

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Appeal No.S-06 of 2026

**Before:**

*Mr. Justice Ali Haider 'Ada'.*

Appellants : 1. Shah Nawaz @ Shahoo son of  
Abdullah Jamali  
2. Irfan son of Qammaruddin  
Mallah, *through* Mr. Habibullah  
G. Ghouri, Advocate.

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

Date of Hearing : 04.06.2026.  
Date of Decision : 04.06.2026.  
Date of Reasons : 10.06.2026.

**J U D G M E N T**

**ALI HAIDER 'ADA', J.-** Through the instant Criminal Appeal, the appellants, namely Shah Nawaz alias Shahoo and Irfan, have assailed the judgment dated 02.10.2025 passed by the learned Additional Sessions Judge-II, Mehar (hereinafter referred to as the "trial Court") in Sessions Case No.478 of 2025 arising out of FIR No.35 of 2025 registered at Police Station Kakar, District Dadu, for an offence punishable under section 397, P.P.C. By virtue of the impugned judgment, both the appellants were convicted and sentenced to suffer rigorous imprisonment for seven years each. They were extended the benefit of Section 382-B of the Cr.P.C.

2. Briefly stated, the prosecution case is that on 25.04.2025 at about 02:30 p.m., near Village Parial Qambrani, the accused persons allegedly intercepted the complainant, Zeeshan, who was travelling on a motorcycle along with his uncle, Ashiq Ali. It was alleged that the accused, while armed with weapons, robbed the complainant of cash amounting to Rs.13,000/- and a mobile phone, and also deprived Ashiq Ali of cash amounting to Rs.4,000/- and a mobile phone. The matter was subsequently reported to the

police, and FIR No.35 of 2025 came to be registered on 29.04.2025 at about 07:00 p.m. During the course of the investigation, the police prepared arrest memos showing that appellant Shah Nawaz alias Shahoo was arrested on 08.05.2025 and appellant Irfan on 12.05.2025. Upon completion of the investigation, the challan was submitted before the competent Court.

3. After taking cognizance of the matter, the learned trial Court framed charge against the appellants on 12.08.2025, to which they pleaded not guilty and claimed trial. In order to substantiate its case, the prosecution examined the complainant Zeeshan as PW-1, who produced the FIR. PW-2 Ashiq Ali, who was also a mashir, was examined and he exhibited the memo of inspection of the place of incident prepared on 30.04.2025 at about 09:00 a.m., as well as the mashirnama of arrest of the appellants. The prosecution further examined the Investigating Officer/author of the FIR as PW-3, who produced the relevant roznamcha entries about his movements and also brought on record certain previous FIRs allegedly registered against the appellants. Thereafter, the prosecution closed its side.

4. The statements of the appellants under section 342, Cr.P.C. were recorded, wherein they denied the allegations levelled against them, professed their innocence and claimed false implication. They neither examined themselves on oath under section 340(2), Cr.P.C. nor produced any witness in their defence. Upon conclusion of the trial, the learned trial Court, through the impugned judgment, convicted and sentenced the appellants as stated above.

5. Learned counsel for the appellants contended that the alleged occurrence had taken place in a populated locality, yet no independent witness was associated by the prosecution. He further argued that there was an unexplained delay in the

registration of the FIR; neither the robbed cash amount nor the mobile phones were recovered from the appellants; no weapon allegedly used in the commission of the offence was secured or connected with them; and that the appellants had been falsely implicated on account of previous enmity. Learned counsel maintained that the prosecution evidence suffers from material contradictions and inherent infirmities, rendering the conviction unsustainable in law. He, therefore, prayed for acquittal of the appellants.

6. Conversely, learned Deputy Prosecutor General supported the impugned judgment and submitted that the prosecution had successfully established its case through reliable ocular evidence. He argued that no motive had been attributed to the complainant party for falsely involving the appellants in such a serious offence and that the learned trial Court had rightly appreciated the evidence available on record while recording conviction.

7. It is noted that on 09.03.2026, the complainant Zeeshan appeared before this Court and raised no objection to the grant of relief to the appellants in the application filed under section 426, Cr.P.C. However, thereafter, he did not appear and the case proceeded with the assistance of the learned State counsel.

8. Heard the learned counsel for the parties and have carefully examined the material available on record.

9. According to the prosecution, both appellants, namely Shah Nawaz alias Shahoo and Irfan, were involved in the commission of a robbery wherein an amount of Rs.13,000/- was allegedly robbed from the complainant, while a further amount of Rs.4,000/- and mobile phones were allegedly taken from the complainant party at gunpoint. Since the charge against the appellants entails serious penal consequences, the prosecution case is required to be

examined with utmost care, caution and circumspection. It is a settled principle of criminal jurisprudence that the burden to establish the guilt of an accused person rests squarely upon the prosecution and such burden never shifts. In this regard, reference may be made to **Article 117 of the Qanun-e-Shahadat Order, 1984**, which unequivocally provides that the party asserting the existence of a fact bears the burden of proving the same. For ready reference, Article 117 of the Qanun-e-Shahadat Order, 1984, is reproduced as under:

**17. Burden of proof.**– (1) *Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.*

(2) *When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*

*Illustrations*

(a) *A desired a Court to give Judgment that B shall be punished for a crime which A says B has committed.*

*A must prove that B has committed the crime.*

(b) *A desires a Court to give judgment that he is entitled to certain land in the possession of B by reason of facts which he asserts, and which B denies to be true.*

*A must prove the existence of those facts.*

10. It is an admitted position emerging from the record that the alleged occurrence took place near Village Parial Qambrani. Despite the fact that the place of incident was not shown to be isolated or inaccessible, neither the complainant associated any independent person to witness the occurrence nor did the Investigating Officer make any sincere effort to secure the attendance of independent witnesses during the course of investigation. The prosecution evidence, therefore, remains confined to interested witnesses alone and lacks independent corroboration. In this regard, guidance may be sought from the case of **Javed Khan v. The State (2026 PCr.L.J. 351)**.

11. Another significant circumstance which adversely affects the prosecution case is the unexplained delay in lodging the FIR. Admittedly, the alleged occurrence took place on 25.04.2025 at about 02:30 p.m., whereas the FIR was registered on 29.04.2025 at about 07:00 p.m., after a delay of almost four days. The prosecution has failed to furnish any plausible, satisfactory, or convincing explanation for such considerable delay. The complainant himself admitted during his deposition that the FIR was lodged after due consideration and consultation. Such an admission assumes considerable importance, as it provides room for deliberation, consultation, embellishment, and even false implication of innocent persons. It is a settled principle of criminal jurisprudence that where an FIR is lodged after an unexplained delay, the possibility of concoction and fabrication cannot be lightly ignored. The prompt lodging of an FIR is intended to eliminate the chances of deliberation and to preserve the truthfulness of the prosecution version. Conversely, where there is an inordinate and unexplained delay in setting the criminal law into motion, the prosecution is under an obligation to satisfactorily explain the cause of such delay. Failure to do so creates a serious dent in the prosecution case and gives rise to a reasonable doubt regarding the authenticity of the allegations levelled against the accused persons. In the present case, the delay of four days remains unexplained from the record. In this regard, reliance may beneficially be placed upon the cases of **Bashir alias Bashoo v. The State (2025 YLR 1601)** and **Suleman v. The State (2025 YLR 677)**, wherein it was held that unexplained delay in the registration of the FIR is a circumstance which casts serious doubt upon the prosecution version and provides sufficient ground for extending the benefit of doubt to the accused.

12. It is also pertinent to observe that the Investigating Officer visited the place of occurrence on 30.04.2025 and

prepared the memo of inspection of the site on that date, whereas the FIR was registered on 29.04.2025. Thus, the place of incident was inspected after an unexplained lapse of one day. Such conduct on the part of the Investigating Officer is not only contrary to the settled principles governing fair investigation but is also inconsistent with **Rule 25.10 of the Police Rules, 1934**, which contemplates that the Investigating Officer should proceed to the scene of occurrence without unnecessary delay so as to ascertain the true facts, collect available evidence, and preserve material clues connected with the offence. For ready reference, Rule 25.10 of the Police Rules, 1934, is reproduced as under:

**25.10. Immediate dispatch of an officer to the spot.**- *When a report of a cognizable case is recorded and it is decided not to dispense with investigation under Section 157(b), Criminal Procedure Code, a police officer shall proceed to the scene immediately. The officer who first proceeds to the spot shall, if he be not competent to complete the investigation, take all possible steps to preserve the scene of the crime from disturbance, to record particulars of and secure the presence of potential witnesses, obtain information relating to the case and arrest the culprit.*

13. Another aspect of the case which merits consideration is that the Investigating Officer, during the course of his deposition, categorically stated that after registration of the FIR, the complainant produced the documents relating to the motorcycle allegedly being used at the time of the occurrence. He further deposed that he had recorded the statement under section 161, Cr.P.C. of one Nazir Ahmed, the original owner of the motorcycle, who had allegedly sold the same to the complainant. However, despite the fact that Nazir Ahmed was a material witness in relation to the ownership, the prosecution failed to produce him before the trial Court. No explanation whatsoever has been offered for withholding his testimony. Likewise, no documentary evidence regarding the transfer or sale of the motorcycle was brought on record

through lawful means to corroborate the prosecution version. Consequently, an important link in the chain of evidence remained unproved. It is a settled principle of law that where a party withholds the best available evidence or fails to produce a material witness without any justifiable cause, the Court may draw an adverse inference that had such evidence been produced, it would have gone against that party. The non-production of Nazir Ahmed, whose statement had admittedly been recorded during investigation and who was directly relevant to a material aspect of the prosecution case, creates a serious dent in the veracity of the prosecution story. The withholding of a material witness, without any plausible explanation, attracts the presumption envisaged under Article 129(g) of the Qanun-e-Shahadat Order, 1984. In this regard, reliance may aptly be placed upon the case of **Rasheed Ahmad alias Sheeda v. The State (2026 SCMR 798)**.

14. Moreover, the Investigating Officer, during his deposition, admitted that the complainant had produced documents relating to the motorcycle allegedly involved in the occurrence. However, despite having collected such documents during the course of investigation, the Investigating Officer neither produced nor exhibited the same before the trial Court. It is the primary duty of an Investigating Officer to place before the Court all material collected during investigation, so that the Court may arrive at a just and fair conclusion on the basis of the complete record. Mere reference to the existence of documents is not sufficient unless the same are produced and exhibited in accordance with law. The non-production and non-exhibition of the documents allegedly supplied by the complainant assume considerable significance in the facts and circumstances of the present case, particularly when the prosecution seeks to establish the identity of the property allegedly involved in the occurrence. The failure to place the best available

documentary evidence on record creates a gap in the prosecution case and further weakens its evidentiary worth. In this regard, reliance may be placed upon the case of **Ahmed Ali v. The State (2023 SCMR 781)**.

15. So far as the mobile phones allegedly robbed from the complainant party are concerned, it is noteworthy that the **Mobile Device Identification, Registration and Blocking Regulations, 2017** provide a comprehensive mechanism for reporting, tracing, blocking and recovering lost or stolen mobile devices through the relevant competent authorities. However, the record is noticeably silent as to whether the complainant ever approached the concerned authority for blocking or tracing the allegedly stolen mobile phones, or whether any effort was made by the investigating agency to obtain call data, tracking information, IMEI records, location details, or any other electronic evidence capable of corroborating the prosecution version. Likewise, no material has been brought on record to demonstrate that the SIM cards allegedly being used in the stolen devices were blocked or monitored after the occurrence. The failure of the prosecution and the investigating agency to avail the mechanism available under the law deprived the case of an important source of corroborative evidence, thereby further weakening the prosecution version.

16. Furthermore, the Investigating Officer produced copies of certain FIRs allegedly registered against the appellants. However, the mere registration or pendency of criminal cases against an accused person does not constitute evidence of guilt, nor can it be treated as a circumstance corroborating the prosecution case. The record does not reflect that the appellants had ever been convicted in those cases by any competent Court of law. It is a cardinal principle of criminal jurisprudence that every accused person is presumed to be innocent unless proven guilty through legally admissible

evidence and a lawful verdict rendered by a competent Court after a fair trial. Guidance in this regard is derived from the case of **Shahid Ali v. The State (PLD 2026 SC 126)**.

17. It is by now a well-settled principle of criminal law that the prosecution must stand on its own legs and prove its case against the accused beyond any shadow of reasonable doubt. Where any doubt arises from the evidence, the same must necessarily be resolved in favour of the accused. Reliance in this regard may also be placed upon the case of **Muhammad Amjad v. The State (2026 SCMR 921)**

18. For the foregoing reasons, this appeal was allowed through short order dated 04.06.2026, whereby the conviction and sentence recorded against the appellants Shah Nawaz alias Shahoo and Irfan vide judgment dated 02.10.2025 passed by the learned Additional Sessions Judge-II, Mehar, were set aside and they were acquitted of the charge. The jail authorities were directed to release the appellants forthwith, if not required to be detained in any other case. These are the detailed reasons in support of our short order dated 04.06.2026.

**JUDGE**