

**IN THE HIGH COURT OF SINDH AT KARACHI**

*Present*

**Mr. Justice Syed Fiaz ul Hassan Shah**

**Criminal Appeal No.580 of 2024  
Crl. Appeal No.533 of 2024  
Crl. Jail Appeal No.589 of 2024  
Crl. Jail Appeal No.590 of 2024  
Crl. Jail Appeal No.591 of 2024**

[Appeal No.580/2024]

Appellant : Abdul Aziz son of Abdul Rasheed  
through Mr. Rashid Siddique, Advocate

[ Appeal No.533/2024]

Appellant : Shahzaib Iqbal @ Boxer son of Muhammad Iqbal  
through Mr. Arif Ullah Khan, Advocate

[Appeals No.589 & 590/2024]

Appellant : Wajid @ Doctor son of Mir Aslam  
through Mr. Mahmood Akhtar Qureshi, Advocate

[Appeal No.591/2024]

Appellant : Mairaj @ Merry son of Muhammad Ibrahim  
through Mr. Abdul Haque, Advocate

State : through Mr. Qamaruddin Nohri, Deputy  
Prosecutor General, Sindh (in all Appeals)

Date of Hearing : 08.10.2025

Date of Judgment : \_\_.10.2025

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

*Dr. Syed Fiaz ul Hasan Shah, J* – Through this consolidated judgment, I propose to dispose of all the listed criminal appeals filed by the above-named appellants, who have assailed the judgment dated 25.07.2024 (hereinafter referred to as the "**impugned judgment**") passed by the learned Vth Additional Sessions Judge, Karachi South (**Trial Court**) in Sessions Case No.885/2022 arising out of FIR No.22/2022 registered under Sections 395 and

397 of the Pakistan Penal Code, 1860 (**PPC**) at Police Station Preedy. By virtue of the impugned judgment, the appellants were convicted under Section 397 PPC and sentenced to undergo rigorous imprisonment for seven years each, along with a fine of Rs.10,000/- each. In case of default in payment of the fine, each appellant was directed to further undergo rigorous imprisonment for 30 days. Additionally, appellant Wajid @ Doctor was convicted under Section 23(1)(a) of the Sindh Arms Act, 2013, with the sentences ordered to run concurrently. The benefit of Section 382-B of the Criminal Procedure Code, 1898 was also extended to all appellants.

2. The facts of the case, as per FIR, are that on 10.01.2022 at about 1635 hours accused named above alongwith companion Taimor @ Tommy entered in the office of VIGOTEL Mobile Sales Center situated at second floor regal mansion, Abdullah Haroon Road Saddar Karachi by putting the complainant Muhammad Rafiq and other employees under fear of death and robbed cash of Rs.46,60,100/-, 23 cross-cheques in the sum of Rs.77,64,320/-, Techno Camon 17 mobile phone from PW Muhammad Bilal, VIVO V-17 from PW Furqan, Vigo Y21S mobile from PW Muhammad Ali, Vigo Y7S and Vigo 112 mobile phone from PW Rashid and fled away. Thereafter, PW-1 as complainant reported the crime and FIR was registered against the unknown persons.
3. After usual investigation, charge was framed at Ex.3, to which they pleaded not guilty and claimed to be tried vide their pleas recorded at Ex.3/A to 3/F. To prove its case, the prosecution has examined as many as 13 prosecution witnesses and exhibited various documents and items. Thereafter, the prosecution closed its side vide Ex.22. The statement of accused was recorded u/s 342 Cr. P.C at Ex.23 to Ex.28, to which they stated that they are innocent

and falsely implicated by the complainant and police. However, they did not opt to be examined on oath nor produced any witness in their defence.

4. I have heard the learned counsel for the appellants as well as the learned D.P.G. and with their assistance meticulously perused the record. It is reminded that the learned counsel for the appellants in Appeals No.589 & 590 of 2024 have been adopted by learned counsel on behalf of the appellants in other Appeals bearing No.580, 533 & 591 of 2024.
5. PW-1, who is the complainant and an eyewitness, initially recorded his statement under Section 154 Cr. P.C. in the following manner:

“I’m residing at the place mentioned in above column number two and working as Sales Manager in SSH Telecom SMC PVT L.T.D. On 10.1.2022 when I was busy along with my colleagues in the working affair at the company’s sale office situated at Vigotel Mobile Center 2<sup>nd</sup> Floor, Regal Mansion, Abdullah Haroon Karachi, suddenly at about 4.35 PM 04 Youngs people 03 wearing pants shirt while one person wearing salwar kameez, forcibly entered into the office, carrying weapons and hit and threatened to sit keep silence otherwise they will kill us. Due to fear we were shocked. Two person out of four persons moved forward and took out Rs.46,60,100/- from the drawer of table and 23 cross cheque amounting Rs.77,64,320/- of different banks on gunpoint and while leaving the place of incident they further robbed (1) Techno Camon Model 17 mobile phone with Sim No.0323 2056980 from PW Muhammad Bilal, (2) VIVO Model V-17 with sim No.0314 2137784 from PW Furqan, (3) Vigo Model Y21S mobile with sim No.0321 8230889 & 0320 8259090 from PW Muhammad Ali, (4) Vigo model Y7S and Vigo Model 112 mobile phone with sim No.0345 7078777 & 0304-707877 from PW Mohammad Rashid and fled away. All four persons speaking in Pashto and Balochi language and I can identify them very well.....”

6. When PW-1 Mohammad Rafiq, the complainant and purported eyewitness of the incident, entered the witness box before the learned Trial Court, his testimony failed to corroborate the contents of the FIR and the statement recorded under Section 154 Cr.P.C. Instead, his deposition introduced new

facts while omitting material particulars, resulting in significant deviations from his earlier version. He deposed:

“On 10.01.2022, it was 4.30 or 4.35 p.m. Asar prayer time, two persons came in our office situated at second floor of Regal Mansion, near BVS School, Abdulllah Haroon Road, Saddar Karachi and entered into my room, where I was doing my office work along with my two staff members namely Taj Muhammad and Bilal Hussain and one customer namely Sohail Nabi. The said two persons took out their fire arm weapons and snatched cash amount and cheque of Rs.50,000/- from Sohail Nabi. Thereafter they snatched about Rs.2000/- or Rs.2500/- from Bilal and Taj while extending life threats to them. Thereafter they went in warehouse adjacent to my room and within 3-5 minutes they returned back to my room and thereafter fled away from our office. After this incident I came to know through the staff members of account office that total there were four accused came to our office, and these accused prior to enter in our office went in the office of accounts from where they snatched a sum of Rs.64,60,000/- or 64,65,000/-/. They had also taken away post-dated cheque of about Rs.77,00,000/- and four mobile phones from account office. Again says the culprits had robbed cash amount of Rs.46,60,000/-seen the recording of CC cameras installed at our office/. After consultation at night next day, I lodged F.I.R. at police station.”

7. Upon comparative analysis of the statement of PW-1 Mohammad Rafiq (the complainant) recorded under Section 154 Cr.P.C. and his testimony before the trial court, it is evident that his evidence substantially undermined the prosecution’s case, stripping it of legal coherence and credibility. Instead of corroborating the version presented in the FIR, PW-1 introduced three inconsistent narratives during his examination: Initially, he stated that only two individuals entered the office, contrary to the FIR which alleged the involvement of four persons. He failed to confirm the exact amount allegedly robbed—Rs.77,64,320—as mentioned in the FIR. Instead, he introduced a new version, claiming that a cheque of Rs.50,000 was taken from Sohail Nabi, and Rs.2,000 or Rs.3,000 from Bilal and Taj. Subsequently, he asserted that he later

learned four accused had entered the Accounts Office and looted Rs.64,60,000 in cash, a post-dated cheque of Rs.77,00,000, and four mobile phones. Furthermore, during cross-examination, PW-1 introduced yet another version by admitting, ***“It is correct to suggest that at the time of incident the accused were wearing masks.”*** This assertion was neither mentioned in the FIR nor during the identification parade. Contradictorily, PW-1 had earlier claimed that all four suspects appeared to be Pashto and Baloch and were identifiable by him. These material contradictions and evolving narratives severely compromise the reliability of PW-1’s testimony and erode the foundational strength of the prosecution’s case.

8. The PW-2 Muhammad Arshad is a witness / mashir of the arrest, when police arrested one Fazal Rahim and recovered one 9 MM pistol and cash Rs.47,170/-. PW-3 Bilal Ali, who is Accountant with M/s. VIGOTEL. He has confirmed commission of offence and robbing articles but he has introduced fourth version by deposing as under:

“On 10.01.2022, I was present at Vigo Tel Office where I am doing job for the last five years as Accountant. On the said date, I was busy in my routine work and at about 4.30 P.M, suddenly I heard noise of Chamber’s door and I saw four persons before me, who were armed with pistols and they pointed upon me. Thereafter, said accused persons broke open the lockers and robbed cash Rs.46,60,100/- and 23 cross cheques amounting of Rs.77,64,320/- and mobiles phone from all of us. They robbed my mobile phone Cannon 17, mobile phone Vivo from Rashid mobile phone Vivo from Furqan and mobile phone Vivo of Ali Bhai which was lying on the table. The accused persons were talking with each other in Pashto and Balochi. Thereafter, the accused persons kept all robbed cash and things in a bag and went away.”

9. He introduced fourth version by stating that the culprits have broken the lockers but neither in the FIR nor in the evidence of complainant PW-1, there is a reference with regard to existence of locker and its broken by culprits; only this

witness PW-3 Bilal Ali has introduced this fact coupled with various looted amount.

10. PW-4 Abdul Rashid, who is also the employee of VIGOTEL Company, during his evidence introduced another version. He deposed that:

“On 10.01.2022 at about 4.30 P.M, I was available in accounts office situated at Regal Mension, Mobile Market, Saddar, Karachi, when four armed persons entered inside the office and they snatched about Rs.46,00,000/- from the cashier and cheques of Rs.77,66,000/- and two mobile phones from me another mobile phone from the table of Ali Bai and mobile phone of Furqan Vigo T-20.”

11. The evidence of this prosecution is also at variant and contradict to the evidence of PW-1, 2 & 3. He has not given any detail as to the specific individual role of each appellant who has robbed cash amount from whom and different cheques which were also looted, he has not given the quantity of mobile phones robbed as has been claimed in the FIR deposed by PW-1.

12. PW-5 Tajuddin, who is also a Salesman of VIGOTEL. He has introduced another version by deposing that:

“On 10.01.2022, it was 4.30 p.m., two persons wearing masks duly armed entered in our office, directed us not to move, otherwise they will kill us. My colleague Bilal Hussain was also sitting behind me, the said culprits snatched cash amount of Rs.2500 from Bilal Hussain, Rs.2500/- from me and left the office. After some time we came to know that the said culprits along with their two other companions entered in the account office and robbed cash amount of Rs.46,62,000/-, different cheques amounting to Rs.77,68,000/- bag from one of our colleague Simon, contained some cash and original documents. Said culprits also snatched mobile phone from three other boys working in the said room and took another mobile which was kept on table. At the same time when the said culprits entered in our room, one Sohail who is our dealer was also sitting with me, from whom they snatched cash amount of Rs.50,000/- and a cheque of

Rs.50,000/-. After commission the wardat they fled away from there.”

- 13.** The testimony of PW-5 Tajuddin stands in stark contradiction to the evidence furnished by PW-1, PW-2, PW-3, and PW-4, particularly with respect to the identity of the accused, the quantum of the amount allegedly robbed, and the individuals from whom cash, mobile phones, and cheques were purportedly snatched. Notably, PW-5 introduced a divergent version implicating one Sohail, a dealer of VIGOTEL, as the person present at the crime scene from whom the accused allegedly snatched Rs.50,000/- in cash and a cheque of equal value. Furthermore, PW-6 Bilal, also a salesman of VIGOTEL, did not witness the incident and merely stated before the Trial Court that he learned of the occurrence and the looted amounts—Rs.2,500/- from himself and Rs.2,000/- or Rs.2,500/- from PW-5 Tajuddin—through hearsay. His testimony, being non-eyewitness and lacking direct knowledge, does not advance the prosecution’s case and fails to meet the evidentiary threshold required under criminal law.
- 14.** PW-7 SIP Khalid Javed who is the investigating officer interrogated Meraj, Asad and Shahzeb and produced cash amount of Rs.650,250/-. PW-8 SIP Muhammad Akhtar who arrested the accused Wajid Ali @ Doctor son of Muhammad Aslam alongwith motorcycle No.KEY-9084 so also 30 bore pistol with magazine and four live bullets and on interrogation the appellant Wajid @ Doctor disclosed to this prosecution witness PW-8 that he alongwith other companions Meraj, Aziz, Fazal and Taimor has committed dacoity in the office of VIGOTEL on 10.06.2022 situated at Abdullah Haroon Road Karachi therefore the appellants have arrested accordingly.
- 15.** PW-9, SI Shabbir Azam, posted at AVLK, arrested three appellants—Shahzaib, Mairaj, and Asad—and recovered an amount of Rs.650,250/-, which was subsequently handed over to the Investigating Officer, SIP Khalid Javed.

During interrogation, appellant Mairaj disclosed that the recovered money was part of the looted amount and had been used to purchase a motorcycle parked at his residence. However, beyond this recovery, PW-9's testimony holds limited relevance to the ocular account or corroboration. Crucially, he failed to establish a direct nexus between the recovered amount and the robbery alleged in the FIR. The prosecution also failed to substantiate that the recovered cash was indeed the same as that looted from the complainant.

16. The testimonies of PW-10, PW-11, and PW-12 pertain to the mashirnama of arrest and recovery. PW-12, SIP Imran Saad, re-arrested the already detained appellants and recovered cash, which was produced before the trial court. His evidence is relevant only to that extent.
17. None of the prosecution witnesses appeared before the trial court to directly implicate the appellants in the commission of the offence. Consequently, the testimonies of PW-12 (Investigating Officer) and PW-13 (Judicial Magistrate who conducted the identification parade) do not materially advance the prosecution's case due to multiple deficiencies and contradictions in the statements of PW-1 to PW-6, who failed to identify the appellants during trial proceedings. Although the identification parade was conducted and exhibited as Exh.19/S, and the Call Data Records (CDRs) of the appellants were produced as Exh.19/V and Exh.7/E, these pertain only to appellant Abdul Aziz, who was identified by eyewitnesses Abdul Rasheed, Syed Bilal, and Simon Michael through CCTV footage. However, the Investigating Officer failed to explain the recovery of various cheques, looted cash, or mobile phones. Moreover, the prosecution witnesses who had earlier identified the accused during the parade did not reaffirm these identifications under oath before the trial court. Their failure to confirm such facts, coupled with the prosecution's omission to



declare them hostile or confront them with prior statements, renders the identification parade inadmissible and devoid of evidentiary value.

18. None of the prosecution witnesses confirmed the contents of the FIR or the incident involving forcible entry into the office by unmasked individuals. Their testimonies deviated significantly from the narrative recorded in the FIR, casting serious doubt on the identification of the accused. These inconsistencies create a substantial dent in the prosecution's case and warrant adverse inference regarding the reliability of the witnesses in establishing the identity of the appellants.
19. The contradictions between the FIR, statements recorded under Section 161 Cr. P.C., and the trial testimony—particularly that of PW-1, the complainant and purported eyewitness—have severely undermined the credibility of the prosecution. PW-1 failed to consistently narrate the incident and did not assign specific roles to each appellant. The quantum of the looted amount was not confirmed during trial, nor were the cheque numbers or their respective amounts detailed by any prosecution witness. The Investigating Officer also failed to clarify whether the cheque kept in the complainant's office pertained to a specific bank, whether they were encashed, remained in possession of the accused, or why they were not recovered despite obtaining remand from the Magistrate.
20. In the present case, the prosecution has demonstrably failed to discharge this burden. Instead of presenting a coherent and consistent narrative, the prosecution witnesses—particularly PW-1, the complainant—have introduced multiple and mutually contradictory versions of the incident. These stark contradictions are not minor discrepancies but go to the root of the prosecution's case, thereby rendering the evidence unreliable. In *“Maulvi*

*Hazoor Baksh vs. The State*”, (PLD 1985 Supreme Court 233) a witness who alters their testimony cannot be considered reliable, and their statements should be treated with caution. While a resiling witness may be disregarded by the court, a complainant who retracts their accusation can critically undermine the prosecution’s case. In such instances, the entire foundation of the case may collapse, especially when the complainant's testimony is central to establishing the offence.

21. Upon a careful reappraisal of the impugned judgment and the evidence adduced during trial, I have considered the submissions of the learned counsel for the appellants. It is a cardinal principle of criminal jurisprudence, as enshrined in Article 13 of the Constitution of Pakistan and Section 103 of the Qanun-e-Shahadat Order, 1984, that the burden of proof lies upon the prosecution to establish the guilt of the accused beyond reasonable doubt. The standard of proof required in criminal cases is not mere suspicion or probability, but proof that excludes every reasonable doubt.
22. It is a settled principle of criminal jurisprudence that the prosecution bears the burden of proving its case beyond reasonable doubt. In the instant matter, PW-1 Mohammad Rafiq, the complainant and purported eyewitness, failed to substantiate the contents of the FIR and his statement recorded under Section 154 Cr.P.C. during his testimony before the learned Trial Court. His deposition introduced new facts while omitting material particulars, resulting in material contradictions and deviations from his earlier version. The evidence recorded by the other prosecution witnesses are also found series of inconsistencies, introduction of new facts which materially undermine the credibility and evidentiary value of their statements and evidence. Such inconsistencies significantly diminish the evidentiary value of his testimony. In light of these

factual discrepancies and the legal standard of proof required under criminal law, the prosecution's case does not meet the threshold necessary for conviction. In light of the settled legal principles and the prosecution's inability to establish its case beyond reasonable doubt, the benefit of doubt must be extended to the appellants. The Hon'ble Supreme Court of Pakistan has consistently held that the benefit of doubt must invariably be extended to the accused. It has further affirmed that if even a single circumstance raises reasonable doubt in the mind of a prudent person, the accused is entitled to acquittal. Importantly, the extension of this benefit does not require the presence of multiple infirmities or a series of doubtful circumstances in the prosecution's case. A solitary, reasonable doubt is sufficient to entitle the accused to acquittal—not as an act of leniency or concession, but as a fundamental right. This doctrine is anchored in the enduring legal maxim: *"It is better that ten guilty persons be acquitted than that one innocent person be convicted."* ***Tajamal Hussain v. the State* (2022 SCMR 1567), *Sajjad Hussain v. the State* (2022 SCMR 1540), *Abdul Ghaffoor v. the State* (2022 SCMR 1527 SC), *Kashif Ali v. the State* (2022 SCMR 1515), *Muhammad Ashraf v. the State* (2022 SCMR 1328), *Khalid Mehmood v. the State* (2022 SCMR 1148), *Muhammad Sami Ullah v. the State* (2022 SCMR 998), *Bashir Muhammad Khan v. the State* (2022 SCMR 986), *The State v. Ahmed Omer Sheikh* (2021 SCMR 873), *Najaf Ali Shah v. the State* (2021 SCMR 736), *Muhammad Imran v. the State* (2020 SCMR 857), *Abdul Jabbar v. the State* (2019 SCMR 129), *Mst. Asia Bibi v. the State* (2019 PLD 64 SC), *Muhammad Mansha v. the State* (2018 SCMR 772), *Hashim Qasim v. the State* (2017 SCMR 986), *Muhammad Zaman v. the State* (2014 SCMR 749 SC), *Khalid Mehmood v. the State* (2011 SCMR 664), *Muhammad Akram v. the State* (2009 SCMR 230), *Faheem Ahmed Farooqui v. the State* (2008**

**SCMR 1572), Ghulam Qadir v. the State (2008 SCMR 1221), Riaz Masih alias Mithoo v. The State (1995 SCMR 1730), and Tariq Pervaiz v. the State (1995 SCMR 1345).**

2. In view of the above discussion, the impugned Judgment dated 25.07.2025 to the extent of conviction and sentence to the appellants Wajid @ Doctor son of Mir Aslam, Mairaj @ Merry son of Muhammad Ibrahim, Shahzaib @ Boxer son of Muhammad Iqbal and Abdul Aziz Bangali@ Burger son of Muhammad Rasheed for the offence punishable U/s 397 PPC is set aside and the appellants are acquitted from the charge. So far as conviction and sentence awarded to the appellant(s) under section 23(1)(a) Sindh Arms Act, 2013 for illegal custody of pistoal (weapon), since no separate sentence has been given under the aforesaid offence; therefore, the matter is remanded back to the trial Court with direction to re-write the Judgment to the extent of commission of offence for illegal control or use of weapon (pistols) punishable under section 23(1)(a) Sindh Arms Act, 2013 and pass appropriate order in accordance with law.
3. It may further be observed that the appellants in their statement recorded under Section 342 Cr. P.C. by the trial Court have denied the allegations and have taken specific plea that the recovered amount has foisted upon them and the appellant are innocent and have no connection with the instant crime therefore the Addl. I.G. (Investigation), Sindh Police, Karachi is directed to take all necessary steps to deposit the recovered amount with the State Bank of Pakistan under proper receipt.
4. The instant Appeals are disposed of in the above terms.

**JUDGE**

*Kamran/PS*