HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Criminal Appeal No.S-195 of 2024

Appellants/Accused:	1. Ghulam Rasool @Sundal s/o Muhammad Yaqoob Baloch. 2. Muhammad Arif s/o Moula Bux Baloch Through Mr. Rao Faisal Ali, Advocate.
Respondent:	The State, Through, Mr. Ghulam Abbas Dalwani, Deputy Prosecutor General Sindh.
Date of hearing:	16.06.2025.
Date of Judgment:	16.06.2025.

J U D G M E N T

Jan Ali Junejo, J:-- This Criminal Appeal has been preferred by the Appellants being aggrieved and dissatisfied with the judgment dated 11-07-2024 (hereinafter referred to as the "Impugned Judgment") passed by learned Additional Sessions Judge-I Mirpurkhas (hereinafter referred to as the "Trial Court") in Sessions Case No. 37/2024 whereby the appellants were convicted under Sections 397 read with 392 PPC and sentenced to undergo rigorous imprisonment for seven years each along with fine of Rs. 10,000/- each, and in default of payment of fine, to undergo simple imprisonment for one month each.

2. The prosecution case, as per FIR No. 107/2023 dated 31.12.2023 lodged by complainant Muhammad Hassan S/o. Muhammad Yaseen at 2130 hours at Police Station Mehmoodabad, is that on 26.12.2023 at 1830 hours near Railway School Morr, Railway Colony Mirpurkhas, two bike riders, one of them armed with pistol, robbed a black color ladies purse containing one Samsung Galaxy touch mobile phone and one currency note of Rs. 1000/- from Mst. Noreen, sister of the complainant. Following the investigation, a challan was submitted, and the case was forwarded to the Court of Sessions. The case was then assigned to the trial

Court. A formal charge was subsequently framed; the appellants denied the charge by pleading not guilty and claimed the right to a trial.

3. During the trial, the prosecution examined five witnesses in support of its case. The details of their testimonies, are provided below:

> **PW-1 Mst. Noreen**, **Exh-03** the sister of the complainant and the alleged victim, deposed that on the evening of 26.12.2023, while she was near Railway School Morr, Mirpurkhas, two unknown men on a motorcycle intercepted her, and one of them, allegedly armed with a pistol, forcibly snatched her black ladies' purse containing a **Samsung Galaxy A-32 mobile phone** and a **Rs. 1000/- currency note**. She identified the accused in court and also identified the recovered articles as those taken from her possession.
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> **PW-2 Muhammad Hassan**, **Exh-04** the complainant and brother of the victim, also claimed to be an eyewitness. He supported his sister's version and produced the FIR (Exhibit **4-A**). He too identified the accused in court for the first time.
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> **PW-3 Muhammad Bilal**, **Exh-05** the mashir (witness) to arrest and recovery, stated that he was present at the time of arrest of the accused on 01.01.2024 and that the black purse, mobile phone, and Rs. 1000/- note were recovered from their possession. He produced the **memo of arrest** (Exhibit **5-A**), **memo of site inspection Exh 5-B**.
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> **PW-4 Abdul Razzaque**, **Exh-06** the Incharge Malkhana, produced the **malkhana entry** (Exhibit 6-A) showing deposit of case property.
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> **PW-5 ASI Mehar Khan**, **Exh-07** the Investigating Officer, deposed regarding the investigation steps taken, including recording of statements under Section 161 Cr.P.C. and production of relevant entries from the police station diary (Exhibit **7-A** and **7-B**). Despite the presence of these witnesses and exhibits, the evidence failed to eliminate doubts, due to inconsistencies, absence of identification parade, and lack of specific descriptions of the robbed articles.

4. In their statements under Section 342 of the Code of Criminal Procedure, both accused persons, Ghulam Rasool and Muhammad Arif, denied the allegations brought by the prosecution. Specifically, the accused Muhammad Arif claimed that the police used to demand extortion money from them and that he was falsely implicated in this case for having filed an application against them. However, they neither examined themselves on oath nor led any evidence in their defense, failing

even to provide any record of the alleged application against the police. After reviewing the evidence and arguments, the trial Court found the mere denial by the accused to be insufficient against the credible evidence of the prosecution. Consequently, the court convicted both accused persons for committing offenses punishable under Section 397 (read with Section 392) of the Pakistan Penal Code and sentenced each of them to seven (07) years of rigorous imprisonment and a fine of ten thousand rupees.

5. The learned counsel for the appellants has advanced arguments challenging the impugned judgment on multiple grounds. He contended that the judgment is against law and principles of natural justice, and that the trial court failed to consider material contradictions in the prosecution evidence. He argued that the prosecution completely failed to establish the case against the appellants and that no direct or indirect evidence was brought on record. The learned counsel submitted that all witnesses are interested and set up, and their testimony suffers from material contradictions and exaggerations to cover lacunas in their false story. He emphasized that the judgment is based on non-reading and mis-reading of evidence without any corroborative piece of evidence, and is founded on flimsy grounds having no substance to prove the charges. The counsel further argued that the appellants have no previous criminal record and that the trial court passed the judgment in a haphazard manner without applying judicial mind, making it suffer from legal infirmity. He prayed that this Honorable Court may set aside the conviction and sentence and acquit the appellants.

6. The learned Deputy Prosecutor General appearing for the State has strongly opposed the appeal and submitted that the prosecution has successfully proved its case beyond reasonable doubt through reliable and consistent evidence of eye-witnesses. He argued that both eye-witnesses, Mst. Noreen (victim) and Muhammad Hassan (complainant), have categorically identified the appellants in

court and their testimony is corroborated by the recovery of robbed articles from the possession of the accused persons. He contended that the defence has failed to establish any previous enmity or grudge between the witnesses and the accused which could motivate false implication. The learned DPG submitted that the trial court has properly appreciated the evidence and correctly convicted the appellants, and that mere denial by the accused cannot outweigh the positive and convincing evidence adduced by the prosecution. He prayed that the appeal may be dismissed and the conviction and sentence be maintained.

7. I have carefully considered the submissions advanced by the learned counsel for the Appellants as well as the learned Deputy Prosecutor General (D.P.G.) for the State. I have also meticulously examined the evidence available on record. Upon a thorough scrutiny of the material on record, it emerges that the Appellants were not named in the First Information Report (FIR). Furthermore, the FIR does not contain any description of the culprits' facial features, physical build, or other identifying characteristics. Despite this, the Appellants were arrested subsequently without any prior suspicion linking them to the crime. Significantly, no Identification Parade was conducted before a Judicial Magistrate to establish their alleged involvement. The in-Court identification of the Appellants by prosecution witnesses, made for the first time during trial, holds minimal evidentiary value in the absence of a prior judicially-supervised identification process. It is a well-settled principle of law that dock identification, when not preceded by a Test Identification Parade (TIP), is inherently weak and lacks evidentiary value. In similar circumstances, the Honourable Supreme Court of Pakistan, in the case of ***Gulfam and another v. The State (2017 SCMR 1189)***, held that: ***"****Identification of an accused person before the trial court during the trial has already been held by this Court to be unsafe particularly when the eye-witnesses making their statements before the trial court were examined after many other prosecution witnesses had already been examined and on all such occasions the accused persons could conveniently be seen by the*

eye-witnesses in the dock. In the present case the eye-witnesses were witnesses Nos. 17 and 18 meaning thereby that 16 other prosecution witnesses had already, been examined by the trial court and on all such occasions the present appellants could conveniently be seen by the eye-witnesses in the dock in the courtroom. This is why identification of an accused person before the trial court during the trial has been held by this Court to be unsafe in the cases of Asghar Ali alias Sabah and others v. The State and others (1992 SCMR 2088), Muhammad Afzal alias Abdullah and another v. State and others (2009 SCMR 436), Nazir Ahmad v. Muhammad Iqbal (2011 SCMR 527), Shafqat Mehmood and others v. The State (2011 SCMR 537), Ghulam Shabbir Ahmed and another v. The State (2011 SCMR 683) and Azhar Mehmood and others v. The State (2017 SCMR 135)".

8. The incident is stated to have occurred on 26.12.2023; however, the FIR was lodged after an unexplained delay of five days, on 31.12.2023. The prosecution has not furnished any cogent or satisfactory explanation for this delay. Such an omission raises serious doubts regarding the spontaneity and genuineness of the FIR, and gives rise to a plausible inference of deliberation and possible fabrication. A useful reference in this regard may be made to the case of ***Syed Fida Hussain Shah v. The State and another (2024 SCMR 1622)***, wherein the Honourable Apex Court held that: *"The occurrence in this case took place on 30.11.2014 at 6.30 pm, but the FIR was lodged on 04.12.2014 at 6.30 pm and as such there is delay of five (05) days in reporting the matter to the Police. No plausible explanation has been given by the complainant for the above mentioned gross delay in lodging the FIR, therefore, the sanctity of truth cannot be attached to the said delayed FIR".* It was further observed that: *"It is further noteworthy that even the name of any accused or his description or features were also not mentioned in the above referred delayed FIR. Admittedly, no identification parade of the petitioner has been held in this case".*

9. While the FIR alleges that the incident occurred at around 1830 hours, prosecution witnesses, including the complainant Muhammad Hassan and PW

Mst. Noreen, testified that it occurred around 05:46 or 06:00 pm. This contradiction assumes importance in the overall reliability of the testimony, especially in light of the other evidentiary deficiencies. The FIR and recovery memos lack basic details regarding the robbed articles. The color and model of the mobile phone, the description and color and description of the purse, and even the serial number of the allegedly recovered Rs. 1000/- currency note are conspicuously absent. Such vagueness undermines the credibility of the recovery proceedings in as-much-as there is no specification, details and mark of identification on the case property. It is also an admitted fact that no judicial identification of the case property was held through the eye-witnesses after the alleged recovery. Hence, no reliance can be placed on such recovery. In the case of ***Daniel Boyd (Muslim name Saifullah) and another v. The State (1992 SCMR 196)***, the Honourable Supreme Court of Pakistan held that: *"So far as the recovery of Rs. 30,000 from the house of appellant Saifullah is concerned, no identification was conducted regarding these notes which was necessary in all circumstances".*

10. Section 397 PPC requires the use or exhibition of a deadly weapon. Although it is alleged that the robbery was committed at gunpoint, no weapon was recovered from the possession of the appellants. Hence, a foundational element for the application of Section 397 PPC is absent. The appellants were unrepresented and not effectively cross-examined. The learned trial court failed to exercise its power under Article 161 of the Qanun-e-Shahadat Order, 1984, which imposes a duty to question witnesses to elicit relevant facts in such circumstances. This procedural omission caused serious prejudice to the defence and vitiated the fairness of the trial.

11. In light of the cumulative effect of the aforementioned material irregularities, including the omission of the appellants' names in the FIR, the failure to conduct an identification parade, unexplained delays, vague descriptions

of the accused and the crime scene, and significant procedural lapses, it becomes evident that the prosecution has not established its case against the appellants beyond reasonable doubt. The legal principle is well-established that it is unnecessary for multiple circumstances to create doubt. A single, substantial circumstance that raises suspicion about the prosecution's evidence can be sufficient to acquit the accused. The Honourable Supreme Court of Pakistan, in ***Muhammad Riaz and others v. The State and others (2024 SCMR 1839)***, underscored this principle. The Apex Court held that: *"It is an established principle of law that to extend the benefit of the doubt it is not necessary that there should be so many circumstances. If one circumstance is sufficient to discharge and bring suspicion in the mind of the Court that the prosecution has faded up the evidence to procure conviction then the Court can come forward for the rescue of the accused persons as held by this Court in Daniel Boyd (Muslim Name Saifullah) and another v. The State (1992 SCMR 196); Gul Dast Khan v. The State (2009 SCMR 431); Muhammad Ashraf alias Acchu v. The State (2019 SCMR 652); Abdul Jabbar and another v. The State (2019 SCMR 129); Mst. Asia Bibi v. The State and others (PLD 2019 SC 64) and Muhammad Imran v. The State (2020 SCMR 857)".*

12. Based on the detailed reasoning provided, the present Criminal Appeal is allowed. The Impugned Judgment, dated July 11, 2024, rendered by the learned Additional Sessions Judge-I of Mirpurkhas, is set aside. Consequently, the conviction and sentence imposed upon the appellants under Sections 397 read with 392 of the Pakistan Penal Code (PPC) are hereby overturned, and they are acquitted of the aforementioned charges. The appellants shall be released forthwith, provided they are not required in connection with any other case.

These are the reasons of short order dated 16-06-2025.

JUDGE