IN THE HIGH COURT OF SINDH, CIRCUIT COURT,HYDERABAD

Before:
Mr. Justice Riazat Ali Sahar

Criminal Appeal No. S-48 of 2023

Appellant:	Rasool Bux (present on bail) through Mr.Meer Muhammad Buriro, Advocate.
Respondent:	The State through Mr. Shawak Rathore, DPG Sindh
Date of Hearing:	26-05-2025
Date of Judgment:	27-06-2025

JUDGMENT

RIAZAT ALI SAHAR, J:

Background

The Appellant, Rasool Bux, was implicated by the Anti-Corruption Establishment, Hyderabad City, in Crime No. 09 of 1999 for offences under s. 409 of the Pakistan Penal Code, 1860 **("PPC")** read with s. 5(2) of the Prevention of Corruption Act, 1947**("1947 Act")** which formed Sessions Case No. 103 of 1999 titled *The State v Rasool Bux* and was taken up by the learned Special Judge, Anti-Corruption (Provincial), Hyderabad for trial.

The First Information Report

The contents of the First Information Report **("FIR")** lodged against the Appellant read:

> "This case is registered as per approval of the Chairman ACC-III-Hyderabad dated 19-4-1999 and competent authority his Dy: Director ACE Hyderabad vide No: ACH/99/R/4124 dt: 15.4.1999, which was initiated on the report of Miss Shagufta Kaka Ist Ext: Joint Civil Judge & FCM Hyderabad vide his No. 1st/Ext: /55 of 1999 dated 24.9.1999. On the allegations that accused Rasool Bux Mallah Ex: Reader was posted in this court from 2.6.1997 to 20.11.1998. On coming to know that he has mis-appropriated the case properties, under the orders of Honourable District & Sessions Judge Hyderabad, I along with Khalid Tipu Rana, learned Civil Judge and FCM

Hyderabad, checked the record and verified the articles and found the following articles were missing from the court record has mis-appropriated by accused Rasool Bux Mallah. Such properties were received by the accused:

1) Cash Rs. 30,000/- in case No: 89/94 St vs. Mohd Iqbal and others U/ss 457, 380 PPC P.S. Bhitai Nagar, Hyderabad.

2) Cash Rs. 43,250/-, one gold chain, one gold ring in case No. 30/1996 (St vs: Wishnu Das and others) (U/s 3/4 Proh: Crime No. 38/96 P.S. Bhitai Nagar (case has been disposed of u/s 249 CrPC on 27-5-1998).

3) Cash Rs. 200/-, one gold ring in case No. 21/98 (St vs. Ghulam Raza alias Khalid u/s Proh: Crime No. 14/98 P.S. Bhitai Nagar).

4) Cash Rs. 29,500/-, 07 pints of Vat One Whiskey, 05 pints of Dry Gin, 05 nips of Whiskey, 08 nips of Dry Gin, in Case No. 29/98 (St Vs. Parbhoo Lal and others) Crime No. 35/98 U/s 3/4 Proh: P.S. Bhitai Nagar).

5) Cash Rs. 545/- in case No. 13/98 (St vs: Ghulam Qadir) U/s 13-D A.P. P.S. Bhitai Nagar.

6) Crime No. 62/98 U/s 5-A Gambling Act of P.S Bhitai Nagar, neither challan nor case properties vi: each appears to be available in court.

Hence the Accused Rasool Bux Mallah Ex: Reader Court of Ist Extra Joint Civil Judge and FCM Hyderabad committed offence punishable U/s 409 PPC r/w Sec: 5(2) Act-II 1947.

Therefore this case is registered on behalf of state."

The Trial

2. After investigation, a challan was submitted before the learned Trial Court. The Appellant received the relevant papers **(Exh-1)** and then a charge was framed against him **(Exh-2)**. He pleaded innocence and claimed trial**(Exh-3)**, which began with the prosecution examining the following seven (7) witnesses:

i. **PW-1**Haji Khan son of Muhammad Usman **(Exh-4)**, who produced a photocopy of Charge Fard showing the taking over of charge from the Appellant **(Exh-4/A)**;

ii. **PW-2** Muhammad Akbar son of Ali Muhammad **(Exh-6)**, who did not produce any document;

iii. **PW-3** Nazeer Ahmed son of Bashir Ahmed **(Exh-7)** who produced a photocopy of R.C. No. 71 dated 06 August 1997 **(Exh-7/A)**;

iv. **PW-4** Khuda Bux son of Khaliq Dino **(Exh-8)**, who produced submission note dated 14 January 1999 **(Exh-8/A)**, attested copy of R.C No.49 dated 14 June 1997 in crime No. 38/1996 U/S 3/4 PEO **(Exh-8/B)**, attested copy of letter dated 18 March 1998 of SHO P.S Bhitai Nagar in crime No. 14/1998 U/S 3/4 PEHO **(Exh-8/C)**, attested copy of letter dated 18 August 1998 of SHO, P.S Bhitai Nagar in crime No.35/1998 U/S 3/4 PEHO **(Exh-8/D)**, attested copy of R.C dated 01 September 1997 of P.S Bhitai Nagar in crime No.53/1997 U/s 402 PPC **(Exh-8/E)**, attested copy of RC No.12 dated 09 October 1998 of P.S Bhitai Nagar in crime No.62/1998 U/S 5-A of Gambling Act **(Exh-8/F)** and R.C No.71 dated 06 August 1997 in crime No.81/1994 U/S 457 PPC of P.S Fort **(Exh-8/G)**;

v. **PW-5** Muhammad Ismail son of Haji Ali Muhammad, Investigation Officer **(Exh-9)**, who produced a photocopy of the Letter No. 1st Extra/55/1999 dated 24 February 1999 of Ms. Shagufta Kaka, then Civil Judge **(Exh-9/A)**, photocopy of his Verification Report **(Exh-9/B)**, photocopy of Letter from Deputy Director, ACE Hyderabad **(Exh-9/C)**, FIR **(Exh-9/D)**, photocopy of Enquiry Report of Ms. Shagufta Kaka and Mr.Khalid Tipu Rana addressed to the District and Sessions Judge, Hyderabad **(Exh-9/E)**, photocopies of charge report and case properties **(Exh-9/F)**, *mashirnama* of arrest **(Exh-9/G)** and correspondence made during enquiry **(Exh-9/H)**;

vi. **PW-7** Shagufta Kaka daughter of Allah Bukhsh Kaka **(Exh-10)**, who produced a photocopy of her Report dated 11 February 1998 **(Exh-10/A)**;

vii. **PW-8** Khalid Tipu Rana son of Muhammad Aslam Rana **(Exh-11)**, who did not produce any document.

3. One witness, **PW** Asif Ali Qazi, was given up by the prosecution **(Exh-12)** whereas another witness, **PW** Mirza Rasheed Ahmed son of Mirza Abdullah Khan died during the proceedings and could

not be examined. In this connection, Process Server Abdul Majeed son of Abdul Aziz was examined on Oath **(Exh-13)** who produced a court summons with his endorsement **(Exh-13/A)**, an attested copy of the death certificate of PW Mirza Rasheed Ahmed **(Exh-13/B)** and a statement by Mirza Feroz Ahmed **(Exh-13/C)**. The prosecution then closed its side for evidence on 19 February 2021 **(Exh-14)**.

4. The statement of the Appellant was subsequently recorded by the learned Trial Court under S. 342 of the Criminal Procedure Code, 1898 **("CrPC")**, which is on record at **Exh-15**. The Appellant then examined himself on Oath under S. 340 of the CrPC **(Exh-16)** and was cross-examined by the prosecution. In his statement on oath, the Appellant again denied the charge against him and pleaded his innocence. The Appellant had named a witness, Ghulam Mustafa Subhopoto, to examine in his defence; however, he could not be deposed on the account of his death. Consequently, the Appellant's side was also closed on 16 May 2022 **(Exh-17)**.

Judgment in Trial

5. The learned Trial Court finally passed Judgment on 21 February 2023 **("Trial Judgment")**. It found the Appellant guilty, convicted him of the offences for which he was charged, and passed the following concurrent sentences while allowing the benefit of S. 382-B of the CrPC to the Appellant:

> **Three (3) years of rigorous imprisonment (RI) and fine of Rs.50,000/- for the offence under S. 409 of the PPC, and simple imprisonment (SI) of three (3) in the event of default in the payment of the fine imposed.**

Three (3) years of RI and fine of Rs. 50,000/- for the offence provided in S. 5(2) of the 1947 Act, and SI of three (3) months in the event of default in the payment of the fine imposed.

Proceedings in Appeal

6. This case came to be heard before me as an appeal under S.410 of the CrPC against the impugned Judgment, and it was, on 26 May 2025, reserved. Mr. Mir Muhammad Buriro, learned Advocate for the Appellant, submitted a synopsis of his arguments, whereas the case was argued orally by Mr. Shawak Rathore, the learned Deputy Prosecutor General Sindh.

7. Heard. Perused.

Opinion

8. I have noticed that the following points require consideration in this appeal:

- The prosecution's evidence, particularly in the light of:
  - Discrepancies in witness testimonies
  - The signatures of the Appellant in evidence
- Admissibility of photocopies in evidence
- Standard and burden of proof and the shifting thereof to the accused in criminal jurisprudence
- The non-speaking nature of the Trial Judgment
- The length of the trial

The Prosecution's Evidence

PW-1 Haji Khan

9. As already stated, the prosecution examined seven witnesses. The first witness, **PW-1 Haji Khan**, who was the Reader in the court of

the First Extra Joint Civil Judge, Hyderabad, deposed that, upon his transfer the Appellant was not handing over his charge to him. Consequently, he was issued a letter by Ms. Shagufta Kaka, the Presiding Officer of the said court, upon which the Appellant appeared and surrendered his charge. PW-1 produced a *photocopy* of the charge fard containing the handing and taking over of charge, which was objected to by the Appellant's counsel. In his cross-examination, PW-1 admitted that he had not produced the purported letter issued to the Appellant for handing over his charge. He moreover admitted **"that case property of criminal cases used to remain in possession/custody of criminal clerk."** (Emphasis added)

10. The production of the Charge Fard **(Exh-4/A)** served only one purpose, and it was to show that the case properties for whose misappropriation the Appellant was charged were in fact in his possession and were not handed over to **PW-1** Haji Khan upon his transfer. This would go to show that the properties were in some way still in the possession of the Appellant and not placed by him in judicial record. It would astonishingly appear that **PW-1**'s evidence served to establish this one thing; yet, the sole document he produced from the judicial record was a photo stat copy, not even a certified copy.

11. Pertinently, the prosecution had given up a witness, **PW Asif Ali Qazi**, during trial through a Statement dated 30-08-2019 **(Exh-12)**, which is relevant, and it reads:

> "That PW Ex No. 4 namely Haji Khan has already been examined on the same point, therefore, I given up the PW Aasif Ali Qazi in the above case.
>
> Dated: 30.8.019
>
> S/d
> APG
> Anti-Corruption (P) Court, Hyderabad.

12. Taking the said Statement on its face-value, if PW Asif Ali Qazi was to be examined on the same point as PW-1 Haji Khan, then he was a very significant witness to (i) corroborate PW-1's evidence and (ii) prove the custody of the case properties with the Appellant. His evidence became of particular significance granted that PW-1's evidence had not been of much help to the prosecution. In such a situation, the giving up of the said witness does not inspire confidence and fairly leads to a negative presumption that, had the said witness been produced, his evidence would have been against the prosecution.

13. Similar propositions were dealt with by earlier benches of this Court in ***Nadir Khan v State*** **(2024 YLR 1565 (Karachi))**, ***Muhammad Qasim Bhutto v State*** **(2024 YLR 1474 (Karachi))** and ***Arbab Ali Shar v State*** **(2023 YLR 2395)**. The crux of these cases is that, although the prosecution is not bound to produce each and every witness, if it fails to produce a central witness who would have given major evidence in favour of the prosecution, then a fair presumption can be raised against the non-production of such a witness as provided in Illustration (g) of Art. 129 of the Qanun-e-Shahadat Order, 1984. I believe this principle is attracted to this case.

PW-2 Muhammad Akbar

14. The next witness the prosecution examined was the then peon of the court of the First Extra Joint Civil Judge, Hyderabad, **PW-2 Muhammad Akbar**. His evidence brings one *"theli"* (small plastic bag) into picture, which the Appellant purportedly took while he was present. His deposition is significant, and it reads:

> "One "theli" was lying in the Almirah of the court. I don't know which material lying in that "theli". One day Reader of the court Rasool Bux Mallah, present accused took that *"theli"*

> *from Almirah. I do not know whether he kept the same "theli" back in the Almirah or not. On the next date when Judge sahib of the court came to know about missing of the property the same Almirah was desealed and property lying in the Almirah was checked and list of case property was got prepared. During checking case property viz. wine and cash amount was found missing."*

15. PW-2's cross-examination is also interesting. He admitted that one key of the lock of the said *Almirah* (cupboard) was lying with him while the other one was with another peon, Ghulam Mustafa Soomro. He similarly stated that his statement under s. 161 of the CrPC recorded before the Anti-Corruption Police was not read over to him; that he did not inform the presiding officer of the court when the Appellant took over the said "*theli",* but he told Khuda Bux Palejo, Clerk **(PW-4)**. I shall turn to his evidence below.

16. In my view, PW-2's evidence was the make-or-break piece of information in the matter. His allegation or claim in evidence was that the Appellant took a black *"theli"* from the *Almirah,* but he has not deposed on the size of the *"theli"* and has shown unawareness as to its contents. In any case, the charge against the Appellant is that he took around one lac Pakistani rupees, gold ornaments and twenty-five (25) bottles of alcohol, and it is hard to believe that all of that could fit in one *"theli"*(small plastic bag), as alleged. The fact that PW-2 was responsible for holding one key of the *Almirah* under discussion, and he did not object to the Appellant's alleged taking of the *"theli"* at the relevant time, is a telling element in considering the veracity of this evidence. Having one key means that PW-2 was the custodian of the *Almirah* as also the articles lying in it, but it is strange that he did not have knowledge of its contents and showed unawareness as to what was inside the *"theli"*, which very conveniently turned out to be black.

PW-3 Nazeer Ahmed

17. **PW-3 Nazeer Ahmed**, who was the Head Constable at P.S. Makki Shah, deposed that he deposited Rs. 30,000/- as case property under R.C. No. 71 dated 06 August 1997 before the First Extra Joint Civil Judge, Hyderabad. The R.C. produced by him was a photocopy, and he stated that he did not know who the Reader was in the said court at the relevant point in time. He is not a witness to the crime but only to the fact that a sum of Rs. 30,000/- was deposited before the concerned court. For the present purposes, therefore, he is not of much importance to the prosecution's case.

18. The evidence of PW-3, specifically to the effect of his lack of knowledge towards who the Reader of the concerned Court was, dents the prosecution's case. He did not depose that the Appellant personally identified himself as Reader or he already knew the Appellant, and so there is a valid possibility of someone else taking the articles purporting to be the Appellant. This is especially the case because, as per the available record to which I shall turn in more detail below, there is no reliable way to see if the RCs which purport to bear the Appellant's signatures were in fact signed by him or someone else posing to be the Appellant.

19. It is pertinent to note, also, that no other witness of the delivery or receipt of the other case properties was examined by the prosecution, except PW-3 whose evidence is limited to Rs. 30,000/- alone. PW-3's evidence, standing alone, also appears to be discrepant as already stated.

PW-4 Khuda Bux

20. The next evidence was of another Clerk to the First Extra Joint Civil Judge, Hyderabad, **PW-4 Khuda Bux**. His deposition is very relevant. He first gave a detailed history of how the matter as to the

misappropriation of case properties came on record including the proceedings in inquiry as well as his role in the same. He also produced attested copies of multiple documents, as mentioned above. What he did not depose on, however, was the *"theli"* which the Appellant allegedly took and which, as PW-2 said, PW-4 was informed about. Thus, PW-2's claim of the Appellant taking the *"theli"* in discussion remains uncorroborated. There are certain relevant portions in his cross-examination which raised my eyebrows:

> *"It is fact that prior to this, enquiry was also pending with Vth Additional District & Sessions Judge against Reader Haji Khan Karar. It is fact that in said enquiry present accused had given statement against me. Voluntarily says that accused Rasool Bux threatened me that if I have not given statement in his favour in this case then he will give statement against me in enquiry of Haji Khan, Reader. It is fact that in the said enquiry the said Haji Khan was acquitted/exonerated. It is fact that when the accused threatened me I had not made any complaint against him to any authority. Voluntarily says that during my appearance before the Sessions Judge in respect of the enquiry of Haji Khan I disclosed this fact before the District Judge…"*

21. It is seen from what has just been reproduced from PW-4's evidence that the Appellant had given a statement against PW-4 in an internal/departmental inquiry. Moreover, when PW-4 made this admission, he is seen to be making constant improvements in his statement by:

- firstly, deposing that he was threatened by the Appellant to give evidence in his favour; and
- secondly, admitting that he did not make any complaint against the Appellant upon receiving threats while simultaneously stating that he informed the District and Sessions Judge concerned when he appeared before him.

22. In criminal jurisprudence, an *interested witness* is someone who can be said to have a direct interest in having an accused somehow

convicted. There is a difference between a *related* and an *interested* witness in the sense that merely being related to the prosecution is of no relevance to that witness's testimony's worth; however, where a witness has a personal reason to find satisfaction in the suffering of the accused by way of false implication, then such a witness is known to be an *interested witness* and their evidence must be considered with great care and caution. An interested witness's evidence requires independent corroboration for it to be considered reliable.

23. By contrast, a *natural witness* is someone who appears to give a fair and impartial deposition and would have no personal interest in involving the accused and having them punished. A *natural witness* would obviously not want crime to go unpunished, and thus it is not unexpected of them to suggest the accused's guilt through their testimony expressly or impliedly, but their conduct would not exhibit partiality or deliberate bias to forcibly implicate an accused by hook-or-crook. A *related witness* may still be a *natural witness*, but an *interested witness* cannot be considered *natural* or *independent*, and their evidence requires due care and diligence to be exercised. The concept of *interested witness* and the worth of such a witness's testimony came to be adjudged by the Supreme Court in ***Muhammad Ramzan v Khizar Hayat*** **(2024 SCMR 1085)**, and it was held that:

> "10. …The testimony of an interested witness should be scrutinized with care and caution. Independent corroborating evidence is essential to test the validity and credibility of the testimonies of interested witnesses…"

A similar view is seen from ***Abid Ali v State*** **(2025 PCrLJ 383)** and ***Nazir v The State*** **(PLD 1962 SC 269)**.

24. In the present case, I believe the fact that the Appellant deposed against PW-4 in a departmental inquiry and then PW-4 got the opportunity to depose against the Appellant in a criminal trial means that the possibility of personal enmity and vendetta of the said witness with the Appellant cannot be ruled out. This is further strengthened by the constant gymnastics of PW-4 in his evidence to somehow cover-up this aspect of the matter. Not only this, but PW-4 was admittedly holding the charge of Criminal Clerk at the time; he was by the very nature of his duties the custodian of the case properties in criminal cases and so the chance of him trying to implicate someone else, such as the Appellant, to escape his own possible implication can also not be ignored. Because of these factors, I will term PW-4 as an interested witness, and I will hold that the evidence of PW-4required independent corroboration, which, as will be seen by the end of this judgment, is found absent.

PW-5 Muhammad Ismail (IO)

25. The case against the Appellant was investigated by **Muhammad Ismail**, then Circle Officer, Anti-Corruption Establishment, Hyderabad City, who appeared as **PW-5**. He first deposed as to the procedure adopted by him from receipt of the complaint until the lodging of FIR and arrest of the Appellant. He produced multiple documents, but most of them were photocopies. The cross-examination of PW-5 is essential and, since it is self-explanatory, its relevant portions are reproduced below:

> *"It is incorrect to suggest that accused being Reader is not custodian of case properties. Voluntarily says that accused received the case properties but did not deposit before Criminal Clerk.* ***It is correct to suggest that case properties were received by the predecessor of the accused. Voluntarily says that accused received the case properties from his predecessor according to enquiry report conducted by Mr. Khalid Tipo Rana and Miss Shagufta Kaka****…I do not know whether keys of the court lies with Naib Qasid…I do not know whether the cases wherein case properties were missed, were disposed of.* ***It is***

> ***correct to suggest that after disposal of the case, case properties be deposited in Malkhana. Voluntarily says accused did not deposit the same. I have not sent the signature of accused before hand writing expert. It is correct to suggest that entries of case properties pertains to the year 1994 to 1996 when accused are not posted. It is correct to suggest that case properties be sealed or de-sealed in presence of the Magistrate.*** *I do not know whether it is not work of reader to deposit the case properties in Malkhana…"*
>
> (Emphasis/special emphasis added)

26. The evidence of **PW-5** introduces further conflict in the prosecution's case, in that he stated that the case properties under dispute were received by the predecessor of the Appellant, however, this is not stated in any other witness's evidence. This has given rise to confusion as to whether the case properties were in fact received by the Appellant or by his predecessor in office, and there is effectively no evidence to suggest clearly a proper answer to this confusion.PW-5 similarly admitted that he had not sent the signatures of the Appellant to a handwriting expert for comparison; this calls for a discussion of its own which I shall do separately below.

PW-7 Shagufta Kaka

27. The charge of the court of the First Extra Joint Civil Judge, Hyderabad—the court where the crime at issue took place—was at the relevant time held by **Ms. Shagufta Kaka**. She was the Presiding Officer of the said Court, and the offence was reported to her. She was the complainant in the matter, and she appeared in evidence as **PW-7**. She deposed that in January 1999, she was proceeding with certain criminal cases; however, they kept getting adjourned due to non-availability of case properties. As such, she called Clerk Khuda Bux Palijo **(PW-4)** to produce the said case properties, but he reported that the same were missing and were not handed over to him during handing/taking over of charge by/from the Appellant. Consequently, PW-7 reported the matter to the District and

Sessions Judge concerned who ordered for sealing/de-sealing of the cupboard containing case properties, which was done in the presence of Khalid Tipu Rana **(PW-8)**, also a Civil Judge at the time, and an inventory was prepared. Thereafter, PW-7 called reports from the SHOs of PS Bhitai Nagar, Hyderabad, under direction from the District and Sessions Judge concerned, and they reported the details of the various case properties submitted by them. Subsequently, the District Judge concerned directed PW-7 to lodge complaint against the Appellant. In her examination-in-chief, PW-7 has disclosed the following case properties which were missing:

i. Case No. 89/1994 (PS illegible), Rs. 30,000/- cash;

ii. Case No. 30/1996 (PS Bhitai Nagar), cash amount (illegible), one gold chain and one gold ring;

iii. Crime No. 14/1998 (PS Bhitai Nagar), 11 bottles of high standard scotch, 5 bottles of black dog scotch, 2 bottles of black and white scotch, 2 bottles of wine, 5 quta scotch, 4 black label scotch (total 29 bottles), one gold ring and cash Rs. 200/-;

iv. Case No. 29/1998 and Crime No. 35/1998 (PS Bhitai Nagar), cash of Rs. 29,500/-, 7 pints of Vat One Whiskey, 5 pints of Dry Gin, 5 pints of Lion Whiskey, 8 nips of Dry Gin (total 25 bottles);

v. Case No. 13/1999 (PS Bhitai Nagar), cash of Rs. 545/-;

vi. Crime No. 62/1998 (PS Bhitai Nagar), neither case file nor case property was submitted and only challan of gambling was found.

28. PW-7 was cross-examined at some length. Following comes out of her cross-examination:

- "It is fact that Khuda Bux was holding the table of Criminal Clerk."

- "I do not remember whether Akbar and Ghulam were serving in my court as it is a matter of 1999."
- "I do not know whether at that time Peons were custodian of the keys of the office."
- "It is fact that on transfer of the accused Rasool Bukhsh Mallah, he was relieved by me. It is fact that misappropriation by the then Reader, was not brought in my knowledge at the time of the relieving of the accused."
- "It is not function of the Judge to supervise the handing and taking over of the charge of subordinate staff."
- "It is fact that at the time of relieving of the accused Rasool Bukhsh, there was no complaint against him before me and the property if any was brought in my knowledge after his transfer."
- **"It is correct that during my posting, one forged document regarding release of a truck was issued by the office but I do not know who issued said order. It is fact that when said forged order was come on the screen at that time, Haji Khan was Reader."** (emphasis added)

29. The evidence brought on the record by PW-7 needs cautious consideration. In her examination-in-chief, interestingly, she made additional accusations against the Accused which were not made in the complaint or the FIR. Her evidence suggests misappropriation of fifty-four (54) bottles of alcoholic drinks, while the charge against the Appellant is of twenty-five (25) bottles. There is no particular description of whether the bottles entirely were stolen or whether, as alleged in the complaint but stated nowhere else, only the liquid was stolen and replaced with water. Her cross-examination shows that she lost memory of many of the things with which she was confronted and also displayed lack of knowledge regarding many aspects of the matter.

30. Indeed, in criminal law, the general understanding is that, due to passage of time and human nature, ordinary errors of observation and memory recall may creep into evidence and result in minor discrepancies, which cannot be used to discard a piece of evidence completely. Minor discrepancies will always occur in evidence, howsoever honest and impartial a witness may be. However, where, as here, the resulting discrepancies or contradictions are of such a major nature that they affect the whole testimony of a witness and create missing links, then the same are to be considered with caution and may be rejected completely or partially as the case may be. In ***Allah Wadhaya v State*** **(2025 YLR 367 (Lahore))**, a somewhat similar observation was given.

31. PW-7 produced only one document, namely a *photocopy* of her Report dated 11-02-1998 **(Exh-10/A)**. Subject to my observations on the admissibility thereof, it is seen that the Road Certificates (RCs) on which PW-7 relied upon in implicating the Appellant were photocopies. For reference, the relevant part of Exh-10/A reads:

> "In compliance of your honour's office memo No. F/4050/99 dated: 3.2.1999 the lists of case properties in case which were challenged by the Bhitai Nagar Police and also from SHO of police station Fort in Crime No. 81/1994, were called. The SHO of police Station Bhitai Nagar, has submitted the list of cases showing crime numbers **along with photo state copies of Road Certificates**. The SHO of police station Fort has also submitted **photo copy of Road Certificate of crime No. 81/1994**."

32. PW-7 relied upon PW-4 Khuda Bux Palijo as her first source of information in the matter, which does not inspire confidence, since I have already held that PW-4 Khuda Bux was an interested witness. It would appear that PW-7 did not virtually consider the possibility of PW-4 being the Criminal Clerk himself trying to scapegoat the Appellant or

someone else, and directly proceeded to assume all guilt upon the Appellant on the basis of photocopies.

PW-8 Khalid Tipu Rana

33. The last witness for the prosecution was **PW-8 Khalid Tipu Rana**. He was then serving as Civil Judge and ACM, Hyderabad, and played a role in the inquiry against the Appellant having been appointed by the District and Sessions Judge concerned. In his examination-in-chief, he deposed as to the procedure adopted by him along with PW-7 in conducting inquiry in the matter as well as his statement under s. 161 of the CrPC. He saw the Accused in open court and deposed that he was the same person. His cross-examination is of great importance to the prosecution's case, and, since it is short, the whole of it is reproduced below for convenience:

> "At the time of preparing the inventory/report besides learned Ist Extra Joint Civil Judge, Hyderabad, one Clerk of the said Court and one Clerk of my Court was also present. I do not remember the names of those Clerks and Naib Qasid who were available at that time. Naib Qasid who was available at the time of preparation of inventory report was posted in the court of learned Ist Extra Joint Civil Judge however, I do not remember his name at this juncture. The inventory report/list was prepared by me as per articles recovered from both the Al-mirahs and thereafter same were tallied with the relevant property register of concerned court. It is incorrect to suggest that the articles in respect of which inventory report was prepared were in the possession and charge of another Criminal Clerk."

34. The cross-examination of PW-8 also displays loss of memory along with the statement that two other clerks, one from his own court and the other from the court of PW-7, were present during the sealing/de-sealing of the *Almirahs* of the concerned court. However, the names of the said clerks have not been brought on the record anywhere nor have they been examined in evidence by the prosecution.

Overall Observations

35. From the prosecution's evidence, it is noticeable that there is no ocular or direct witness of any of the misappropriation alleged. The premises of a court of law and especially its office, is a crowded area where usually many court officials and members of the public are present. The cash mentioned in the FIR could have been removed from the court premises in a hidden manner, however, if the Appellant removed huge quantities of liquor from the court premises, then there should have been witnesses of the occurrence. The only witness who seems to be an eyewitness is PW-2 Muhammad Akbar, but his statement is not conclusive as it mentions removal of one black *"theli"* without specifying its contents or size. For all that matters, that *"theli"* could contain nothing or it could contain everything, but to make a clear claim in this respect would amount to conjecturing.

36. Similarly, the case against the Appellant is based entirely on circumstantial evidence and he was implicated on the claim that he received case properties but did not submit them in court which means that he was in possession of the same and misappropriated them. This brings me to another important factor, namely the custodial authority over the case properties allegedly misappropriated.

37. Interestingly, at all material times it was always clear to the witnesses that the possession of case properties lies with the criminal clerk/property clerk of a court in ordinary course, and not with the reader. The Appellant was the Reader, and it was not his authority or assignment to hold custody of case properties. That authority lied with the Criminal Clerk, who was bound to ensure safe custody of the case properties, but instead the Appellant alone was implicated without considering the liability of the Criminal Clerk or any other responsible court official in the

matter. If it is to be assumed that the Appellant somehow was given access to case properties in spite of his assignment as Reader, then the integral question of who gave him such access and how he was permitted to handle case properties arises, which has gone untouched throughout the proceedings from the complaint up until the conclusion of the trial. That said, I would exercise judicial restraint in commenting further on any liability upon any person who was not on trial because it would be inappropriate to speak on someone without providing them a fair opportunity of defending themselves.

38. In the absence of natural and clear ocular evidence in the matter, there are numerous possibilities with which this Court is confronted. It could very well be that the Appellant took the case properties, as alleged, but it is equally possible that some other person misappropriated the case properties, and the charge was levelled on the Appellant. Yet again, however, to make a conclusive claim based on the available evidence will amount to speculation, which cannot be made the basis of conviction.

39. It is also necessary to note that no recovery at all of the allegedly misappropriated properties was made from the Appellant, which could have otherwise possibly connected him with the offence. In the absence of other incriminating evidence, the non-recovery of any of the case properties from the Appellant has become a material factor which also adds to the missing links in the prosecution's evidence. I must concede, alcoholic drinks, gold ornaments and money are all easily disposable items and could have possibly been disposed of in due course of time from the occurrence until its report. I have thus not given much weight to the matter of non-recovery in isolation, but I believe it is still of cumulative effect to the whole of the case and adds another missing link to it.

The Appellant's Signatures in Evidence

40. I shall now consider another significant aspect of the matter, that is, the prosecution's failure to send the signatures of the Appellant to a handwriting expert for comparison. This was admitted, as already stated, by **PW-5 Muhammad Ismail**, who was the IO, and the observation of the learned Trial Court in this respect is merely in one sentence:

> "These Road Certificates show the same signature of present accused as appeared on the plea of charge (Exh-3) and on statement of accused (Ex-15)."

41. For evidence, relevance here is Art. 84 of the Qanun-e-Shahadat Order, 1984 **("QSO")**, which reads:

> "**84. Comparison of signature, writing or seal with others admitted or proved:** (1) In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.
>
> (2) The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare with the words or figures so written with any other words or figures alleged to have been written by such person.
>
> (3) This Article applies also, with any necessary modifications, to finger-impressions."

42. Art. 84 of the QSO very clearly vests in a court the power to compare and verify signatures, handwritings and seals with those admitted on record. Thus, it is not obligatory to send signatures or handwritings to an expert for comparison and a court may very well do so on its own. The said power, nonetheless, is a discretionary one which must be exercised carefully, cautiously, reasonably and fairly. Under s. 24A (1)

of the General Clauses Act, 1897**("1897 Act")**, all forums under law are mandated as follows:

> "**24A. Exercise of power under enactments:** (1) Where, by or under any enactment, a power to make any order or give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of the purposes of the enactment."

43. In the light of the general principles of law as well as S. 24A (1) of the 1897 Act, it would appear that whether to exercise or not to exercise discretion is something a court must decide using its judicial mind by considering all the surrounding circumstances in a matter. However, where a court chooses to exercise discretion, it has no power to do so arbitrarily or whimsically; exercise of discretion must for all intents and purposes be fair, just and in a way which advances the purposes of the enactment under which such discretion is conferred.

44. The documents which were compared by the learned Trial Court in this matter were the Road Certificates purportedly signed by the Appellant for receiving the case properties whose misappropriation is alleged. The originals of these documents were not produced which could have been used for comparison. On the contrary, evidence adduced by the prosecution shows that the RCs produced before it were either photocopies or attested copies from photocopies (i.e. photocopies of photocopies). Neither the prosecution nor the learned Trial Court made efforts to have the originals of these documents produced and the learned Trial Court proceeded to compare signatures from such documents, giving its conclusion on one sentence. And the learned Trial Court proceeded to examine the Appellants signatures in undue haste through photocopies and photocopies of photocopies, through which it could not reliably examine the strokes, pressure, pen quality, etc., of the signatures.

45. Assuming for argument's sake that original documents were available for the Trial Court's examination, still it was bound to proceed with caution in the matter and to record proper and detailed findings as to how and in what manner it compared the signatures, including commentary on the strokes, pressure, pen quality, etc., which it did not do. In my respectful view the learned Trial Court's exercise of discretion in this respect was not judicious and fair, and while it is true that the ordinary course for appellate courts is not to disturb discretionary actions of lower courts, the present case is not one where the ordinary course can be adopted.

Admissibility of photocopies in evidence

46. The next point for this Court to consider is regarding the admissibility of photocopies into evidence. The record of this case shows that most of the documents on which the prosecution relied were photocopies and were admitted by the learned Trial Court subject to decision on the Appellant's objections at the time of judgment. There is no finding by the learned Trial Court on this matter.

47. The provisions as to documentary evidence are made in Chapter V of the QSO, from Arts. 72 to 101. In terms of these articles, the contents of documentary evidence can be proved by two (2) modes, namely through *primary evidence* and through *secondary evidence*. ***Primary Evidence*** is defined in Art. 73 as the "document itself produced for the inspection of the Court" and means the original of the document concerned. Art. 73 offers four (4) explanations for the purposes of interpreting the said article in the light of which:

- Where a document is executed in several parts, then each part of the document is primary evidence of that document, and where a document is executed in a counterparts, then

each counterpart is primary evidence against the parties executing it.

- Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest. However, copies of the common original are not primary evidence of the contents of the original.

- There is also provision as to admissibility of electronic evidence in terms of Explanations 3 and 4.

48. ***Secondary evidence*** has, conversely, been defined in Art. 74 of the QSO, and it includes the following:

- Certified copies made from the original document in terms of Art. 87 of the QSO, which are sufficient proof of the original document provided they are issued in accordance with the procedure prescribed in the QSO.

- Copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies.

- Copies made from or compared with the original document.

- Counterparts of documents as against parties who did not execute them.

- Oral accounts of the contents of a document given by some person who has himself seen it.

49. In terms of Art. 75 of the QSO, all documents must be proven by primary evidence unless they qualify to be proven through secondary evidence. Photocopies of documents or attested copies from photocopies are not primary evidence and cannot be admitted until and unless the procedure prescribed within the QSO is completely followed. To qualify as admissible, documents sought to be produced as secondary evidence must fulfil two requirements, namely:

- *First*, at least one of the conditions provided in Art. 76 of the QSO must exist.

- *Second*, if at least one of the conditions of Art. 76 are fulfilled, then a party must issue a notice under Art. 77 of the QSO to the person in possession of the original document. A notice under Art. 77 is of course subject to the exceptions provided within the said article and may be dispensed with by a Court under such exceptions, provided they exist.

The use of the word "must" in Art. 75 of the QSO shows that it is mandatory for a party to prove all documents through primary evidence alone, until and unless it is established that the conditions to record secondary evidence have been fully met. The admissibility of photocopies has also been considered in earlier cases such as ***Muhammad Akram v Muhammad Asif*** **(2022 CLC 1137 (Lahore))**, ***Arif Chaudhry v State Life Insurance Corporation*** **(2022 CLC 577 (Lahore))**, ***Muhammad Aamir v State*** **(2022 PCrLJN 29 (Lahore))**, ***Waseem Khan v State*** **(2022 PCrLJ N 70 (Karachi))**, ***Nasir Iqbal v State*** **(2020 PCrLJ 1410 (Lahore))**, ***Muhammad Irfan v State*** **(2019 YLR 1738 (Islamabad))** and ***Pir Munawar Shah v Habib-ur-Rehman*** **(2018 CLC 1901 (Peshawar))**.

50. To state the obvious, the law is always enacted to be followed; when a procedure is prescribed in law for a particular thing to be done, then that is how that thing is required to be done **(*Secretary, Ministry of Finance, Finance Division, Government of Pakistan v Muhammad Anwar* (2025 SCMR 153)**; ***Nadir Khan v Qadir Hussain* 2024 SCMR 770**; ***Ammad Yousaf v State*** **(PLD 2024 SC 273)**; ***Muhammad Hanif Abbasi v Imran Khan Niazi*** **(PLD 2018 SC 189))**. Thus, as a consequence of Arts. 76 and 77 of the QSO, the prosecution was bound to produce the originals of the RCs and other documents in evidence,

particularly when nothing was brought on the record to show that the said documents were unavailable and covered by the exceptions provided within the said articles. In the case in hand, the failure of the prosecution to produce originals of the exhibits in evidence is a fatal flaw, which cannot be ignored by me, and could not have been ignored by the learned Trial Court as it most unfortunately was.

51. Had the learned Trial Court decided on the admissibility of these documents at the time that they were proposed to be produced, the Appellant could have possibly chosen to exhaust his remedies against such an admission. However, when the learned Trial Court wrote time and time again in the depositions of the PWs that the photocopies and attested copies were being admitted subject to the defence's objections to be adjudicated at the time of final judgment, the learned Trial Court in fact made a promise to the Appellant, which it did not honour. In this way, the Appellant was incorrectly cornered by the said documents, which were considered by the learned Trial Court without commenting on their admissibility or otherwise.

52. In fact, as a matter of law, the learned Trial Court ought to have considered the admissibility of every piece of evidence, photocopy or not, on its own without waiting for any objection from any side. Therefore, *in arguendo* even if the Appellant had not raised any objection on the photocopies being produced in evidence, it was still the learned Trial Court's duty to examine their admissibility and pass appropriate orders if need be. It failed to do so.

53. In this respect, good guidance is offered by ***Province of Punjab v Muhammad Bashir*** **(1997 MLD 806)** and ***Hidayatullah v State*** **(2018 SCMR 2092)**. In ***Hidayatullah***, five judges of the Supreme

Court in its Shariat Appellate Jurisdiction deprecated the practice of trial courts of deferring objections on admissibility of documents. It was observed:

> "6. …
>
> A heavy responsibility lies upon the court as well as the prosecution and defence counsel to be alert so that inadmissible evidence should not come on the record. If any party tender such evidence during the trial the other party should immediately raise objection to the admissibility of such evidence and the court should decide the same then and there before proceeding further and prevent it from coming on the record if it is found to be inadmissible in evidence. It is the duty of the trial judge to check such evidence without waiting for any such objection from either side because the judge is required to be vigilant and to play an active role while recording evidence of witnesses.
>
> …It is the duty of the trial court to decide the objection then and there and not to defer the same till the end of the trial.
>
> 9. Before parting with this judgment, we want to bring on record our concern and displeasure about the manner in which the trial in question has been conducted. Learned trial judge has allowed the evidence to come on record which was not admissible which indicates the ignorance of the basic provisions of the law on the part of the Prosecutor, defence counsel and learned trial judge. It also indicates the lack of control of the learned Presiding Officer over the proceedings being conducted by him. Likewise, even the learned Federal Shariat Court has ignored the basic principles governing for appraisal and re-appraisal of the evidence. We are expecting from the learned presiding officers to be vigilant while recording the evidence during trial and should not allow to either of the parties to bring inadmissible evidence on the file. The learned presiding officers should realise that they are answerable and accountable to Allah Almighty and also to the High Court/Federal Shariat court for illegalities and irregularities done by them and the learned High Court under section 439, CrPC, is quite competent to examine the correctness of the order passed by them and may take serious action against them."

54. The admissibility of evidence in any criminal case is not a light matter, and it must be dealt with strictly as per the rules and procedure given under the law. The benefit of the prosecution's failure to comply with the mandatory rules of evidence must, therefore, go to the Appellant.

Standard and burden of proof in criminal cases

55. As arbiters of justice, courts of law must remain mindful of the futures of the people with which they are burdened. This holds true especially in criminal cases, where the decision, if taken against an accused, could range anywhere from simple imprisonment to hanging till death. And, while it goes without saying that no crime should go unpunished, it is equally valid that no innocent person should even for a second suffer punishment for something they did not do. Thus, criminal law relies upon proof *beyond reasonable doubt* in convicting the accused, as opposed to the rule of *preponderance of evidence* in civil cases, because this ensures that no person is deprived of life or liberty except in genuine cases of guilt and in accordance with law. This is a very high standard of proof and it is not discharged through discrepant evidence which is not only doubtful but also contains missing links. Conviction and sentencing require convincing and confidence-inspiring evidence to be brought before a court, which was not done in this case.

56. Criminal jurisprudence similarly imposes burden of proof upon the prosecution in all criminal cases, subject of course to the exceptions created by law. This means, if not already obvious, that under ordinary circumstances the prosecution is bound to prove the guilt of an accused beyond reasonable doubt before the burden is shifted to the defence to prove the innocence of the accused.

57. Let me to examine now the learned Trial Court's treatment of the burden of proof doctrine in this case. It appears that the learned Trial Court was overly convinced by the fact that the case in hand was enquired into by two judicial officers, who came in evidence as PW-7 and PW-8, as is seen from the following observations:

> "12. The prosecution also examined PW-7 Miss Shagufta Kaka, the then Presiding Officer of the trial court at (Exh-10) and PW-8 Mr. Khalid Tipu Rana, the then Civil Judge & FCM Hyderabad at (Exh-11). Both these witnesses being Judicial Officers conducted enquiry against the present accused and found him responsible regarding misappropriation of the case properties."
>
> 13. …Admittedly, the enquiry has been conducted by two Judicial Officers and this report is very material, important and show the facts which are undeniable and unrebuttable evidence against the accused. Both the judicial Officers i.e. Miss Shagufta Kaka and Mr. Khalid Tipu Rana appeared as witnesses during trial and recorded their evidence at (Exh's-10 & 11) respectively…They had also fully supported the prosecution case in their evidence. The prosecution case stand proved against the accused through cogent and reliable evidence and it has been proved that the present accused misappropriated the case properties shown in charge."

The above paragraphs clearly show that the learned Trial Court did not give much weight to the cross-examinations of these witnesses but gave a lot of consideration to the fact that they were judicial officers, going so far as to hold that the material given by the said judicial officers was 'undeniable' and 'unrebuttable'.

58. While the general principle is that evidence must be weighed and not counted, the official position or suchlike antecedents of a witness are not something which add or subtract weight to or from the evidence brought on the record. In law, every person, subject to the law itself, must be considered equal in their evidence, and, if upon a neutral and fair appraisal a cogent case is made out, only then will appropriate judgment be passed. The learned Trial Court gave due respect to the two judicial officers who came to depose before it, which was fine until its appraisal began to show departure from the basic principles regarding consideration of evidence. For all that matters, anyone could have been a witness against the Appellant, but that would have no relevance unless the evidence given by them was neutrally appraised and inspired confidence. This is a legal and constitutional guarantee given by Arts. 4, 10A and 25 of the

Constitution of the Islamic Republic of Pakistan, 1973, as also by the celebrated maxim ***let justice be done though the heavens should fall***, and it must be respected.

59. The learned Trial Court likewise took virtually on their face value the accusations that the case properties were received by the Appellant and proceeded to shift the burden to the defence to show that the Appellant had deposited the same before the court concerned. It did so on the basis of inadmissible documents, uncorroborated evidence and presumptions. In my view the learned Trial Court adopted a very relaxed approach towards shifting of the burden of proof from the prosecution to the defence, which ultimately culminated in what I may, with the greatest of respect, call a patent error apparent on the face of the record.

The non-speaking nature of the Trial Judgment

60. During my reading of the Trial Judgment, it seemed to me that the learned Trial Court disposed of the case in a hasty manner. The factual circumstances and depositions of the PWs are reproduced through and through, but there is very brief discussion on the quality of the evidence and the legal issues involved. Under the settled principles of law, every judicial, *quasi*-judicial and executive forum is bound to exercise their discretion reasonably, and a major part of reasonable exercise of discretion is to supply proper reasons and justification for their orders. Where, as here, a judicial order is found to be non-speaking, then it conveys the impression to its readers that the court was impatient and uninterested in properly deciding the case before it. It conveys apathy.

61. A non-speaking order or judgment not only causes problems to the parties to a case but also to appellate courts, who are unable to understand properly the wisdom with which the subordinate court passed

its orders as well as the points which it did or did not consider. In ***Muhammad Iqbal Chaudhry v Secretary, Ministry of Industries and Production*** **(PLD 2004 SC 413)**, it was held that a judgment should convey the clear impression that the legal and factual aspects of the case were properly and judiciously considered by the court deciding a case. Thus, the Supreme Court remanded the case on the sole ground of the failure of the lower court to pass a speaking order. I believe the Trial Judgment fell short of the requirements of a speaking judgment on similar lines as the case of ***Muhammad Iqbal Chaudhry***.

Conclusion

62. All that now remains is to conclude. Indeed, misappropriation of case properties from judicial record is a serious offence, and it does not call for any leniency to be exercised. In such cases, not only the investigation but also the prosecution and judicial proceedings should be airtight and carried out with an iron-fist. The culprit(s) of such offences cannot go unpunished because such crimes ultimately impact the outcomes of many other cases pending on the files of the courts. Be all that as it may, in the present case, the offence did not get the investigative and prosecutive attention that it deserved. I as a judge have only in my hands to give my sincerest consideration to the evidence produced before me, and upon doing so; I could see that the case against the accused was not free from doubt.

63. The case began in the year 1999, the Appellant was subject to trial for about twenty-four (24) years, and at the end he suffered about nine (9) months behind bars (thirteen (13) months, if remissions are included). He filed this appeal while in prison in 2023 and it is being decided when the year 2025 is half gone. He waited twenty-six (26) years

for the outcome of his case and is now about seventy-seven (77) years old. The Appellant deserved a reasonably expeditious trial of his case, as also a fair trial, but it seems to me that he was not given one.

64. In view of my above discussion, the instant appeal is **allowed**. Consequently, while extending the benefit of the doubts as herein above stated, I acquit the Appellant of the charge. He is on bail. His bail bond stands cancelled, and surety discharged.

JUDGE

Abdullahchanna/PS