

# IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 401 of 2024.

Appellant : Nazeer Ahmed son of Abdullah,  
Through Mr. Mohsin Ali Khan, advocate.

Respondent : The State  
Through Mr. Tahir Hussain Mangi, APG

Date of hearing : 12.05.2025

Date of judgment : 15.05.2025

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

**KHALID HUSSAIN SHAHANI, J -.** The appellant, Nazeer Ahmed, has assailed the judgment dated 02.05.2024 passed by the learned VIII Additional Sessions Judge (Model Criminal Trial Court), Karachi West, in Sessions Case No. 1402 of 2023 arising out of FIR No. 29/2023 registered at Police Station Baldia Town, offence under Sections 392, 397, and 34 PPC. By the said judgment, the appellant was convicted under Section 397 PPC and sentenced to rigorous imprisonment for a term of seven years.

2. The prosecution case, in brief, is that on 14.03.2023, complainant Muhammad Junaid lodged FIR No. 29 of 2023 alleging that he and his friends were returning from a picnic when at around 6:45 p.m., near Saeedabad Turning, Baldia Town, Karachi, two unknown individuals intercepted them on a motorcycle. One of the culprits, reportedly armed with a pistol, forcibly robbed them of their cash and mobile phones. An FIR was registered against unknown accused.

3. Learned counsel for the appellant has contended, inter alia, that the appellant was not nominated in the FIR nor was he known to the complainant at the time of the incident. There is no test identification parade conducted to establish the identity of the accused. The dock identification made for the first time during trial is inherently unsafe in the absence of prior identification proceedings. It is further contended that the appellant was actually arrested on 14.03.2023 in an injured condition following a police encounter by police of PS Madina Colony in connection with FIR Nos. 70 and 71 of 2023, both of which pertain to separate offences. His arrest in the present case was shown the next day on

15.03.2023 by police of PS Baldia Town, despite the fact that the accused was already in lawful custody. The concealment of this arrest fact becomes even more significant in light of the CRO record (Ex.6/J), which reveals that FIR Nos. 29, 70, and 71 of 2023 were all registered on the same day i.e., 14.03.2023. Yet, this crucial fact was deliberately withheld by the Investigating Officer of the present case, who was posted at the same police station, PS Madina Colony, where the appellant had already been taken into custody with firearm injuries. It is inconceivable that the Investigating Officer would be unaware of an accused being arrested by the same police station on the same date in multiple FIRs. The learned counsel further submitted that the investigation appears to have been tailored to fix the appellant in a case where he was not nominated nor identified with any certainty. The non-production of three eyewitnesses namely Owais, Khizar, and Sufyan, who were present at the scene according to the complainant, further weakens the prosecution's case. The complainant's statement at trial also gives a date of incident as 21.03.2023, which starkly contradicts the FIR that records the incident on 14.03.2023. No explanation for this inconsistency has been offered by the prosecution. Such contradictions go to the root of the matter and cannot be dismissed as minor. It is further argued that no weapon, robbed article, or other incriminating material has been recovered from the accused to connect him with the crime. Even the site inspection and arrest memos appear to be backdated or manipulated, as they were completed within unusually short time spans and contain discrepancies in timing, raising doubts about their veracity.

4. Conversely, learned Additional Prosecutor General has opposed the appeal and submitted that the accused was arrested by police of PS Madina Colony shortly after the incident on the same date and was found in possession of a weapon, and sustained injuries during police action. He argued that the proximity in time between the robbery and the appellant's arrest supports the prosecution's version. He also contended that the complainant identified the appellant at the hospital and later in court, and that such identification may be considered credible in light of the circumstances. He argued that no major contradiction has emerged in the prosecution evidence, and the learned trial court after proper appraisal of evidence found the appellant guilty. Therefore, no case for interference is made out.

5. This Court has carefully examined the record with the assistance of both learned counsel. The following factual and legal anomalies emerge. The complainant in his deposition stated that the incident occurred on 21.03.2023, which is manifestly at odds with the FIR where the date is recorded as 14.03.2023. The complainant also claimed to have identified the accused at the hospital, but no memo or independent corroboration of such identification has been brought on record. Crucially, no identification parade was held before any Magistrate. The reliance on dock identification alone, especially in a case involving previously unknown assailants, is unsafe and unreliable in the absence of any corroborative evidence.

6. The most glaring flaw in the prosecution's case is the deliberate concealment of the appellant's earlier arrest on 14.03.2023 by the police of PS Madina Colony in FIRs No. 70 and 71 of 2023. The CRO record produced at Ex.6/J clearly reflects that all three FIRs, including FIR No. 29 of 2023 (present case) were registered on the same date. Despite this, the Investigating Officer of the instant case (who belongs to the same police station as the arresting officer in FIR 70/71) failed to acknowledge the appellant's already documented custody, and instead falsely projected his arrest as occurring on 15.03.2023.

7. Such conduct is not only misleading but also reflects serious lapses and manipulation in investigation. It gives rise to the inference that the accused may have been wrongly roped in due to his availability in custody, a tactic not unfamiliar in our criminal justice system. Despite naming three independent eyewitnesses in the FIR, the prosecution has examined only the complainant and PW Fayyaz. The latter himself introduced confusion regarding the sequence of arrest and identification, stating that the accused was apprehended within 15 minutes of the crime, which the record does not support. The absence of these eyewitnesses without any explanation further weakens the prosecution's case. The arrest, recovery, and site inspection memos suffer from chronological implausibility. The IO claimed to receive the FIR at 1605 hours but recorded entries showing he proceeded for site inspection at 1615 hours, and completed it by 1630 hours, an improbable sequence unless pre-prepared. The procedural lapses and contradictory documentation are not mere irregularities but reflect investigative bias and manipulation.

8. The prosecution has failed to establish the appellant's guilt beyond reasonable doubt. The case is riddled with inconsistencies, suppression of material facts, unreliable identification, and a deeply flawed investigation. The CRO record (Ex.6/J) exposes an attempt to withhold material exculpatory evidence from the court. In the circumstances, it is impossible to uphold the conviction.

9. It is a well-settled principle that in criminal jurisprudence, if there is any real or substantial doubt regarding the prosecution case, the benefit must go to the accused. Even the slightest doubt that arises due to the prosecution's own fault must be resolved in favour of the accused. Accordingly, this appeal is allowed. The conviction and sentence recorded by the learned trial Court in its judgment dated 02.05.2024 is set aside. The appellant Nazeer Ahmed is acquitted of the charge. He shall be released forthwith if not required in any other custody case.

**J U D G E**