

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 304 of 2025.

Appellant : Muhammad Ali son of Hameed,  
Through Mr. Liaquat Ali Awan, advocate.

Respondent : The State  
Through Mr. Fayyaz Hussain Sabki, APG

Date of hearing : 19.05.2025

Date of Judgment : 23.05.2025

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

**KHALID HUSSAIN SHAHANI, J.** – The present criminal appeal has been filed by Muhammad Ali, challenging the judgment dated 10.04.2025 passed by the learned VIIIth Additional Sessions Judge, Malir Karachi, in Sessions Case No.1650/2021 emanating out of FIR No.12/2021 registered at Police Station Sharafi Goth for offence under Sections 392, 397, 109, and 34 PPC. By the impugned judgment, the appellant was convicted under Section 392 PPC and sentenced to undergo rigorous imprisonment for a period of three years along with a fine of Rs.50,000/-, or in default thereof, to suffer one month's simple imprisonment. The benefit of Section 382-B Cr.P.C. was extended to the appellant. However, his co-accused namely Hina, Fahad alias Katchra, and Khurram alias Dori were acquitted of the charges framed against them. One additional accused person, whose name appeared in the same charge sheet, was neither convicted nor acquitted, and the judgment is entirely silent as to his fate.

2. Brief facts of the prosecution case according to FIR are that on 12-01-2021 at 05:30 p.m at Main KIA Road, Opposite Farooque Textile Mills, Landhi Shah Latif Town Malir, Karachi the complainant along with his wife were going on their motorcycle from Agha Khan Hospital towards their home at Future colony, on 125 Motorcycles three boys wearing shalwar Kameez whitish color average body holding weapons in their hands on gun point committed robbery of wallet, containing cash of Rs.1500/=, an ATM card of Soneri Bank and Original CNIC card from complainant Murad Nawaz and pink color wallet, containing cash of Rs. 1000/- 04 gold bangles, a gold Kara and a gold finger ring from his wife namely Mst. Kazima, and they also snatched key of complainant's

motorcycle and fled away. The complainant called at 15 and thereafter lodged instant FIR against the accused persons.

3. Pursuant to the registration of the FIR, the investigation of the case was entrusted to ASI Muhammad Shakeel Jadoon who visited the place of incident and prepared memo of side inspection on the pointing of complainant and in presence of mushirs and also recorded statements of witnesses under section 161 Cr.P.C and Completing other formalities, the I/O of the case submitted A class report, and thereafter the arrest of present accused was shown on 16.03.2021 and his identification parade was made in investigation room of P.S Sharafi Goth through complainant and finally Challan/Charge Sheet was submitted in the competent Court having Jurisdiction.

4. Copies in pursuance of section 265-C of Criminal Procedure Code were supplied to the Appellant and Charge was framed. To substantiate its case prosecution examined seven witnesses, Statements of accused were recorded Under Section 342 of Criminal Procedure Code in which they claimed to be innocent having been falsely implicated due to the malafide intention of the police. Through the Impugned Judgment, the appellants were convicted and sentenced as already mention above.

5. The learned counsel for the appellant has raised several grounds in support of the appeal. It has been contended that the impugned judgment suffers from serious legal and procedural infirmities, and that the conviction of the present appellant is based on flawed appreciation of evidence, especially in light of the fact that the other co-accused have been acquitted from the same set of allegations and the same evidentiary record. It is urged that the conviction of one out of five accused, in the absence of any distinguishing evidence or reasoning provided by the trial court, reflects a selective and discriminatory application of mind. The learned counsel has pointed out that the charge sheet in the instant case nominated five persons as accused, all of whom were placed on trial together. However, the trial court's judgment has adjudicated only four of them, while the fifth accused appears to have been left entirely out of consideration. There is no mention of whether his case was separated, concluded, or kept pending. This failure to address the status of all accused persons renders the judgment legally incomplete and violative of

Section 367 of the Code of Criminal Procedure, which mandates that the trial court must give a finding on each accused before it. Such an omission, it is argued, is not a mere irregularity but a serious jurisdictional error.

6. Conversely, the learned APG appearing on behalf of the State supported the impugned judgment and opposed the appeal. He argued that the learned trial court had rightly appreciated the evidence on record and convicted the present appellant on the basis of reliable and corroborative material brought forth during trial. It was contended that the appellant was specifically named in the challan and identified by the complainant as one of the perpetrators of the robbery. Though a formal identification parade was not held, the learned APG maintained that the in-court identification of the accused by the complainant carried evidentiary weight, particularly when no enmity was alleged between them and no motive was suggested for false implication. The learned APG further submitted that the recovery of Rs.35,000/- from the possession of the appellant, on his pointation, lends independent corroboration to the prosecution's case. He argued that even though the recovery was not witnessed by independent persons and the recovered amount was not produced during trial, the consistent oral testimony of the police officials involved in the recovery proceedings was sufficient, in the absence of mala fide, to support the charge. He relied upon settled principles of law that the testimony of police officials is not to be discarded merely for want of independent corroboration, especially where the defence has failed to establish any ill will or animosity. The learned APG also defended the differential outcome of the trial, wherein the co-accused were acquitted while the appellant was convicted. He argued that the case of the appellant stood on a different footing, primarily due to the fact that incriminating recovery was made from him and he was directly identified by the complainant during trial. The co-accused, on the other hand, were either not identified or not linked with any recoveries or overt acts during the commission of the offence. As such, the learned trial court was justified in distinguishing the case of the appellant from that of the acquitted co-accused. Regarding the alleged procedural lapses in the trial court's record, particularly the absence of clear representation by defence counsel during cross-examination and the non-adjudication of one accused person, the learned APG submitted that such irregularities, if any,

were not of such magnitude as to vitiate the entire proceedings. He maintained that the appellant had full opportunity to defend himself, and the trial was conducted in accordance with law. The minor defects in procedural compliance, according to him, did not result in any miscarriage of justice warranting interference by the appellate court. In sum, the learned APG prayed for the dismissal of the appeal and urged that the conviction and sentence awarded to the appellant be maintained, as the prosecution had successfully proved its case beyond a reasonable doubt through ocular testimony and corroborative recovery.

7. The primary evidence against the appellant consists of an alleged recovery of Rs.35,000/- said to have been effected on his pointation. However, the complainant of the case, during cross-examination, explicitly admitted that this recovery was not carried out in his presence. Furthermore, the prosecution failed to produce the said recovered amount before the trial court. It was neither exhibited nor identified during trial, and there was no demonstration that the property so recovered had any nexus to the complainant. It is further emphasized that the recovery proceedings were not witnessed by any independent person from the locality, as required by Section 103 CrPC. The mashirnama of recovery was prepared only in the presence of police officials, thereby undermining its evidentiary value. In different judgments of Honorable Apex Courts, it has been held that mere oral assertions by police witnesses regarding recovery cannot sustain a conviction unless the recovered articles are brought on the record and linked to the offence through cogent evidence.

8. A critical point raised during the appeal is the alleged identification of the appellant by the complainant. The record reveals that the complainant identified the accused for the first time while the latter was in police custody, and not through any judicially conducted test identification parade. The courts have consistently held that identification of an accused for the first time in court, without prior judicial identification, carries no evidentiary value. The superior courts have warned against the dangers of mistaken identity and have emphasized the necessity of holding a proper identification parade under judicial supervision. In the present case, there is no explanation offered by the prosecution for the omission to conduct a test identification parade, nor

was any prior description of the accused given in the FIR or in the complainant's initial statement under Section 161 CrPC.

9. It is also brought to the Court's attention that the record of proceedings from the trial court reveals a significant irregularity in terms of legal representation. On the date when several prosecution witnesses were examined and cross-examined, there is no clear indication on the record as to which defence counsel conducted the cross-examination on behalf of which accused. The order sheet merely refers to "defence counsel(s)" in vague terms, without any signatures, vakalatnama, or formal representation being reflected in the file. Such lack of clarity regarding legal representation during the critical stage of cross-examination casts serious doubt on the fairness of the trial and constitutes a violation of the accused's constitutional right to effective legal representation under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973. The requirement under Section 364 Cr.P.C that trial proceedings be accurately recorded with attribution of statements to specific parties was clearly not adhered to.

10. Furthermore, the trial court, while convicting the appellant, did not provide any cogent reasoning to distinguish his case from that of the acquitted co-accused. All accused were charged jointly, faced trial on identical allegations, and were confronted with the same set of prosecution witnesses. Yet, while the rest were acquitted, the present appellant was convicted without any explanation being offered for this differential treatment. The superior courts have consistently held, notably in 2016 SCMR 274 and 2019 SCMR 64, that where the prosecution evidence is identical in respect of multiple accused, the acquittal of one or more necessitates the same benefit being extended to the others, unless the prosecution can show a material distinction. In the absence of such reasoning, the conviction appears arbitrary and unjustified.

11. In addition, the failure of the prosecution to produce material evidence specifically the allegedly recovered cash seriously undermines the prosecution's case. It is well established in criminal jurisprudence that failure to produce case property, particularly when it forms the backbone of the prosecution's case, vitiates the credibility of the entire recovery. The Supreme Court has reiterated that non-production of recovered property

amounts to suppression of material evidence and is sufficient to create reasonable doubt entitling the accused to acquittal.

12. The overall discussion concluded that the prosecution has miserably failed to establish the guilt against the present appellant beyond the shadow of any reasonable doubt and it is a well-settled principle of law that for creating the shadow of a doubt, there should not be many circumstances. If a single circumstance creates reasonable doubt in the prudent mind, then its benefit is always extended in favour of the accused not as a matter of grace or concession, but as a matter of right. In this respect, reliance is placed on the case of *Muhammad Mansha v. The State (2018 SCMR-772)*. The rule of benefit of the doubt is essentially a rule of prudence which cannot be ignored while dispensing justice following the law. The conviction must be based on unimpeachable evidence and certainty of guilt and doubt arising in the prosecution case must be resolved in favour of the accused. The said rule is based on the maxim. *"It is better that ten guilty persons be acquitted rather than one innocent be convicted"* which occupied a pivotal place in Islamic Law and is enforced strictly because of the saying of the Holy Prophet (Peace Be Upon Him) that the *"mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent"*. The prosecution is bound to prove its case against the accused beyond any shadow of reasonable doubt, but no such duty is cast upon the accused to prove his innocence. It has also been held by the Superior Courts that the conviction must be based and founded on unimpeachable evidence and certainty of guilt, and any doubt arising in the prosecution case must be resolved in favour of the accused. In the case of *Wazir Mohammad v. The State (1992 SCMR 1134)*, it was held by Supreme Court that *"In the criminal trial it is the duty of the prosecution to prove its case against the accused to the hilt, but no such duty is casted upon the accused, he has only to create doubt in the case of prosecution"*. The Supreme Court in another case of *Shamoon alias Shamna v. The State (1995 SCMR 1377)*, held that, *"The prosecution must prove its case against the accused beyond reasonable doubts irrespective of any plea raised by the accused in his defence. Failure of prosecution to prove the case against the accused entitles him/them to an acquittal. The prosecution cannot fall back on the plea of an accused to prove its case. Before the case is established against the accused by the prosecution, the question of burden of proof on the accused to establish his plea in defence does not arise."* Reliance is also placed on the case of *Naveed Asghar and 2 others v. The State (PLD 2021 SC 600)*.

13. Having considered the entirety of the record, and having evaluated the evidence produced by the prosecution, this Court is of the considered view that the case against the appellant was not proved beyond reasonable doubt. The identification of the appellant was flawed, the recovery was not substantiated by production of the alleged property, and the procedural irregularities in the conduct of trial further reinforce the conclusion that the appellant was denied a fair trial. The law is well settled that even a single circumstance creating doubt in the prosecution's case is sufficient to extend benefit of doubt to the accused, as a matter of right rather than concession. It is also trite law that where two views are possible, one suggesting guilt and the other indicating innocence, the latter must be preferred.

14. In the light of the foregoing discussion, the appeal is allowed. The conviction and sentence awarded to the appellant Muhammad Ali son of Hameed are set aside. He is acquitted of the charge. He shall be released forthwith unless he is required to be detained in any other case.

**J U D G E**