IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Appeal No. S-49 of 2022
&
Criminal Appeal No. S-51 of 2022

Appellants 1. Ahmed Ali alias Zohaib son of Hujat Ali 2. Hujat Ali son of Beero Khan in Cr. Appeal No.S-49 of 2022	:	Through Mr. Muhammad Afzal Jagirani assisted by Ms. Kiran Manzoor Mirani & Ms. Mehran Abdullah, Advocates along with Appellants (on bail).
Appellants 1. Tabarak son of Sadaruddin 2. Waqas son of Abdul Baqi 3. Qamaruddin son of Sadaruddin 4. Qadardin @ Qadar Hussain son of Mohammad Rafique 5. Abdul Razaque son of Mohammad Rafique 6. Jumo son of Sadaruddin in Cr. Appeal No.S-51 of 2022	:	Present in person (on bail).
The State	:	Through Mr. Ali Anwar Kandhro, Addl. Prosecutor General, Sindh.
Date of hearing	:	19.05.2025
Date of Judgment	:	19.05.2025

JUDGMENT

Muhammad Saleem Jessar, J.- Through this single judgment, I propose to dispose of captioned Criminal Appeals, as both appeals are outcome of counter cases against each other.

2. Criminal Appeal No.51 of 2022 has been filed by Appellants Tabarak, Waqas, Qamardin, Qadardin alias Qadar Hussain, Abdul Razaque and Jumo, all by caste Suhriyani, against judgment dated 17.09.2022 passed by learned Additional Sessions Judge, Kashmore (trial Court) vide Sessions Case No.239 of 2021 re: State Vs. Tabarak and others, arising out of FIR No.126/2021, under

Sections 452, 395, 397, 337-L(ii), 506/2 PPC, registered at Police Station, 'A' Section, Kandhkot whereby the appellants have been convicted for an offence punishable under Section 395 PPC and sentenced to undergo R.I. for 04 years each. They were also ordered to pay a fine of Rs.3000/- each and in case of default to suffer 03 days S.I more. All above named accused were also convicted for an offence punishable under Section 397 PPC and were sentenced to undergo R.I. for 07 years each. They were also convicted for an offence punishable under Section 452 PPC and were sentenced to undergo R.I. for 02 years each and to pay a fine of Rs:1000/- each and in case of default to suffer 01 day S.I more. They were also convicted for an offence punishable under Section 506/2 PPC and were sentenced to undergo R.I. for 01 year each and to pay a fine of Rs:1000/- each and in case of default to suffer 01 day S.I more. The accused Qamardin Suhriyani was also convicted for an offence punishable under Section 337-L(ii) PPC and was sentenced to undergo R.I. for 02 years. All the sentences of imprisonment awarded to the appellants were ordered to run concurrently. However, the benefit of section 382 (b) Cr. P.C. was extended to them.

3. Criminal Appeal No.49 of 2022 has been filed by Appellants Ahmed Ali @ Zohaib and Hujat Ali against the judgment dated 17.09.2022 passed by learned Additional Sessions Judge, Kashmore (trial Court) vide Sessions Case No.234 of 2021 re:State Vs. Ahmed Ali @ Zohaib and another, arising out of FIR No.129/2021, under Sections 397, 398, 337-A(iii), 337-L(ii) and 506/2 PPC, registered at Police Station, 'A' Section, Kandhkot whereby, both accused namely, Ahmed Ali alias Zohaib and Hujat Ali were convicted for an offence punishable to Section 397 PPC and were sentenced to undergo R.I. for 07 years each. Both above named accused were also convicted for an offence punishable under Section 398 PPC, and were sentenced to undergo R.I. for 07 years R.I each. The accused Ahmed Ali alias Zohaib was further convicted for an offence punishable under Section 337-A (iii) PPC and was sentenced to undergo R.I. for 03 years and to pay an ARSH amount, which shall be Ten percent of the Diyat, to be paid to the injured/complainant namely Qamardin Suhriyani. The accused Ahmed Ali alias Zohaib was also convicted for an offence punishable under Section 337-L(ii) PPC and was sentenced to undergo R.I. for 02 years. Both accused were also convicted for an offence punishable under Section 506/2 PPC and were sentenced to undergo R.I. for 01 year R.I each and to pay a fine amount of Rs:1000/- each. In case of default thereof to

suffer S.I for 01 day more each. All the sentences of imprisonment awarded to both the convicts were ordered to run con-currently. It was also specifically ordered that until and unless, the ARSH amount so awarded is not paid by accused Ahmed Ali alias Zohaib, he shall remain in jail, till payment of aforesaid amount. However, the benefit of section 382 (b) Cr. P.C, was extended to them.

4. Brief facts giving rise to filing of Cr. Appeal No.51 of 2022 are; that on 25.06.2021, at 0900 hours, the complainant namely Mst. Hazooran Khatoon, wife of Hujat Ali Suhiryani, appeared at PS 'A' Section Kandhkot and got registered abovesaid FIR, stating therein that on 04.06.2021, she along with her witnesses was available at her house, where at about 1300 hours, accused Qamardin, Jumo, Tabarak, Waqas, Abdul Razaque and Qadardin alias Qadar Hussain being armed with TT pistols and cudgel trespassed into her house. Accused Qamardin caused lathi blow to her, which she received on her left knee joint, while rest of the accused caused kick and fist blows to her. Accused Qamardin, Tabarak and Waqas also took away one golden locket, 30 tola of silver ornaments and cash of Rs:50,000/- from the iron box and went way, while issuing threats of dire consequences to the complainant party.

5. After completing usual investigation, SHO of PS 'A' Section Kandhkot submitted the challan in the case before the concerned Court, showing therein accused Jumo as an absconder, whereas accused Tabarak and Waqas were shown in custody, while accused Qamardin, Qadardin alias Qadar Hussain and Abdul Razaque were shown to be on bail. On 26.07.2021, accused Jumo surrendered before the concerned Judicial Magistrate and produced copy of order of interim pre-arrest bail. Thereafter, the Judicial Magistrate sent-up the R & Ps of this case to the Court of Sessions, Kashmore at Kandhkot, where the case papers were supplied to the accused as provided under section 265-C Cr.P.C. vide receipt Ex.02. A formal charge against accused/convicts was framed vide Ex.03, to which they pleaded not guilty and claimed to be tried through their respective pleas recorded vide Exh.04 to 09.

6. Thereafter, the prosecution led its evidence as provided by section 265-f Cr.P.C. The complainant namely Mst. Hazooran Khatoon was examined at Exh.10, she produced FIR and copy of order dated 22.06.2021, passed in Cr. M.A. 966/2021 as Ex.10/A & 10/B respectively. PW Hujat Ali was examined at Exh.11. Author of the FIR, namely HC Inayatullah was examined at Exh.12,

who produced DD entry No.07 at 0900 hours and DD entry No. 08 at 0920 hours as Exh.12/A. First mashir namely Hatim Ali was examined at Ex13, who produced memo of injuries, memo of site inspection and memo of arrest of the accused as Ex.13/A to 13/C respectively. I/O namely ASI Muhammad Moosa Domki was examined at Ex.14, who produced DD entry No. 09 at 0925 hours, DD entry No. 10 at 0930 hours and DD entry No. 15 at 1130 hours as Exh.14/A. Author of memo of injuries namely ASI Kambeer was examined at Ex.15, who produced DD entry no. 12 at 1340 hours and carbon copy of medical letter as Ex.15/A & 15/B respectively. Lastly the prosecution examined, MO, Dr. Abdul Qadeer Khoso at Ex.16, being well conversant with handwriting and signature of WMO Dr Anam Jameel). He produced MLC of injured Mst. Hazooran as Exh.16/A. Then, ADPP, appearing for the State closed the side of prosecution, vide his statement Exh.17.

7. Thereafter, statements of accused were recorded under Section 342 Cr. P.C. at Ex.18 to 23 respectively, wherein they denied the allegations of prosecution and professed their innocence. However, neither they examined themselves on oath as provided under Section 340(2) Cr. P.C. nor led any evidence in their defence.

8. The relevant facts in Cr. Appeal No.49 of 2022 filed by Ahmed Ali @ Zohaib and Hujat Ali are; that on 26.06.2021 at 1700 hours, the complainant namely Qamardin Suhriyani appeared at PS 'A' Section Kandhkot, where he got registered above said FIR stating therein that on 23.05.2021, he along with his witnesses was returning back to their house, when they reached near NADRA Office Kandhkot, it was 2030 hours, where accused namely Ahmed Ali alias Zohaib Ali and Hujat Ali, both armed with TT pistols, along with two unknown culprits attempted to snatch bike from him and on his resistance, caused butt blows of pistol to him, which he received on his nose and forehead and then the accused went away, while issuing threats of dire consequences.

9. After completing usual investigation, SHO of PS 'A' Section, Kandhkot submitted challan of this case before learned Family Judge & J.M Kashmore at Kandhkot, wherein both accused were shown on bail. Thereafter, the Judicial Magistrate, sent-up the R & Ps of the case to the Court of Sessions Kashmore at Kandhkot, where the case papers were supplied to the accused persons, in compliance of section 265-C Cr. P.C. A formal charge against accused was also framed vide Ex.03, to which they pleaded not guilty and claimed trial. Such pleas of accused were recorded vide Ex.04 and 05 respectively.

10. In order to prove its case, prosecution examined the complainant namely, Qamardin at Ex.06, who produced FIR and copy of order dated 22.06.2021, passed in Crl. M.A 908/2021 as Ex.06/A and 06/B respectively. PW Tabarak Ali was examined at Ex.07. First mashir namely, P.W. PC Zulfiqar Ali was examined at Ex.08, who produced memo of injuries and memo of site inspection as Ex.08/A and 08/B respectively. IO namely ASI Khawand Bux Awan was examined at Ex.09, who produced DD entry No. 29 at 1730 hours, DD entry No. 30 at 1740 hours and DD entry No. 34 at 1950 hours as Ex.09/A and intimation letter of interim pre-arrest bail granted to both the accused as Ex.09/B. MO Dr. Abdul Qadeer Khoso was examined at Ex.10, who produced police letter and duplicate MLC of injured Qamardin as Ex.10/A and 10/B respectively. Lastly, the prosecution examined author of memo of injuries namely, SI Ghulam Shabir at Ex.11, who produced DD entry No. 42 at 2200 hours, DD entry No. 27 at 1700 hours, and DD entry No. 28 at 1720 hours as Ex.11/A and 11/B respectively. Then, A.D.P.P. appearing for the State closed the side of prosecution, vide his statement Ex.12.

11. Thereafter, statements of accused were recorded under Section 342 Cr. P.C, at Ex.13 and 14 respectively, wherein they denied the allegations of prosecution and professed their innocence. They neither examined themselves on oath, as provided under Section 340(2) Cr. P.C, nor led any evidence in their defence.

12. After formulating the points for determination in the case, recording evidence of the prosecution witnesses and hearing counsel for the parties, trial Court convicted and sentenced all the accused in both cases by two separate judgments of the same date, as stated above, hence these appeals.

13. On the date of hearing viz. 19.5.2025 Appellants Tabarak and others in Cr. Appeal No.51 of 2022 were present. However, their counsel Mr. Asif Ali Abdul Razak Soomro, as intimated by Mr.Abdul Rehman Bhutto, advocate, was out of station. However, Mr. Bhutto submitted that the parties have settled down their differences outside the Court and do not want to prosecute each other. Hence, he submitted that by allowing these appeals, the impugned judgments may be set aside and the accused / appellants in both the appeals may be acquitted of the charges.

14. However, neither appellants Ahmed Ali @ Zohaib and Hujat Ali in connected appeal appeared nor their counsel was in attendance.

15. Learned Additional P.G., appearing for the State, submitted that main offences in both the cases are non-compoundable; however, all the appellants in both the appeals have sustained injuries, therefore, to that extent these appeals can be disposed of. In support of his contention, he placed reliance upon the case reported as PLD 2008 Karachi 420 *(re-ASHIQUE SOLANGI and Another Versus THE STATE)*. He also pointed out that though the cases pertain to alleged robbery; however, nothing incriminating was recovered from either side, hence the offence in terms of Sections 395, 397 and 398 PPC were not established.

16. It seems that the contention made on behalf of the appellants is mainly relating, rather confined, to the fact that as parties have amicably settled their differences and are not inclined to prosecute each other, therefore, the appeals may be allowed in order to keep harmonious relations between the parties. However, after perusal of evidence adduced by the parties in both cases, it seems that there are lacunas, discrepancies and infirmities, so also contradictions in both cases.

17. However, before touching the merits of the case, I deem it proper to deal with the submission regarding compromise having arrived at between the parties outside the court and consequently disposal of the appeals on considering such fact.

18. It seems that the offences punishable under Sections 337-L(ii) and 452 PPC are compoundable, whereas the offences punishable under sections 337-Aiii and 506/2 PPC except 395, 397, 398 PPC are non-compoundable. Therefore, I would like to discuss the legal point as to whether in the circumstances of a particular case, compromise between the parties could be allowed in respect of non-compoundable offences too?

19. From perusal of the case-law on this point, it seems that the Superior Courts have held that ***compromise is meant to promote harmonious living and maintain cordial relations between the parties, therefore, even in non-compoundable offences if the complainant / victim himself does not want***

to pursue the case any further, then the courts may accept the compromise arrived at between the parties.

20. In this connection, guidance could be sought from the following decisions.

21. In the case reported as ***AAMIR and 2 others*** Vs. ***The State and another*** (**2011 MLD 1468 [Lahore])**, Honourale Lahore High Court, held as under:

> ***"9. Now I advert to the factum whether compromise can be effected in non-compoundable offence. I am of the view that the compromise is meant to promote harmonious living and maintain cordial relations between the parties. This view was affirmed by august Supreme Court of Pakistan in the case of Ghulam Shabbir and 2 others v. The State (2003 SCMR 663)."***

22. In the case of ***GHULAM SHABBIR and 2 others*** Vs. ***The State***, reported in **2003 SCMR 663**, decided by a Full Bench of Honourable Supreme Court, which was also relied upon in the case of ***AAMIR and 2 others*** (supra), the accused were tried for the charge under sections 302/324/337-A(ii)/148 and 149, P.P.C read with section **9 and sections 6, 7 and 8 of Anti-Terrorism Act, 1997** by the Special Court constituted under Anti-Terrorism Act, 1997, in pursuance of F.I.R. No. 174, dated 13th August, 1993 registered at Police Station Jand, District Attock. On conclusion of the trial the trial Court found the accused persons guilty of the charge and vide judgment dated 23rd September 2000 convicted and sentenced them for above said offences. The accused were also convicted under Section 9 of ATA, 1997 and sentenced to undergo 4 years' R.I. each with fine of Rs.10,000 each in default whereof to undergo R.I for 2 months more. In Appeal, Honourable Lahore High Court, Rawalpindi Bench, Rawalpindi, modified the sentences awarded under Sections 302/149, whereas the accused were acquitted for the offences under Sections 324/149 PPC. However, rest of the conviction / sentence was maintained, which also included conviction and sentence of R.I. for four years under Section 9 of the ATA, 1997. Thereafter, a Criminal Miscellaneous Application was filed on behalf of the accused persons, wherein it was stated that rival parties have compounded the offence and have forgiven to each other in the name of Almighty Allah and in this behalf a compromise had been effected, therefore, it was prayed that the same may be accepted and the accused may be acquitted of the charge. Honourable Supreme Court allowed

said application holding as under:

> ***"Accordingly, the permission to compound the offence in view of subsection (5) of section 345 of the Cr.P.C. is accorded to the parties in order to maintain cordial relations and bury their hatchets forever. Resultantly, Criminal Miscellaneous No. 123 of 2002 is allowed… … Since leave to compound the offence is allowed, as such we set aside the conviction / sentence of the petitioners as well as impugned judgment dated 25th September, 2001. The petitioners namely Ghulam Shabbir son of Ghulam Yousaf, Ghulam Raza son of Ghulam Mohi-e-Din and Mushtaq Ahmed are acquitted under subsection (6) of section 345, Cr.P.C. They are directed to be released forthwith, if not required in any other case."***

23. It may be pointed out that in above said case Honourable Supreme Court allowed the compromise application although the accused were also convicted under Section 9 of the Anti-Terrorism Act, 1997 which is a **non-compoundable** offence.

24. In another case of ***ALI RAZA and another*** Vs. ***The State and another***, reported in **PLD 2013 Lahore 651**, it was held as under:

> ***"If the loss allegedly sustained by the complainant and his wife at the hands of the accused / petitioners has been made good, to their entire satisfaction, there may be no harm in allowing the instant applications for bail after arrest. Even otherwise, it has always been observed that the compromise even in non-compoundable offences is a redeeming factor, which brings peace, harmony and coherence in the society and it may have far-reaching positive effects, in the lives of warring-parties."***

25. In the case reported as ***TASAWAR HUSSAIN*** Vs. ***The STATE and another*** (**2021 YLR Note 124 [Islamabad])**, it was held as under:

> ***"7. Section 345, Cr.P.C. relates to compounding offences and subsection (1) of section 345 provides that the offences under the sections of the Pakistan Penal Code specified in the first and second columns of the table given therein may be compounded by the persons mentioned in the third column of that table.***
>
> ***8. Offence of robbery as mentioned in section 392 of Pakistan Penal Code does not find mention in the table given in section 345, subsection (1) of the Criminal Procedure Code and, therefore, is not compoundable. Similarly, section 411 of Pakistan Penal Code does not figure in the table mentioned under section 345, Cr.P.C. and, therefore, is not compoundable. However, the fact that the complainant himself has executed the affidavit, wherein he has undertaken that he has forgiven the petitioner/accused on the name of Allah Almighty and shall have no objection if the petitioner / accused is acquitted or released on bail after arrest, may be considered as the ground for the grant of bail in the interest of***

> ***justice and equity. Where the complainant party is no longer willing to prosecute the matter any further then it is not for this Court or the Courts subordinate to it to compel the parties to do so, as the saying goes, "you can take the horse till the water but you cannot make him drink".***
>
> ***9. In the similar case reported in "Muhammad Akram v. The State 1995 MLD page 1826" the factum of compromise was taken into consideration and bail was granted. More or less, the same view was taken in a case of rape in the case reported in "Mst. Mussarat Elahi alias Bibi v. The State 1997 PCr.LJ 1193", and the Supreme Court of Pakistan took judicial notice of a compromise in a matter which was otherwise not compoundable and converted the petition for Special Leave to Appeal into an appeal and, therefore, accepted the appeal by reducing the sentence to that which had already been undergone in the case of Ghulam Ali v. The State reported as 1997 SCMR 1411.***
>
> ***10. Thus, I am fortified in my opinion that judicial notice of a compromise having taken place can be taken even in offences which are not compoundable.***

26. In the case of ***MUHAMMAD JAMIL and others*** Vs. ***The State and another***, reported in **2013 P Cr. L J 1458 [Lahore]**, it was held as under:

> ***"Though, the accusations, mentioned in the F.I.R., constitute non-compoundable offences yet, compromise / reconciliation between the parties has always been held a redeeming feature, which brings peace and harmony in the society and only for this reason, the courts have always respected enthusiasms and passion of the parties to compound the offence, being compoundable or not. This is of course, not a job of the courts to pressurize the parties to continue with their hostilities or prosecute each other for years."***

27. In view of above, it would be in the best interest of justice, equity and fair play, in order to keep harmonious relations between the parties and to maintain peace and tranquility in the vicinity, matters are disposed of even if there are non-compoundable offences in the cases.

28. Now adverting to the merits of the case, it may be observed that, in fact, there appears to be a dispute between the parties over possession of the house, presently in occupation of Mst. Hazooran and others and both parties have also admitted that Mst. Hazooran had initiated proceedings under the Illegal Dispossession Act, 2005 against accused Tabarak and others.

29. Complainant Mst. Hazooran in her FIR alleged that on 23.5.2021 when she was present in her house along with other inmates, at night time the accused Qamar Din and other entered her house and issued threats for

vacating the house on the force of weapon; however, they went back while issuing threats of dire consequences to them. Thereafter, on 04.06.2021, when she along with her witnesses was available at her house, when at about 1300 hours, accused Qamardin, Jumo, Tabarak, Waqas, Abdul Razaque and Qadardin alias Qadar Hussain being armed with TT pistols and cudgel trespassed into her house. Accused Qamardin caused lathi blow to her, which she received on her left knee joint, while rest of the accused caused kick and fist blows to her. Accused Qamardin, Tabarak and Waqas also took away one golden locket, 30 tola of silver ornaments and cash of Rs:50,000/- from the iron box and went way, while issuing threats of death to the complainant party. However, she did not report the matter to police in respect of the incident allegedly taken place on 23.5.2021.

30. Very strangely, alleged incident of snatching of motorcycle of Qamardin by accused Ahmed and another also relates to the same date viz. 23.5.2021.

31. Apart from above, no incriminating articles have been recovered from any of the accused in both cases.

32. From perusal of cross-examination of the prosecution witnesses, particularly alleged eye-witnesses in both cases, it appears that they have made material admissions and contradictions which put dent in the prosecution case and create doubts in the prosecution story.

33. Complainant Qamar Din in Cr. Appeal No.49 of 2022, admitted in his cross-examination that his kerchief was stained with blood which he kept on his nose which started bleeding as a result of inflicting of blow by the accused. He further admitted that he had handed over said hand-kerchief to the I.O. but the same was not produced before court. He also admitted that he had lodged FIR **after one month and three days of incident, thus there seems to be unexplained inordinate delay in lodging the FIR which is also injurious to the prosecution case.** He also admitted that accused Ahmed alias Zuhaib, who was son of Mst. Hazooran, viz. the complainant in FIR lodged by her against Qamar Din and others, has filed complaint under the Illegal Dispossession Act against him and others.

34. P.W. Tabarak admitted in his cross examination that three days prior to the incident, accused party namely, Zuhaib and others had made firing at their house; however, after firing they did not go to police station for lodgment of FIR. This statement is contrary to the statement made by the complainant in his cross-examination to the effect, **"The firing was made by accused Zuhaib at our house about two days prior to the incident by making 2/3 fires. The neighborer had come after such firing. We had gone to PS for FIR but the SHO was in line with them therefore he did not lodge our FIR.** He further admitted that **blood was oozing from nose injury of Qamar Din and his clothes stained with oozen blood.** Despite that the shirt of Qamar Din, which was stained with blood, was not secured by the police as admitted by complainant Qamar Din in his cross examination to the effect, **"The shirt was not given by me to police."**

35. The mashir Zulfiqar Ali deposed in his evidence that the place of incident was a busy place surrounded by many shops, so also there was Elementary Collage and Government High School at about 200/250 feet away from the place of incident. Despite this, no independent witness of the locality was associated as mashir which is violative of the provisions of Section 103 Cr.P.C.

36. Likewise, in Cr. Appeal No.51 of 2022, complainant Mst. Hazooran admitted in her cross examination that mashir Tufail is her brother, whereas other mashir Hatim is his son. It has also come that there are various house of neighbours, despite that none of the independent person of the locality was associated as mashir, instead the persons having blood relations with complainant Mst. Harooran were associated as mashirs, although they were not residing in the same compound where the complainant and accused were residing. She also admitted that on the day of incident police visited the place of incident and then went away without preparing any document; however, in the same breath she took a somersault and deposed that the documents were prepared there.

37. P.W. Hujat Ali, who is husband of complainant Mst. Hazooran, deposed that on 23.5.2021 the accused duly armed with weapons entered into their house and warned them to vacate the house and then they went away. Thereafter, on 04.6.2021 they again entered into their house out of whom

accused Qamar Din was having a lathi, while other accused were armed with firearm weapons. Qamar Din said as to why they were not vacating the house and then he inflicted lathi blow to his wife i.e. complainant Mst. Hazooran which hit at her knee and other accused gave kicks and fists blows to her. When they tried to save her, the accused pointed their firearm weapons towards them and reprimanded them not to come near. Thereafter, they robbed golden locket and 30 tolas of silver and cash of Rs.50,000 and fled away. This story also seems to be unique. The accused allegedly gave beatings to an aged and ailing female namely, complainant Mst. Hazooran but did not cause any sort of injury to male inmates of the house. The attitude and conduct of the PWs Hujat and Zuhaib, who are admittedly husband and son of Mst. Hazooran respectively also seems to be illogical and unnatural because it is beyond imagination that they being husband and son of the victim respectively, did not rush in order to save Mst. Hazooran, although love and affection and *'Ghyrat'* of such blood relations demanded that they should have rushed to save Mst. Hazooran even at the cost of any harm to be caused to their lives. Similarly, although the accused except complainant Qamar Din, were holding firearm weapons but none of them used the same. Had there been any intention of the accused to commit murder of the complainant party or to cause grievous hurt, then they could have easily used the firearm weapon, as such there is lack of necessary ingredient i.e. *mens rea* / intention.

38. In his cross examination P.W. Hujjat admitted that he had moved application in respect of first incident, which allegedly took place on 23.5.2021, to SSP Office Kashmore on 4.6.2022 viz. the date when second incident allegedly took place. No explanation has been offered as to why he reported the matter after such delay. He also admitted in his cross examination that after receiving certificate regarding injury allegedly sustained by complainant Mst. Hazooran, they never go to police station but they directly approached the Court and filed application under Section 22-A Cr. P.C. for registration of FIR. In this view of the matter, there was apparently delay in lodging the FIR because it is not their case that after issuance of MLC they went to police station immediately but police did not register their FIR, instead they directly approached the court for getting directions for registration of FIR. It has also been admitted that the mashir Tufail was brother of Mst. Hazooran, whereas second mashir Hatim was his son, thus were closely related to complainant party. No explanation has come forward from the prosecution as to why

independent persons of the locality were not associated as mashirs or witnesses, thus there also seems to be violation of the provision of Section 103 Cr. P.C. which is mandatory requirement of the law.

39. In view of above said lacunas, admissions made by PWs and contradiction in their evidence, serious doubts have been created in the prosecution case.

40. It is well a settled principle of law that the prosecution is bound under the law to prove its case against the accused beyond any shadow of reasonable doubt. It has also been held by the Superior Courts that conviction must be based and founded on unimpeachable evidence and certainty of guilt, and any doubt arising in the prosecution case must be resolved in favour of the accused. In instant case prosecution does not seem to have proved the allegations against the accused/appellant by producing unimpeachable evidence, thus doubts have been created in the prosecution version. In the case reported as ***Wazir Mohammad*** Vs. ***The State*** **(1992 SCMR 1134)** it was held by Honourable Supreme Court as under:

> *"In the criminal trial whereas it is the duty of the prosecution to prove its case against the accused to the hilt, but* ***no such duty is cast upon the accused, he has only to create doubt in the case of the prosecution****."*

41. In another case reported as Shamoon alias Shamma Vs. The State (1995 SCMR 1377) it was held by Honourable Supreme Court as under:

> *"The prosecution must prove its case against the accused beyond reasonable doubts* ***irrespective of any plea raised by the accused in his defenc.*** *Failure of prosecution to prove the case against the accused, entitles the accused to an* ***acquittal****."*

42. Reference may be also be made to a recent decision given by a Division Bench of Baluchistan High Court in the case of ***Muhammad Rafique*** Vs. **The State**, reported in 2025 YLR 169 [Balochistan], where it was held as under:

> ***"13. It is a well-established principle of administration of justice in criminal cases that finding guilt against an accused person cannot be based merely on the high probabilities inferred from evidence in a given case. The finding regarding his guilt should be rested surely and firmly on the evidence produced in the case and the plain inferences of guilt that may irresistibly be drawn from that evidence. Mere conjectures and probabilities cannot take the place of proof. Suppose a case is decided merely on high probabilities regarding the existence or non-existence of a fact to prove the guilt of a person; in that case, the golden rule of giving "benefit of the doubt" to an accused person,***

> ***which has been a dominant feature of the administration of criminal justice in this country with the consistent approval of the Constitutional Courts, will be reduced to naught.***
>
> ***14. The prosecution is under obligation to prove its case against the accused person at the standard of proof required in criminal cases, namely, beyond reasonable doubt standard. It cannot be said that this obligation was discharged by producing evidence that merely meets the preponderance of probability standards applied in civil cases. Suppose the prosecution fails to discharge its said obligation, and there remains a reasonable doubt, not an imaginary or artificial doubt, as to the accused person's guilt. In that case, the benefit of that doubt is to be given to the accused person as a right, not as a concession."***

43. Needless to emphasize the well settled principle of law that the accused is entitled to be extended benefit of doubt as a matter of right and not as a grace or concession. In present case, there are various factors, as detailed above, which create doubts and put dents in the prosecution case. Even an accused cannot be deprived of the concession of benefit of doubt merely because there is only one circumstance which creates doubt in the prosecution case. In the case of ***Ahmed Ali and another*** Vs. ***The State*** reported in **2023 SCMR 781**, a Full Bench of Honourable Supreme Court has held as under:

> ***"12. Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right. Reliance in this regard may be placed on the cases reported as Tajamal Hussain v. The State (2022 SCMR 1567), Sajjad Hussain v. The State (2022 SCMR 1540), Abdul Ghafoor 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 (PLD 2019 SC 64), Hashim Qasim v. The State (2017 SCMR 986), Muhammad Mansha v. The State (2018 SCMR 772), 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) and Tariq Pervaiz v. The State (1995 SCMR 1345)."***

44. In the recent case of ***RAMESH KUMAR*** (2024 MLD 608), it was held:

> ***"15. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many***

> ***circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)."***

45. For the foregoing reasons, by a short order dated 19.05.2025, both appeals were allowed. Consequently, conviction and sentences awarded through impugned judgment dated 17.09.2022 arising out of Crime No. 129/2021 under sections 397, 398, 337-A(ii), 337-L(2), 506/2, PPC registered at Police Station A- Section, Kandhkot (Re-State v. Ahmed Ali alias Zohaib and another) and Judgment dated 17.09.2022 arising out of Crime No. 126/2021 under sections 452, 395, 397, 337-L(ii), 506/2, PPC registered at PS A-Section Kandhkot (Re-State vs. Tabarak & others) were set aside. The appellants in both the appeals were on bail, their bail bonds stood cancelled and sureties were discharged.

Office is directed to place a signed copy of this judgment in the connected appeal.

JUDGE

Larkana
Dated. 19.05.2025
Approved for Reporting