

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.430 of 2025

Before:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Khalid Hussain Shahani

Appellant : Raza Hussain son of Zawar Hussain
Through Mr. Mahmood Zakir Advocate.

Respondent : The State
Through Mr. Irshad Ali, Assistant
Attorney General.

Complainant : Mst. Moni Faheem,
Through Mr. Salman Ahmed, Advocate.

Date of hearing : 02.04.2026

Date of judgment : 16.04.2026

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. – The appellant assails the conviction judgment dated 26.04.2025 passed by the learned Presiding Officer, Special Court (Offences in Respect of Banks), Sindh at Karachi, in Case No. 27 of 2014, arising from FIR No. 20/2014 registered at P.S. FIA (CBC), Karachi, for offences under Sections 409, 420, 468, 471 and 477-A, PPC. The sentences awarded are as follows:

Offence	Imprisonment	Fine	Default
Section 409 PPC	10 years RI	Rs.4,91,91,820/-	3 years SI
Section 468 PPC	5 years RI	Rs.5,00,000/-	2 years SI
Section 471 PPC	3 years RI	Rs.2,00,000/-	1 year SI
Section 477-A PPC	5 years RI	Rs.3,00,000/-	1½ years SI

All sentences run concurrently; benefit of Section 382-B, Cr.P.C. extended

2. The prosecution case originated from a written complaint dated 19.03.2014 lodged by Mst. Moni Faheem, then Area Manager, HBL Club Road, Karachi, who also exercised supervisory authority over HBL Mansfield Street Branch. The substance of the allegation was that during an internal scrutiny and reconciliation process, a grave irregularity was detected in the cash and vault operations of the said branch. The

appellant, who at the relevant time was serving as Manager Operations and was one of the officials entrusted with operational control of the vault, was alleged to have dishonestly substituted fictitious debit cash vouchers in place of actual cash and, through such fabricated instruments, caused unauthorized credits in favor of certain account holders including co-accused Ali Mumtaz, Abdul Majeed, Sajjad Ahmed, Zohaib and Faheem Uddin. The total shortage and corresponding misappropriation were quantified at Rs.24,595,910/-.

3. After investigation, the appellant and others were sent up for trial. Charge was framed on 18.04.2016, to which they pleaded not guilty and claimed trial. The prosecution examined nine witnesses. During the course of proceedings, the co-accused were acquitted, some under Section 245(1), Cr.P.C., and some under Section 249-A, Cr.P.C. The appellant was initially convicted on 16.09.2022. However, that conviction was set aside by a Division Bench of this Court on 02.11.2023 on the ground that five material witnesses had earlier been examined-in-chief without the presence of defence counsel and without cross-examination, which was held to be a serious procedural defect. The case was remanded with a specific direction that PW-1 to PW-5 be recalled for cross-examination and that a fresh statement under Section 342, Cr.P.C. be recorded. Upon remand, four of those witnesses were recalled and cross-examined. PW-3 Muhammad Maroof had, meanwhile, passed away and thus could not be recalled. After completion of the remand proceedings, the learned trial Court again convicted the appellant through the impugned judgment dated 26.04.2025.

4. Learned counsel for the appellant contended that the conviction cannot be sustained because: first, the remand proceedings were concluded in undue haste and the right of effective cross-examination remained illusory; second, all witnesses of fact are employees of the complainant bank and therefore interested; third, PW-3 died before cross-examination, rendering his earlier statement unusable and leaving an incurable gap in the prosecution case; fourth, the appellant was not the sole custodian of the vault, as the Head Cashier and Second Officer also held custodial roles, but their participation was not ruled out; fifth, all co-accused, including the alleged beneficiaries and the Head Cashier, were acquitted, entitling the appellant to the benefit of parity; and sixth, observations made by the trial Court while acquitting co-accused, casting doubt upon the quality of investigation, ought equally to benefit the appellant. Learned A.A.G. as well as learned counsel for the complainant

supported the impugned judgment and submitted that no ground for interference is made out in a matter where the prosecution is supported by a voluminous and largely unshaken documentary record.

5. We have heard the learned counsel for the parties, examined the impugned judgment, gone through the oral and documentary evidence, and independently reappraised the record. In an appeal against conviction, the appellate Court is under a duty to undertake its own scrutiny of the evidence and to determine whether the prosecution has proved its case beyond reasonable doubt. At the same time, where the conclusions of the trial Court are rooted in a proper appreciation of admissible evidence and are not shown to suffer from misreading, non-reading or perversity, appellate interference is not warranted merely because another view may also be hypothetically possible.

6. The prosecution case rests upon both oral and documentary evidence. PW-1 Mst. Moni Faheem, the complainant and Area Manager, described the process through which the irregularity surfaced during internal scrutiny, identified the relevant branch record, and brought on record a large body of documents comprising reports, vouchers and related bank material. Her testimony primarily establishes the discovery of the fraud, the institutional detection process, and the production of the foundational record. PW-2 Muhammad Yasir Shamsul Huda, the Branch Manager, corroborated the internal reporting chain and explained that the kind of debit cash vouchers recovered from the vault were documents ordinarily processed under the operational authority of the Manager Operations. His evidence is relevant not merely because of his designation, but because it links the incriminating documents to the sphere of responsibility held by the appellant at the material time.

7. The most material witness is PW-4 Muhammad Farhaj, Cash Officer/Teller, who was directly associated with the vault operations on the relevant date. He deposed that the vault was being operated under the control of the appellant and Head Cashier Allahuddin; that on 19.03.2014 the appellant personally opened the vault, handed him the key and directed commencement of the cash operation; that on checking the vault, cash was found short and fictitious debit cash vouchers were discovered in lieu of actual cash; and that the appellant admitted before him that he had extended credits to certain customers. In cross-examination, this witness remained firm on the core features of the prosecution case. Most significantly, he maintained that, during the relevant period and in the

actual working context in which the shortage was detected, no person other than himself and the appellant had access to the vault after the appellant opened it and handed over operational control. This part of his evidence is important because it narrows the field of possible access, links the appellant to the physical custody of the vault at the material time, and materially supports the prosecution theory that the fictitious vouchers found inside the vault were not planted by an outsider or by some unidentified official.

8. PW-5 Mst. Shahnaz Yousuf appears to be a formal signatory for audit or verification purposes and does not materially advance the core prosecution narrative. Her evidence, therefore, is of marginal significance and need not be overstated. PW-6 to PW-9 are formal and investigative witnesses. Through them, the prosecution brought on record the cash excess/shortage reports, the steps taken during investigation, the arrest and procedural details, and the material collected in support of the case. Their evidence is relevant for continuity of the prosecution narrative, for proving the investigative steps, and for placing the recovered and collected documents into the evidentiary chain.

9. The documentary evidence is substantial and forms the backbone of the prosecution case. The record includes a very large number of debit cash vouchers, stated to be fictitious, as well as cash reports, account opening forms, statements and allied bank documents. The significance of this documentary record lies not merely in its volume, but in the consistency with which it supports the prosecution story: that there was a major cash shortfall inside the vault and that, in place of actual currency, numerous debit cash vouchers were lying therein. This is not a case resting upon a solitary oral accusation unsupported by record; rather, the oral evidence explains the discovery, nature and custody of the documents, while the documents themselves reflect a sustained and structured pattern of falsification incompatible with mere inadvertence or clerical irregularity.

10. It is true that documentary evidence in a criminal trial does not become conclusive merely because the defence could not demolish it in cross-examination. The prosecution must still prove its authorship, relevance and nexus with the accused. In the present case, however, that burden stands discharged to the requisite criminal standard because the documents were produced through competent bank witnesses having direct familiarity with branch operations and the internal record; their

existence and recovery from the vault were consistently spoken to; the shortage was contemporaneously detected; and the defence did not extract any material contradiction suggesting that the documents were fabricated later, planted, or disconnected from the actual vault operations. In that setting, the unshaken documentary record assumes high probative value.

11. The first submission of learned defence counsel is that the remand proceedings were concluded in undue haste and that the opportunity of cross-examination remained ineffective. We do not find substance in this contention. The remand order dated 02.11.2023 was a specific and curative order meant to remedy the precise defect identified by the Division Bench, namely the earlier absence of cross-examination of certain witnesses. The record now shows that PW-1, PW-2, PW-4 and PW-5 were recalled and cross-examined by the defence. The right guaranteed to an accused is the right of fair and reasonable opportunity, not a right to endless deferment or repetitive reopening after such opportunity has in fact been availed. No specific prejudice has been demonstrated as to what material question the defence was prevented from putting, what line of cross-examination was shut out, or what concrete defence was frustrated. A plea of prejudice cannot succeed in the abstract; it must be tied to some identifiable impairment of defence. None has been shown here.

12. This brings us to the question of PW-3 Muhammad Maroof, who died before he could be recalled after remand. The learned trial Court referred to Article 47 of the Qanun-e-Shahadat Order, 1984. The applicability of that provision to the earlier statement of PW-3 may give rise to legal debate because the earlier round of examination had itself been found defective for want of proper opportunity of cross-examination. It is therefore unnecessary to place any decisive reliance upon the testimony of PW-3. Even if his statement is altogether left out of consideration, the prosecution case remains intact on the strength of PW-1, PW-2 and, above all, PW-4, read with the documentary evidence comprising the vouchers, shortage reports and related record. In other words, the conviction does not depend upon PW-3. His non-availability is regrettable, but it does not create a fatal gap where the essential facts constituting entrustment, dominion, discovery of shortage, recovery of fictitious vouchers, and linkage of those vouchers to the appellant's operational role stand otherwise established from independent evidence.

13. The defence next argued that the prosecution witnesses are all employees of the complainant bank and are therefore interested witnesses. The argument is too broadly framed to be legally accepted. A witness is not to be branded as interested merely because he is employed by the victim institution. An interested witness, in the legal sense, is one having a personal motive to falsely implicate the accused or to secure a particular result. No such motive has been shown here. Bank officials who, in the course of their official duties, detect a defalcation, explain the operational procedure, and produce institutional records do not become disqualified or inherently unreliable on that account alone. Their evidence is to be tested by intrinsic consistency, cross-examination, and conformity with the documentary record. On that touchstone, the testimony of PW-1, PW-2 and PW-4 inspires confidence.

14. The contention regarding absence of statements under Section 164, Cr.P.C. is likewise without force. Statements under Section 164, Cr.P.C. are not a mandatory requirement in every prosecution. Their absence is not fatal where the case is otherwise proved through direct testimony and documentary material. The present prosecution is not founded upon a retractable confession or a lone oral disclosure requiring such formal assurance; it is anchored in institutional records, discovered shortage, recovery of fictitious vouchers from the vault, and the testimony of witnesses directly associated with the relevant banking operations.

15. The argument that the appellant was not the sole custodian of the vault, and that therefore the possibility of involvement of the Head Cashier or Second Officer creates reasonable doubt, requires closer examination. It is correct that in banking practice cash vaults may operate under a system of joint custody or joint responsibility. But the mere existence of such a system does not, by itself, dissolve criminal liability or create automatic doubt. The real question is not whether some other person also held a formal designation in relation to the vault, but whether the evidence on record sufficiently establishes that the appellant had dominion over the property and was the person connected with the fraudulent substitution of fictitious vouchers for actual cash. On this point, the evidence is clear enough. The appellant was admittedly serving as Manager Operations and was one of the officers responsible for vault operation. PW-2 linked the relevant voucher processing to the office held by the appellant. PW-4 deposed that on the date of detection the appellant personally opened the vault, handed over the key, and initiated the day's vault operations. PW-4 further stated that, in the relevant operational period, no person other than

himself and the appellant had access to the vault. The discovered state of affairs was not of a stray discrepancy or isolated single voucher, but of a large-scale, repeated substitution of actual cash by fictitious debit cash vouchers extending over time. Such a pattern is not consistent with an accidental lapse. It is indicative of sustained manipulation by someone exercising recurring operational control over the vault and the related voucher mechanism. The evidence, taken cumulatively, points to the appellant as that person.

16. It is also material that the appellant, in his statement under Section 342, Cr.P.C., did not furnish any meaningful explanation for the presence of fictitious vouchers inside the vault, for the substantial cash shortage, or for the prosecution assertion that the vouchers bore signatures attributable to him in his official capacity. A statement under Section 342, Cr.P.C. is meant to afford the accused an opportunity to explain incriminating circumstances appearing in evidence. Where serious and specific circumstances are put to an accused and he responds with a bare denial, the Court may take that failure into account, though such failure cannot substitute for proof otherwise required from the prosecution. In the present case, the prosecution had already laid a substantial evidentiary foundation; the appellant's silence and non-explanation therefore become an additional reinforcing circumstance. This court is mindful that caution must be exercised in treating an omission to deny signatures as a formal admission in the strict sense. A criminal conviction cannot rest upon technical default alone. Nevertheless, where the prosecution specifically attributes incriminating documents to the accused, proves them through relevant witnesses and surrounding circumstances, and the accused neither specifically disputes those signatures nor offers any alternative explanation consistent with innocence, the Court is entitled to treat that omission as lending assurance to the prosecution case. It is in that limited but legitimate sense that the appellant's response under Section 342, Cr.P.C. assumes significance.

17. Learned counsel also argued that the appellant is entitled to acquittal on the principle of parity because the co-accused account holders and even Head Cashier Allahuddin have been acquitted. This submission overlooks the settled principle that parity is attracted only where the case of the accused seeking its benefit stands on the same evidentiary footing as that of the acquitted co-accused. The present appellant does not stand on the same footing. The co-accused account holders were allegedly beneficiaries of unauthorized credits, but the

prosecution failed to connect them through direct documentary or operational evidence to the internal manipulation of the vault and vouchers. Their acquittal, therefore, rests upon deficiency of evidence against them, not upon any judicial determination that no fraud had occurred. The position of the present appellant is materially different. He was posted as Manager Operations, linked by evidence to the processing authority over the impugned class of vouchers, connected by PW-4 to the opening and operational handling of the vault on the relevant date, and confronted with a case in which fictitious vouchers were recovered from the vault under his operational control and substantial shortage was detected. In addition, there is the evidence of PW-4 regarding the appellant's admission and the appellant's failure to explain the incriminating circumstances in his Section 342 statement. The evidentiary substratum against the appellant is thus qualitatively different from that against the acquitted co-accused. Parity, therefore, is unavailable.

18. The argument that observations made by the trial Court while acquitting some co-accused should enure to the benefit of the appellant also does not assist the defence. Orders under Sections 245(1) or 249-A, Cr.P.C. are context-specific and depend upon the quality of evidence against the particular accused. Any remarks made therein about the state of investigation are not binding adjudications operating in rem against the entire prosecution case. More importantly, even where the investigation is not above criticism, that by itself does not justify acquittal if reliable oral and documentary evidence otherwise proves guilt. Defects in investigation may weaken a doubtful case; they do not erase proved facts.

19. Learned defence counsel attacked the reliance placed by the prosecution upon the statement of PW-4 that the appellant admitted having extended credits to certain customers. This part of the evidence may properly be treated with caution because it is in the nature of an extra-judicial incriminating statement narrated by a witness. Such evidence, standing alone, would not be sufficient to found conviction. However, it is not standing alone here. It is only one link in a larger chain comprising discovery of shortage, recovery of fictitious vouchers from the vault, appellant's operational role, the evidence regarding access and control, and the failure of the defence to offer any coherent explanation. Thus, even if the alleged admission is treated as requiring corroboration, such corroboration is available in abundance from the surrounding proved circumstances.

20. The ingredients of the offences for which the appellant has been convicted also stand established from the evidence. For Section 409, P.P.C., the prosecution was required to show entrustment or dominion over property and dishonest misappropriation or conversion thereof. Entrustment and dominion are proved by the appellant's admitted position as Manager Operations connected with vault functioning and by the direct evidence showing his control over the vault operation. Misappropriation is proved by the substantial cash shortage coupled with the recovery of fictitious debit cash vouchers in place of actual cash. Dishonest intention is inferable from the repeated and systematic nature of the substitution, the unauthorized credits allegedly facilitated thereby, and the absence of any innocent explanation. For Section 468, P.P.C., the prosecution had to show forgery for the purpose of cheating. The repeated preparation and use of fictitious debit cash vouchers as substitutes for actual cash, thereby enabling unauthorized crediting and concealment of shortage, constitutes the making or use of false instruments for a dishonest purpose. For Section 471, P.P.C., knowing use of a forged document as genuine stands attracted where such fictitious vouchers were retained and used in the branch record and vault operations as though they represented genuine transactions. For Section 477-A, P.P.C., deliberate falsification of accounts is established where fictitious vouchers are employed to create a false appearance in the record and to mask actual cash deficiency. The cumulative evidence satisfies the ingredients of these offences. The defence led no evidence. The appellant did not enter the witness-box under Section 340(2), Cr.P.C., nor did he produce any material to suggest that the shortage arose from accounting error, procedural lapse, unauthorized conduct of some other identified official, or any circumstance consistent with innocence. Once the prosecution had proved a strong chain of incriminating circumstances, the failure of the accused to explain those matters particularly within his knowledge became relevant. An adverse inference under Article 129(g) of the Qanun-e-Shahadat Order, 1984, may be drawn only as an additional reinforcing circumstance and not as a substitute for the prosecution's burden. Considered in that proper legal framework, the appellant's silence materially fortifies the prosecution case already otherwise established.

21. We have also considered the question of sentence. The learned trial Court enhanced the sentences under Sections 471 and 477-A, P.P.C. compared with the earlier conviction. Though fuller reasons for such enhancement would have been preferable, no serious prejudice is shown to have resulted therefrom in the circumstances of this case because all

substantive sentences have been directed to run concurrently and the principal sentence remains that awarded under Section 409, P.P.C. The fine imposed under Section 409, P.P.C., read with the relevant provision of the Offences in Respect of Banks (Special Courts) Ordinance, 1984, has been calibrated with reference to the loss sustained by the bank and directed towards restitution upon recovery. It cannot be said to be illegal or arbitrary. It must be observed that the delay in conclusion of this prosecution is deeply troubling. The case arose in March 2014 and the impugned conviction was recorded in April 2025, after one earlier conviction, one appellate remand and repeated rounds of proceedings. Such delay is inconsistent with the constitutional aspiration of a fair and expeditious trial. Yet, delay by itself cannot justify acquittal where the evidence otherwise proves guilt beyond reasonable doubt. The accused has already been extended the benefit of Section 382-B, Cr.P.C., which partly mitigates the hardship caused by the protracted proceedings.

22. Upon an independent and cautious reappraisal of the entire record, we are satisfied that the prosecution has proved beyond reasonable doubt that the appellant, while serving as Manager Operations and exercising dominion over the vault operations of HBL Mansfield Street Branch, dishonestly misappropriated bank cash entrusted to his operational control, employed fictitious debit cash vouchers to conceal the shortage and facilitate the fraudulent scheme, knowingly used those false documents as genuine, and thereby falsified the bank's accounts. The evidence relied upon by the learned trial Court is legally admissible, materially corroborated, and sufficient to sustain the conviction. No misreading or non-reading of evidence has been pointed out which would justify appellate interference.

23. For the foregoing reasons, this appeal is dismissed. The impugned judgment dated 26.04.2025 passed by the learned Presiding Officer, Special Court (Offences in Respect of Banks), Sindh at Karachi, is maintained. All substantive sentences shall run concurrently. The appellant shall continue to receive the benefit of Section 382-B, Cr.P.C., and the period already undergone shall be adjusted towards his sentence in accordance with law.

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