the place of occurrence or from the Sukkur Bus Stand wherefrom the journey allegedly commenced. This lack of impartial and corroborative testimony further weakened the prosecution's version. It is also

notable that while the complainant provided specific details about the accused—including their full parentage but he failed to allege any motive, prior enmity, or plausible reason for involvement of the appellant, who was said to be well known to him, would commit such a grave offence. This glaring omission proved fatal to the prosecution's theory and rendered the incident inherently implausible.

11. In light of these factors, it is evident that the prosecution has failed to establish the guilt against the appellant beyond shadow of reasonable doubt. The material contradictions, absence of independent corroboration, procedural lapses, and unnatural conduct of the complainant collectively created sufficient doubt to make the appellant entitle to the benefit thereof. The reliance in this regard is placed on the authoritative pronouncement of the Honourable Supreme Court of Pakistan in *Muhammad Riaz and others v. The State and others (2024 SCMR 1839)*, wherein it was observed that;

“It is an established principle of law that to extend the benefit of the 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 persons”.

12. Given the foregoing deficiencies and legal infirmities, the Impugned Judgment passed by the learned Trial Court cannot be sustained on the touchstone of settled legal principles and is, therefore, liable to be set aside.

13. Based upon above discussion, I am of the considered view that the prosecution has failed to establish its case against the appellant beyond reasonable doubt, thus, the conviction and sentence recorded against appellant Khalid @ Khalid Hussain Junejo by learned trial Court, vide Impugned Judgment dated 15.04.2024, are hereby set aside, and the appellant is acquitted of the charged offence. The bail bond of the appellant present in Court on bail, stands cancelled and his surety is discharged.