IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal Nos.339 & 340 of 2025

Appellant in both appeals	:	Hameed-ur-Rehman son of Ghulam Nabi *Through* M/s. Anwar Alam Subhani, Ubedullah Ghoto and Naeemuddin Chanchar, Advocates
Respondent	:	The State *Through* Ms. Najma Latif Golo, APG.
Date of hearing	:	26.10.2026
Date of judgment	:	12.11.2026

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. **-** Appellant Hameed-ur-Rehman, assails two judgments of even date, i.e. 28.02.2025, rendered by the learned IV Additional Sessions Judge, Karachi East, in Sessions Case No.1900/2024, arising out of FIR No.694/2023 for offence under Section 397 PPC, and Sessions Case No.1901/2024, arising out of FIR No.695/2023 for offence under Section 23(1)(a) of the Sindh Arms Act, 2013, both registered at Police Station Korangi Industrial Area, Karachi. By the former judgment, the appellant was sentenced to seven years' rigorous imprisonment under Section 397 PPC; by the latter, to seven years' rigorous imprisonment and a fine of Rs.20,000/-, or two months' simple imprisonment in default, under Section 23(1)(a) of the Sindh Arms Act, 2013. The benefit of Section 382-B Cr.P.C. was extended in both cases.

2. The prosecution case, briefly, is that on 12.05.2023, at about 12:30 a.m., complainant Kashif Adnan was allegedly deprived of his wallet containing Rs.3,000/- by an armed person in Street No.3, Sector 8/A, Hazrat Bilal Colony, Karachi. Upon an alarm being raised, the alleged offender was apprehended by residents and beaten. A police patrol headed by ASI Mazhar Hayat subsequently arrived, whereupon the appellant was allegedly handed over along with the robbed property and a .32-bore revolver containing two live rounds. Separate FIRs were registered for robbery and unlawful possession of the firearm. After investigation, the appellant was charged in both cases on 29.06.2024. The prosecution examined four witnesses in each trial, comprising the complainant, the arresting officer, a police mashir and the Investigating Officer. In his statements under Section 342 Cr.P.C., the appellant denied the

accusations and the alleged recoveries, pleading false implication. The trial Court nevertheless convicted him as aforesaid.

3. Learned counsel for the appellant, while reiterating the grounds of appeal and written synopses, principally questioned the identity of the offender, genuineness of the alleged recoveries, contradictions between the complainant and police witnesses, non-association of independent witnesses, deficient handling of case property and the reliance placed by the trial Court upon previous criminal cases. Learned Additional Prosecutor General represented the State. I have considered the respective positions and independently examined the evidence in both trials. The determinative question is whether the material relied upon by the prosecution establishes the appellant's participation in the robbery and his conscious possession of the alleged firearm beyond reasonable doubt.

4. The prosecution case under Section 397 PPC rests essentially upon the testimony of complainant Kashif Adnan (PW-1, Exh.3). His substantive account materially departed from the FIR. Whereas the FIR placed the occurrence outside his house, he testified that he had left home to procure medicine for toothache and reached an abandoned place about 200 paces away, where an individual emerged from darkness, possibly wearing a medical mask. These circumstances directly concern his opportunity to observe and identify the assailant. More significantly, although the FIR attributed the immediate apprehension of the culprit and delivery of the weapon and robbed property to the complainant, he stated before the trial Court that, after rescuing the apprehended person from public beating, he returned home to change his blood-stained clothes; upon coming back, he found that the police had already placed the person inside the police mobile. The police subsequently showed him a purse, which he identified as his own. Thus, his sworn testimony materially displaced the foundational assertion that he personally handed over the accused and recovered articles to the police.

5. The infirmity becomes more pronounced from the complainant's express inability to identify the appellant. He stated in examination-in-chief that, having seen the accused through video link, he could not recognize him. In cross-examination, he admitted that, notwithstanding his earlier statement under Section 161 Cr.P.C. concerning the pointing of a weapon, he had not actually seen any weapon in the assailant's hand. He further acknowledged darkness at the scene, the gathering of more than one hundred persons, the public beating of the apprehended individual, the

failure to secure his blood-stained clothes or other blood evidence, and the fact that the weapon was neither recovered nor sealed in his presence. These admissions concern the identity of the offender, the use of a deadly weapon and the authenticity of the alleged recovery; they cannot be relegated to the category of inconsequential discrepancies.

6. The learned trial Court discounted the complainant's failure to identify the appellant on the supposition that his appearance might have changed with time and that the witness had not categorically denied his identity. This reasoning is legally untenable. A failure of affirmative identification cannot be converted into proof of identity merely because the witness has not expressly excluded the accused. The burden rested upon the prosecution to establish that the person tried was the perpetrator; it could not be shifted to the complainant or the appellant to disprove that proposition. The suggested change in appearance was speculative and did not furnish the missing evidentiary link.

7. The testimony of ASI Mazhar Hayat (PW-2, Exh.4) does not repair this deficiency. He claimed that, upon reaching the spot at about 00:45 hours, Kashif Adnan produced the apprehended person, whereafter he personally recovered a .32-bore revolver with two live rounds and a purse containing Rs.3,000/- during search. The contemporaneous memorandum of arrest and recovery (Exh.3/A), however, records that the complainant had already produced the accused, firearm, wallet and cash before the police and that nothing was recovered during the appellant's physical search except his wearing clothes. PC Ali Gohar (PW-3, Exh.5) similarly testified that the complainant handed over the firearm, purse and cash to ASI Mazhar Hayat. The prosecution thus presented incompatible accounts of the same recovery: one attributing it to the police officer's personal search and the other to prior delivery by the complainant. The contradiction goes to the origin and authenticity of the alleged possession and recovery, not merely to their description.

8. ASI Mazhar Hayat further admitted in cross-examination that he had not produced the departure entry for the police patrol, had introduced an allegation concerning the snatching of a mobile phone which was absent from the FIR and relevant proceedings, and had not sealed the allegedly recovered purse containing Rs.3,000/-. He also conceded that eight to ten persons were available at the spot but were not associated as witnesses. PW-3 referred to fifty persons gathered there, yet none was produced to establish who had actually apprehended the suspect or recovered the

articles. The complainant himself acknowledged the presence of an even larger gathering. Although the evidence of police officials is not intrinsically unreliable, the absence of independent corroboration assumes importance where the only available official accounts differ on the essential fact of recovery and the principal witness disputes his presence during that exercise. Nor was the alleged recovery of the robbed property satisfactorily substantiated. PW-3 admitted that the purse and cash were not produced before the trial Court; the Investigating Officer, ASI Nazeer Hussain (PW-4, Exh.6), likewise acknowledged the non-production of Rs.3,000/-. The purse had admittedly not been sealed. Where immediate recovery is advanced as the primary circumstance connecting an accused with an otherwise unidentified robber, such deficiencies cannot be dismissed as merely procedural. They impair the reliability of the very circumstance upon which the prosecution seeks corroboration.

9. The Investigating Officer's evidence proves the investigative steps undertaken by him, including preparation of the site inspection memorandum (Exh.3/C), police entries and forwarding of the alleged firearm for forensic examination. It does not independently prove the disputed initial recovery or the identity of the offender. PW-4 acknowledged that the appellant was injured when custody was delivered to him, while the complainant and police witnesses offered materially differing accounts of his apprehension and the handling of the property. The alleged beating is not itself proof of innocence; equally, it cannot constitute proof of participation in robbery. The persons who allegedly apprehended and assaulted the culprit were not examined, and the resulting evidentiary gap remains unfilled.

10. Section 397 PPC requires proof of robbery or dacoity accompanied by the offender's use of a deadly weapon, causing grievous hurt or attempting to cause death or grievous hurt. The statutory minimum sentence is seven years. In the present case, the complainant's inability to identify the appellant, his admission concerning non-observation of the weapon, and the doubtful recovery collectively prevent a reliable finding that this appellant committed the robbery with the aggravating circumstance contemplated by Section 397 PPC. Indeed, the uncertainty extends to his participation in the underlying robbery itself; consequently, the evidence does not justify substitution of a conviction under Section 392 PPC.

11. Turning to Criminal Jail Appeal No.340/2025, the prosecution was required to establish that the appellant unlawfully possessed or carried the firearm

within the contemplation of Section 23(1)(a) of the Sindh Arms Act, 2013. The alleged possession is founded entirely upon the same disputed apprehension and recovery. ASI Mazhar Hayat (PW-1, Exh.3) claimed recovery during personal search, whereas PC Ali Gohar (PW-3, Exh.5) stated that Kashif Adnan had handed the weapon over to the police. The memorandum (Exh.3/A) likewise records prior delivery of the articles by the complainant and no recovery during personal search. These versions cannot simultaneously be true in their material particulars.

12. Of particular significance is the evidence of Kashif Adnan (PW-2, Exh.4) in the arms trial. He stated unequivocally that the police had already placed the apprehended person in their mobile when he returned to the spot; that the alleged pistol had not been recovered in his presence; and that the parcel containing the weapon did not bear his signature. Upon being confronted with the appellant's identity, he categorically stated that *"present accused is not my culprit and I have no objection if he is acquitted."* The complainant's willingness to see the appellant acquitted is not, by itself, determinative of criminal liability. His categorical disavowal of the appellant's identity, however, is substantive evidence bearing directly upon the prosecution's claim that this was the person whom he had apprehended and from whom the incriminating weapon was recovered. The trial Court failed to accord this admission its proper evidentiary significance, notwithstanding that the complainant was the very person to whom the prosecution attributed the initial apprehension and production of the firearm.

13. The position is aggravated by the treatment of case property. PW-2 stated that the firearm was not recovered in his presence and that the parcel bore no signature of his. The record reflects the production of an empty cartridge or casing in addition to the two live rounds originally described; the Investigating Officer, while identifying the case property, expressly qualified his identification concerning that additional empty. PW-3 acknowledged the non-production of the purse and cash, while PW-4 could not reconcile the competing versions regarding the initial possession of the firearm. The forensic report (Exh.6/D) may establish the mechanical condition of the weapon examined, but it cannot establish from whose possession that weapon was recovered. Proof that a firearm is functional is not proof that a particular accused possessed it.

14. The omission to associate private persons does not, by itself, invalidate an arms recovery. Section 34(a) of the Sindh Arms Act, 2013, permits police

officials and other persons present at the spot to witness searches and recoveries. The rule, however, does not immunise their testimony from scrutiny. Here, the doubt arises not from their official status but from irreconcilable accounts of how the weapon came into police custody, the complainant's denial of having witnessed its recovery, his disavowal of the appellant's identity and the unexplained features of the case property. The prosecution's evidence, taken cumulatively, does not establish conscious possession beyond reasonable doubt.

15. In both judgments, the learned trial Court relied additionally upon the appellant's previous criminal-record entries and observed that he had failed to substantiate his plea of innocence. Neither consideration could lawfully supply the deficiencies in proof. Registration of earlier FIRs does not establish guilt in the present prosecutions, much less justify branding the appellant a habitual offender without legally established findings relevant to that conclusion. Likewise, his decision not to examine himself on oath or lead defence evidence did not shift the burden resting upon the prosecution. The prevalence of street crime, however grave a societal concern, cannot replace the judicial requirement that each offence be proved against the particular accused through trustworthy evidence.

16. The governing principle is settled beyond controversy. In 1995 SCMR 1345[1], 2009 SCMR 230[2] and 2018 SCMR 772[3], the Supreme Court affirmed that even a single circumstance creating reasonable doubt in the mind of a prudent person entitles the accused to its benefit as of right, not grace. The present record discloses not one isolated discrepancy but several mutually reinforcing infirmities affecting identity, possession and recovery. It is unnecessary to reject every prosecution witness in toto; it suffices that the cumulative evidentiary foundation is incapable of sustaining the convictions beyond reasonable doubt.

17. The learned trial Court, by treating material contradictions as minor variations, drawing an affirmative inference from non-identification, relying upon previous FIR registrations and placing an unwarranted evidentiary burden upon the appellant, failed to appreciate the evidence in its correct legal perspective. The resulting findings suffer from misreading and non-reading of material evidence and cannot be sustained. The prosecution having failed to establish the appellant's guilt in either case beyond reasonable doubt, both appeals merit acceptance.

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[1] Tariq Pervez v. The State
[2] Muhammad Akram v. The State
[3] Muhammad Mansha v. The State

18. Consequently, Criminal Jail Appeal Nos.339 and 340 of 2025 are allowed. The judgments dated 28.02.2025 passed by the learned IV Additional Sessions Judge, Karachi East, in Sessions Case Nos.1900/2024 and 1901/2024 are set aside. Appellant Hameed-ur-Rehman son of Ghulam Nabi is acquitted of the charges under Section 397 PPC in FIR No.694/2023 and Section 23(1)(a) of the Sindh Arms Act, 2013, in FIR No.695/2023, both of Police Station Korangi Industrial Area, Karachi, by extending him the benefit of doubt. He shall be released forthwith, if not required to be detained in any other case. The conviction warrants shall stand recalled. The case property shall be dealt with in accordance with law. Copies of this judgment be transmitted to the concerned trial Court and jail authorities for immediate compliance.

J U D G E