

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

Criminal Appeal No. S-53 of 2023

Appellants :Fazal-ur-Rehman, 2). Abdul Karim, 3).Muhammad Younis, 4). Siraj, 5).Abdullah @ Waheedullah, 6).Muhammad Essa and 7). Bhagial @ Bhagio, *through* Mr. Habibullah G. Ghouri Advocate.

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

Complainant :Mst. Moomal *through* Mr. Zafar Ali Malghani, Advocate

Date of hearing : 15.06.2026.
Date of decision : 15.06.2026.
Date of Reasons : 22.06.2026.

J U D G M E N T

Ali Haider 'Ada', J.- The appellants, through the instant Criminal Appeal No.S-53 of 2023, have called in question the judgment rendered by the learned Additional sessions Judge-II, Jacobabad, (trial Court) in Sessions Case No.240 of 2020 arising out of FIR No.04 of 2020, registered with Police Station B-Section, Thull, for offences punishable under Sections 395, 452, 506-II, 427, 337-H(ii), 337-A(i), 337-A(ii), 337-F(i), 148 and 149, P.P.C.

2. By the impugned judgment, the appellants were convicted and sentenced under Section 395 read with Section 149, P.P.C. to suffer rigorous imprisonment for five years. They were further convicted and sentenced under the remaining penal provisions and awarded various terms of imprisonment ranging from one year to three years. In addition thereto, fines and amounts of Daman were also imposed. All the sentences were directed to run concurrently. Feeling aggrieved by the said conviction and sentences, the appellants have preferred the instant appeal.

3. Briefly stated, the prosecution case is that on 03.12.2019 at about 10:00 a.m., the accused persons, acting in furtherance of their common object and being duly armed with weapons, committed house trespass into the house of complainant Mst. Moomal. During the course of the occurrence, they allegedly subjected the complainant party to violence, caused injuries to them and robbed six buffaloes along with one buffalo calf. The injuries sustained by the victims were subsequently opined by the medical officers to fall within the ambit of Sections 337-A(i), 337-A(ii) and 337-F(i), P.P.C. Upon registration of the FIR, the usual course of investigation was undertaken and, after completion thereof, the challan was submitted before the competent Court.

4. Upon receipt of the challan, the learned trial Court took cognizance of the matter and supplied copies of the relevant documents to the accused persons in compliance with the requirements of law. Thereafter, on 11.11.2020, formal charge was framed against the appellants, to which they pleaded not guilty and claimed trial.

5. In order to substantiate the charge, the prosecution examined complainant Mst. Moomal as PW-01. She deposed regarding the occurrence and the injuries she sustained, and also produced a copy of the FIR. The prosecution thereafter examined Dr. Abdul Karim, who had medically examined injured Dilshad, Deedar and Mst Moomal, as produced the police letter for treatment along with the relevant medical documents. The prosecution further examined Dr. K. Das, Professor of Surgery, who produced the office orders relating to the constitution of the Medical Board, documents concerning the medical examination of complainant Mst. Moomal and the medical opinion rendered by the Board. The prosecution also examined Dr. Muhammad Saleem, Dr. Muhammad Rafique, Dr. Farooque Ahmed, Dr. Judgesh Kumar, Dr. Zahid Ali and Dr. Abdul Ghani, who were members of the Medical Board and

supported the medical evidence available on record. Thereafter, injured witness Dilshad was examined. Another cited witness, namely Deedar, was subsequently given up by the prosecution. To prove the investigative aspect of the case, Head Constable Abdul Ghani was examined, who produced the relevant roznamcha entries and the injury memo of the complainant, Mst. Moomal. Thereafter, Imdad Ali was examined, who produced the injury memo of injured Dilshad as well as the memo of place of occurrence. The prosecution also examined ASI Sanaullah, who produced the relevant roznamcha entries regarding his visit to the place of incident. ASI Ali Gul was also examined and produced the relevant entry reflecting the appearance of the injured persons before him. Upon completion of the prosecution evidence, the learned State Counsel closed the side of the prosecution.

6. After closure of the prosecution evidence, statements of the appellants under Section 342, Cr.P.C. were recorded, wherein they professed their innocence, denied the allegations levelled against them and claimed false implication. The appellants neither examined themselves on oath under Section 340(2), Cr.P.C. nor did they produce any witness in defence. Upon conclusion of the trial, the learned trial Court convicted and sentenced the appellants through the impugned judgment, which is now under challenge before this Court.

7. Learned counsel for the appellants contended that the prosecution case suffers from material contradictions, omissions and infirmities which strike at the root of the prosecution story. According to him, the prosecution failed to examine injured witness Deedar, whose non-production has adversely affected the credibility of the prosecution case and has created a serious dent therein. It was further argued that the ocular account is not in accord with the medical evidence and that the prosecution has failed to establish its case beyond reasonable doubt. Learned counsel further submitted

that a separate FIR had also been lodged by the appellants against the complainant party, which demonstrates that the occurrence had two versions and constituted a cross-case. According to him, the existence of a cross-version substantially weakens the prosecution case and creates serious doubt regarding the alleged involvement of the appellants in the commission of robbery and the infliction of injuries. On these grounds, he prayed for acceptance of the appeal and acquittal of the appellants.

8. Conversely, learned counsel appearing on behalf of the complainant supported the impugned judgment and submitted that the learned trial Court has examined the entire evidence available on record and has rightly arrived at the conclusion of guilt against the appellants. He contended that the ocular account furnished by the prosecution witnesses stands fully corroborated by the medical evidence and the surrounding circumstances of the case. According to him, the role attributed to each of the appellants has been consistently established and the minor discrepancies pointed out by the defence are natural in nature and do not affect the prosecution case. He, therefore, prayed for dismissal of the appeal and maintenance of the conviction and sentences awarded by the learned trial Court.

9. Likewise, learned Deputy Prosecutor General supported the impugned judgment and argued that no material contradiction or infirmity has been pointed out which could reasonably create doubt in the prosecution case. He maintained that the prosecution has successfully proved the charge against the appellants through reliable, confidence-inspiring and corroborative evidence. He accordingly prayed for dismissal of the appeal.

10. Heard learned counsel for the parties and perused the evidence and material available on record with their able assistance.

11. The record reflects that, according to the prosecution case, three persons from the complainant party, namely Mst. Moomal, Dilshad and Deedar, sustained injuries during the occurrence. The injuries allegedly suffered by them on their heads were initially declared as *Shajjah-i-Khafifah*, and *Ghayr-Jaifah Damiyah*, whereas the injury attributed to Mst. Moomal was subsequently opined to fall within the category of *Shajjah-i-Mudihah*. In such circumstances, the burden squarely rested upon the prosecution to establish the nature, extent and classification of the injuries through cogent, reliable and confidence-inspiring medical evidence.

12. In order to prove the medical aspect of the case, the prosecution relied upon the medical certificates issued in favour of the injured persons. However, the medical certificate of Mst. Moomal was specifically challenged by the defence. Consequently, a Special Medical Board was constituted to reassess the nature of her injuries. The Medical Board, after examining the relevant material, expressed the opinion that the earlier medical certificate issued in favour of Mst. Moomal was not correct. Thus, two conflicting medical opinions emerged from the prosecution's own evidence regarding the same injury. Such inconsistency in the medical evidence creates a serious dent in the prosecution case. It is a settled principle of law that where two versions emanate from the prosecution's own evidence, the version favourable to the accused must receive due consideration. Once the Medical Board declared the earlier medical certificate to be incorrect, the evidentiary value and authenticity of the initial medical opinion stood substantially impaired, thereby rendering the medical evidence doubtful and unreliable.

13. The medical evidence relating to injured Dilshad also does not improve the prosecution case. Dilshad deposed before the Court that he had sustained injuries on his head and shoulder. The Medical Officer classified the injuries as *Shajjah-i-Khafifah* and *Ghayr-Jaifah*

Damiyah, punishable under Sections 337-A(i) and 337-F(i), P.P.C. Respectively. For proper appreciation, reference may be made to the statutory definitions. Under Section 337-A(i), P.P.C., *Shajjah-i-Khafifah* means an injury on the head or face which does not expose the bone of the victim. Likewise, Section 337-E(i), P.P.C. defines *Damiyah* as an injury whereby the skin is ruptured and bleeding occurs. A careful examination of the medical evidence pertaining to injured Dilshad reveals that the essential ingredients of the aforesaid injuries were not satisfactorily established. The medical documents merely refer to a scalp-deep injury on the left side of the skull, but there is no clear medical opinion demonstrating that the injury fulfilled the legal requirements of *Shajjah-i-Khafifah*. Similarly, the medical evidence is noticeably silent regarding rupture of skin accompanied by bleeding to attract the offence of *Damiyah*. No subsequent medical observations or explanatory opinion were produced by the prosecution to bridge this deficiency. Consequently, the medical evidence appears inconclusive and fails to lend the required corroboration to the ocular account.

14. The collective effect of the conflicting medical opinions regarding Mst. Moomal and the inconclusive medical evidence relating to Dilshad creates a serious doubt about the prosecution version. It is by now a settled principle that where medical evidence is inconsistent, unreliable, or does not support the prosecution narrative, the benefit arising therefrom must accrue to the accused. Support in this regard may be drawn from the cases of *Ghulam Sarwar Ghangro v. The State* (2026 SCMR 251), *Muhammad Abras v. The State* (2025 SCMR 1145) and *Imtiaz Hussain Shah v. The State* (2025 SCMR 1110).

15. Furthermore, another material aspect of the case is that injured witness Deedar, who was cited as a prosecution witness and was allegedly one of the persons injured during the occurrence, was subsequently given up by the prosecution. The statement made by the learned Law Officer for dispensing with the examination of the

said witness does not disclose any plausible or legally sustainable reason for withholding his testimony. It is an admitted position that Deedar was not merely an eyewitness but was also an injured witness whose evidence could have materially assisted the Court in corroborating both the ocular and medical aspects of the prosecution case. The unexplained withholding of such a material witness casts a serious shadow upon the prosecution version. It is a settled principle of law that where a material witness is withheld without any convincing explanation, an adverse presumption may legitimately be drawn against the prosecution under **Article 129(g) of the Qanun-e-Shahadat Order, 1984**, to the effect that had such witness been produced, his testimony would have been unfavourable to the prosecution. In the circumstances of the present case, the non-examination of injured witness Deedar assumes considerable significance and further weakens the prosecution case. Guidance in this regard may be sought from the cases of *Rasheed Ahmad alias Sheeda v. The State (2026 SCMR 798)* and *Amjad Ali v. The State (2026 SCMR 729)*.

16. Another circumstance which cannot be lost sight of is the delay in registration of the FIR. The alleged incident admittedly took place on 03.12.2019. The record reveals that on the very same day the police machinery was set into motion through Roznamcha Entry No.6, pursuant to which the complainant party was issued medical letters for treatment of the injured persons. Significantly, however, the said entry does not disclose the names of any of the present appellants, nor does it reflect that the complainant party attributed the injuries to them. Ordinarily, when injured persons approach the police station for obtaining medical letters immediately after an occurrence, it is expected that the basic facts of the incident, including the identity of the alleged assailants, would be disclosed to the police. The omission of such a vital fact from the earliest version of the occurrence assumes considerable importance. The record further reveals that the FIR was ultimately lodged only after

obtaining an order from the learned Justice of Peace dated 06.01.2020. Even thereafter, the FIR came to be registered on 09.01.2020. Thus, there was an unexplained delay not only between the occurrence and the initiation of criminal proceedings but also after the issuance of the order by the learned Justice of Peace. Such delay provided sufficient opportunity for deliberation, consultation and embellishment, thereby diminishing the evidentiary value of the prosecution version. Reliance in this regard may be placed upon *Muhammad Siddique v. The State* (2026 SCMR 783) and *Maqsood Ali v. The State* (2026 SCMR 393).

17. It is by now a settled principle of criminal jurisprudence that the prosecution is required to prove its case beyond any shadow of reasonable doubt. If a single circumstance creates a reasonable doubt in a prudent mind regarding the guilt of the accused, then the accused becomes entitled to the benefit of such doubt. Reference may be made to *Iftikhar Ahmed v. The State* (2026 SCMR 674).

18. For the foregoing reasons, this Court found that the prosecution had failed to establish the charge against the appellants beyond reasonable doubt. Consequently, vide short order dated 15.06.2026, the instant criminal appeal was allowed, the conviction and sentences awarded to the appellants by the learned trial Court were set aside, and the appellants were acquitted of the charge by extending them the benefit of doubt. Since the appellants were already on bail, their bail bonds stood cancelled, and the sureties were discharged. These are the detailed reasons in support of the said short order.

JUDGE