IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.449 of 2024

Appellant : Arbaz @ Abbas S/o Siraj @ Noor Muhammad
Through M/s. Muhammad Zareen Satti and Ubedullah Ghoto, Advocates.

Criminal Jail Appeal No.624 of 2024

Appellant : Noor Muhammad son of Jaffar
Through Mr. Immad Qamar, Advocate.

Criminal Jail Appeal No.625 of 2024

Appellant : Noor Muhammad son of Jaffar
Through Mr. Ubedullah Ghoto, Advocate.

Respondent : The State
Through Mr. Qamaruddin Nohri, A.P.G. Sindh.

Date of hearing : 05.11.2026

Date of judgment : 12.11.2026

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. **-** These connected appeals question two judgments dated 29.05.2024 rendered by the learned IV-Additional Sessions Judge, Karachi East. In Sessions Case No.1321 of 2023, emanating from FIR No.176 of 2023, Police Station Landhi, Noor Muhammad and Arbaz alias Abbas were convicted under section 397, P.P.C., and sentenced to seven years' rigorous imprisonment each. In Sessions Case No.1367 of 2023, arising from FIR No.177 of 2023 of the same police station, Noor Muhammad was separately convicted under section 23(1)(a) of the Sindh Arms Act, 2013, and sentenced to seven years' rigorous imprisonment with a fine of Rs.20,000/-, or one month's simple imprisonment in default. Both judgments extended the benefit of section 382-B, Cr.P.C. Their common factual origin warrants disposal through this consolidated judgment.

2. Briefly, the prosecution alleged that on 27.03.2023, at about 2130 hours, a police party headed by ASI Syed Khalid Hussain reached near Lal Mazar, Landhi No.5½, Area 4-B, where a crowd was beating the appellants. Muhammad Ali son of Ghulam Mohiuddin allegedly informed the officer that they had robbed him at gunpoint of a wallet containing his CNIC copy and Rs.200/-. Their motorcycle allegedly struck an electricity pole during

escape, whereafter they fired to frighten the public but were apprehended. The police rescued them, allegedly recovered the wallet from Noor Muhammad's shalwar pocket and secured a .30-bore pistol, without a magazine and with an empty lodged in its chamber, from the ground beside him. Nothing was recovered from Arbaz. The robbery and arms FIRs were registered at 0300 and 0315 hours, respectively, on 28.03.2023.

3. The charges were framed on 04.07.2023. In each case, the prosecution examined only SI Mumtaz Ali, the investigating officer, and ASI Syed Khalid Hussain, the arresting officer. Muhammad Ali, the alleged victim and recovery mashir, was not examined on the explanation that he had changed his residence and was untraceable. PC Javed, the other recovery mashir, was also not produced. In their statements under section 342, Cr.P.C., the appellants denied the accusations. Noor Muhammad attributed his implication to a quarrel with certain boys who falsely branded him a robber before the public; Arbaz maintained that he was taken into custody upon approaching the crowd while returning from the market. Neither testified on oath nor produced defence evidence.

4. Heard and perused the record. The central distinction overlooked by the trial Court is between proof of the appellants' arrest and proof of their commission of the offences. PW-1 Mumtaz Ali stated that "*On:28-03-2023, I was posted at P.S. Landhi. I received investigation of crime alongwith two accused in injured condition, case property and documents. I interrogated the accused and produced the accused before court and while returning I visited the place of incident. I prepared memo. On the same date I sent the case property to FSL and then received the report. Then I submitted final report."* His account establishes subsequent investigative steps. He witnessed neither the robbery nor the original recovery. His identification of the appellants as the persons investigated could not establish their participation in an occurrence he had not seen. The trial Court's description of his testimony as "unshattered and confidence inspiring" did not enlarge its permissible evidentiary reach.

5. PW-2 Syed Khalid Hussain likewise arrived after the alleged robbery. His material testimony reads that "*At 2130 hours when we reached at Lal Mazar Area 4-B, where public was gethred and they were bearing two persons. I saved them from public. One person M. Ali S/o Mohiuddin disclosed that the accused have committed robbery."* Regarding the recovery, he stated that "*From pocket of his shalwar one wallet was*

recovered, in which Rs.200/- and CNIC of Noor Muhammad was available, while one pistol was laying near his left foot. I secured the pistol and found that there was only one empty in chamber and nothing else was recovered. The other accused disclosed his name as Abbas, from whom nothing was recovered." Thus, neither examined witness saw the taking of the wallet, the alleged threat, the escape or the firing. The officer's receipt of an accusation from Muhammad Ali was not equivalent to direct proof of the occurrence narrated by that absent person.

6. Non-examination of a complainant is not invariably fatal where the charge is otherwise established through competent evidence. Here, however, Muhammad Ali alone could have supplied the direct account of the robbery, identified the respective acts of the offenders and proved his ownership of the allegedly stolen property. No member of the crowd appeared to establish the occurrence, pursuit or apprehension. The trial Court's invocation of quality over quantity of evidence did not answer the absence of proof on these essential facts.

7. The recovery of the wallet also remained uncertain. PW-2 described it as containing the CNIC of Noor Muhammad, whereas the FIR, recovery memo and note recording production of the articles refer to a CNIC copy of Muhammad Ali. No clarification was sought in re-examination. With the alleged owner and both recovery mashirs absent, the discrepancy concerned the very article relied upon to connect the recovery with the alleged robbery. Production of the wallet, currency and CNIC copy in Court could not, by itself, establish their disputed provenance or the antecedent act of robbery.

8. As regards Arbaz, PW-2 expressly acknowledged that "The other accused disclosed his name as Abbas, from whom nothing was recovered." No examined witness attributed to him the taking of property, possession or use of a weapon, or any act facilitating the alleged robbery. His presence among persons being beaten by the crowd did not establish participation or common intention. Section 34, P.P.C., could not supply the missing connection. Similarly, the medical evidence established injuries, but not the truth of the accusation which occasioned the public beating. Nor did the documentary reference to a motorcycle prove, through an eyewitness, its alleged use by the appellants in committing the offence.

9. The trial Court further misread Arbaz's cross-examination of PW-2. It held that "*Secondly, learned counsel for the accused Arbaz opted not to cross examine the witness, which means that the evidence of the witness*

remained firm." The deposition, however, records against cross-examination by Arbaz's counsel that "*Adopted."* The cross-examination conducted for Noor Muhammad was therefore adopted for Arbaz. It contained the following material admissions that *"It is correct that I have not produced departure entry." "50-60 persons were available at the spot." "It is correct that pistol was secured from floor." "It is correct that magazine is not available." "It is correct that second mashir was not associated from public."* The officer also stated that "*At 2215 hours we returned at P.S. It is correct that /FIR is registered at 0300 hours."* These admissions required appraisal on their merits; they could not be displaced by observations about the witness's confidence or the brevity of cross-examination.

10. The documentary chronology also required reconciliation. Diary report No.53 at 2210 hours records that the injured persons were being taken to Jinnah Hospital, while report No.58 at 0300 hours records their return after treatment. Medical treatment could explain an interval before registration and the delay, standing alone, would not justify rejection of the prosecution. Nevertheless, PW-2's assertion of returning to the police station at 2215 hours was not reconciled with those entries. More fundamentally, the evidence failed to establish the robbery itself or the circumstances attracting section 397, P.P.C. No examined witness proved the use of a weapon by either appellant during the alleged taking.

11. The arms charge must be assessed independently. An acquittal of robbery does not necessarily defeat an otherwise proved arms offence; equally, conviction in the principal case cannot substitute for proof of unlawful possession. PW-2 placed the pistol near Noor Muhammad's left foot, whereas the FIR and recovery memo placed it under his right side. He admitted securing it from the floor. About fifty to sixty persons had occupied the scene, and no examined witness saw Noor Muhammad holding, carrying, firing or discarding the weapon. Recovery from the ground may establish possession when supported by reliable surrounding circumstances; in the present setting, proximity alone did not establish conscious possession beyond reasonable doubt.

12. Police evidence is legally competent and does not invariably require independent corroboration. Its official character, however, does not dispense with scrutiny. The difficulty here lies in the circumstances of the recovery: a weapon lying on the ground after intervention by a substantial crowd, no examined account of its prior possession by the accused, and

non-production of both attesting witnesses. These features left the essential nexus between Noor Muhammad and the firearm unproved.

13. The forensic report dated 13.04.2023 recorded intact seals upon receipt and opined that "*The above mentioned Pistol is in working condition at the time of examination."* It also linked the submitted crime empty marked "C" with the examined pistol and recorded that "*One .30 bore test empty is being sent in the sealed parcel of the above mentioned fire arm/weapon."* The report establishes the weapon's working condition and its ballistic relationship with the submitted empty; it does not identify its possessor or the person who fired it. The return of a laboratory test empty also explains why two empties were subsequently produced, and their number alone affords no ground to infer fabrication. Likewise, the missing magazine does not negate the firearm's character. The decisive deficiency remains the absence of reliable proof connecting its possession with Noor Muhammad.

14. The trial Court nevertheless reasoned in the arms judgment that "*The record reveals that the present case is an offshoot case of crime No.176/2023 under section 397/34 PPC of same police station, wherein, accused above named was convicted, therefore, inference of accused, being guilty, can be drawn in this case too."* Such reasoning is untenable. Each charge required proof of its ingredients. The robbery conviction could not validate the disputed recovery or establish possession in the separate prosecution.

15. Both judgments also reversed the burden of proof. In the robbery case, the trial Court observed that counsel had that *"failed to prove the innocence of accused persons, the defence pleas of the accused persons and doubts in the case of prosecution."* The appellants were under no obligation to prove innocence before receiving the benefit of deficiencies in the prosecution evidence. Their refusal to testify on oath or call defence witnesses could not cure those deficiencies. Even rejection of their explanations would not establish the charges. The diary recital of confessions during police interrogation likewise supplied no substantive proof: no judicial confession or distinct resulting discovery was shown. The prevalence of robbery in Karachi, also invoked by the trial Court, could not lower the standard of proof in these particular prosecutions.

16. The cumulative effect is decisive. The alleged victim was not examined; neither prosecution witness saw the robbery; the recovered identity document was inconsistently described; Arbaz's participation was

unsupported by any specific act; and the firearm was secured from the ground without reliable evidence of its conscious possession by Noor Muhammad. These deficiencies were compounded by misreading the adopted cross-examination and requiring the defence to prove innocence. Under the principles stated in 1995 SCMR 1345[1] and 2018 SCMR 772[2], a material circumstance creating reasonable doubt entitles the accused to acquittal as of right. The present record discloses several such circumstances.

17. Consequently, Criminal Appeal No.449 of 2024 and Criminal Jail Appeals Nos.624 and 625 of 2024 are allowed. Both judgments dated 29.05.2024, passed in Sessions Cases Nos.1321 and 1367 of 2023, are set aside. Arbaz alias Abbas son of Siraj alias Noor Muhammad and Noor Muhammad son of Jaffar are acquitted of their respective charges by extending them the benefit of doubt. Appellant in Cr. Jail Appeal No.624 and 625 of 2024 shall be released forthwith, if he is not required in any other case. Appellant in Cr. Appeal No.449 of 2024 is present on bail, his bail bond stand cancelled and surety discharged. The fine paid by Noor Muhammad, if any, shall be refunded.

18. The case property shall be dealt with according to law upon expiry of the applicable period for further challenge, subject to any order of a competent Court. This acquittal shall not confer any entitlement upon the appellants to the seized firearm. A copy of this judgment shall be placed in each connected appeal and transmitted to the trial Court and concerned prison authority for compliance.

J U D G E

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