

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 785 of 2024

Appellant M. Irfan @ Brha	:	Through Mr. Ubedullah Ghoto, Advocate
The State	:	Through Ms. Amna Ansari, Additional Prosecutor General, Sindh
Dates of Hearing	:	31.08.2026
Date of Judgment	:	31.08.2026
Date of Reason	:	17.09.2026

JUDGMENT

Muhammad Saleem Jessar, J.- Through this Criminal Appeal, appellant has assailed the Judgment dated 30.09.2024 passed by learned IVth Additional Sessions Judge, Karachi-East vide Sessions Case No. 1028 of 2022, being outcome of FIR No. 95/2022, registered with Police Station Landhi, Karachi, for the offences punishable under section 397/34 PPC, whereby he was convicted for offence punishable under Sections 397 PPC and awarded sentence of rigorous imprisonment for seven years. However, benefit of Section 382-B Cr.P.C. was extended to him.

2. Brief facts giving rise to filing of instant Criminal Appeal, as per FIR are that in night of 31.01.2022 at about 09:45 pm complainant, Haseeb Bin Tariq, after meeting with his friend was coming back to his house on a motorcycle and when he reached at Coke-a-Cola Company bus stop at J-17 Landhi 89, Karachi, three persons came there on a motorcycle who on the strength of weapon stopped him and then robbed his mobile phone TECHNO BLUE SUPER K-24 (having IMEI No.359068105084408,

359068105084416-1) and purse of brown colour containing cash of Rs.3500/-, company card, CNIC copy and color copy of motorcycle documents bearing Registration No. KPB-7884 and, while threatening him, escaped away from the spot. Consequently, the complainant lodged aforesaid FIR at P.S. Landhi against 03 unknown accused for committing the offence of robbery.

3. After having completed investigation, Investigating Officer submitted charge sheet before the Court of concerned Judicial Magistrate, whereby, he challaned three accused.

4. During investigation, it came to knowledge of the Investigating Officer that the accused involved in instant case are available at P.S. Sharafi Goth, having been involved in FIR No.61/2022 under Section 392 read with Section 397 PPC. Accordingly, he along with the complainant reached there, where the complainant identified all three accused to be involved in instant case, thus the Investigating Officer re-arrested three accused in this case/crime.

5. A formal charge was framed against the accused on 03.04.2022 vide Ex. 02, to which they did not plead guilt and claimed to be tried vide their respective pleas Ex.2/A to Ex.2/C. However, during course of trial, accused Abdul Rehman @ Chachu absconded, therefore, required process was issued against him and reports were kept on record as Ex.03 to Ex.06. Thereafter, another accused namely Abdullah also absconded away and process was ordered to be issued against him too.

6. In order to prove its charges against the accused, prosecution examined PW-1 / mashir, Muhammad Siddique at Ex.07, who produced memo of place of incident as Ex.07/A, memo of pointation and arrest of accused as Ex.07/B and nakshanzari as Ex.07/C. PW-2, Haseeb Bin Tariq, who is complainant as well as mashir of both memos, was examined at Ex.8, who produced FIR as Ex.08/A and photographs as Ex.08/B. PW-3, ASI Saleem Ahmed, who is Investigation Officer of the case as well as author of both memos, was examined at Ex.9, who produced relevant roznamcha entries as Ex.09/A to 9/I.

7. Thereafter State counsel closed prosecution's side vide Statement Ex.10.

8. Thereafter, statement of accused was recorded under Section 342 Cr. P.C. vide Ex.11, wherein he denied the prosecution allegations stating that the case is false and that nothing was recovered from him, but the police officials, in order to show their efficiency, got him booked in false case. He further stated that the witnesses, being interested, had falsely deposed against him. However, neither he opted to get recorded his statement on oath, nor did he produce any witness in his defence. He claimed himself to be innocent and prayed for justice.

9. I have heard learned counsel for the appellant as well as learned Additional Prosecutor General Sindh appearing for the State and perused the material made available before me with their assistance.

10. Learned counsel for the Appellant, while arguing the case submitted that the Appellant has not been named in FIR and was shown arrested in Crime No.61 of 2022, registered at Police Station *Sharafi Goth*, Malir Karachi, for an offence punishable under Section 392 PPC, read with Section 397 PPC. The Appellant along with co-accused *Abdullah* and *Abdul Rehman @ Chachu* was shown to have been arrested in said case. After completion of investigation, the Appellant along with co-accused were granted post arrest bail; however, during pendency of the trial co-accused *Abdullah* and *Abdul Rehman @ Chachu* jumped over the bail. He next submitted that recovery of alleged robbed *Mobile* phone was effected from absconding co-accused *Abul Rehman @ Chachu*, and nothing incriminating has been shown to have been recovered from the Appellant, nor he himself produced anything before the police during course of investigation. He further submitted that right from the date of his arrest and subsequent custody from the date of his conviction viz. 30.09.2024, he has been in jail. Learned counsel also drew attention of the Court towards Jail Roll dated 06.05.2026, which reveals that the Appellant has served out substantial portion of his sentence upto 06.05.2026 01 year, 08 months and 17 days, whereas he has earned remission of 03 years, 06 months and 23 days upto 06.05.2026. The total period of sentence served out by him including remission is 05 years, 03 months and 10 days, while unexpired portion of his sentence is 01 year, 08 months and 20 days. He further submitted that although the Appellant was not named in the FIR, despite that, after his arrest he was not subjected to identification parade. Even alleged confession before the police, as claimed by the prosecution, has got no sanctity in the eye of law, the same being violative of Articles 38 and 39 of

the Qanun-e-Shahadat Order, 1984. He, therefore, submitted that the prosecution has failed to prove its charge against the Appellant, hence by allowing instant Appeal, impugned judgment may be set aside and the Appellant may be acquitted of the charge by extending benefit of doubt to him. In support of his contentions, he placed reliance upon the cases of *Muhammad Azam v. the State* (2014 SCMR 1683) and *Munawar Hussain v. The State* [2015 P.Cr.L.J 365 (Sindh)].

11. On the other hand, learned Additional Prosecutor General, Sindh, opposed the Appeal on the ground that no enmity or ill-will has been pointed out by the Appellant against the police, therefore, minor discrepancies would not vitiate veracity of prosecution evidence. According to her, the impugned judgment does not suffer from any illegality or infirmity, which may warrant interference by this Court. She, therefore, prayed that instant appeal may be dismissed and impugned judgment may be maintained.

12. On a query being raised by the Court, learned Additional Prosecutor General admitted that the Appellant was not named in the FIR and nothing incriminating was recovered from his possession or at his pointation during investigation. Besides, the robbed articles have been shown to have been recovered from co-accused *Abdul Rehman*, who, whilst on bail, had jumped over during pendency of the trial.

13. From perusal of the evidence of prosecution witnesses, there seems to be certain material contradictions in their evidence, and so also between two versions made by the complainant, one in the FIR and another in his deposition. Apart from this, there are also some glaring lacunas and discrepancies in the investigation, which make the prosecution case highly doubtful.

14. In the FIR, the complaint simply stated that on the date, time and place of incident, as disclosed in the FIR, three persons came there on a motorcycle and on the strength of weapon stopped him and then robbed his mobile, purse of brown colour containing cash of Rs.3500/-, company card, CNIC copy and color copy of motorcycle documents and escaped away from the spot. However, in his deposition, he appears to have made certain exaggerations and improvements, inasmuch as; in the FIR, he stated that

besides mobile and other articles, the accused also snatched color copy of motorcycle documents, whereas in his deposition color copy of motorcycle documents was replaced by **original registration running page**. Furthermore, in the FIR, he stated that after snatching the mobile and other articles, accused **escaped away from the spot**, whereas in his deposition he made exaggeration to the effect that after committing the alleged offence, the accused persons while escaping away from the spot, when reached at the corner of the street, younger brother of the complainant namely, Shah Mir came out of the house and gave *Lalkara* to the accused who instead of stopping their bike, made fire shot, which missed and complainant and his brother were saved. Besides, in his deposition the complainant also deposed that after alleged incident, they reported the matter at Police Station Landhi, but the police did not lodge the FIR and only kept entry in the record. However, there is, at all, no mention of such fact in the FIR. Even alleged entry was not produced during evidence either by the complainant or even by the Investigating Officer of the case.

15. In his deposition, the complainant also deposed that *accused Abdullah issued (sic) fire*. However, P.W. Mohammad Siddique, uncle of the complainant, deposed that accused / appellant Irfan made aerial firing. He did not depose that if any fire was made by accused Abdullah, which fact was deposed by the complainant. P.W. Mohammad Siddique in his cross-examination admitted that *he does not know as to who was riding the motorcycle and who was having the weapon*. If it was the position, then as to how he deposed at the end of his examination-in-chief that accused Irfan, whom he identified in court, made aerial firing. This witness also admitted in his cross examination that *he did not see the face of accused persons on the first day when they committed the alleged offence*. Again, in such an eventuality, as to how he identified accused/appellant Irfan in the Court when admittedly he did not see the face of any accused at the time of alleged offence.

16. As stated above, the complainant in his deposition has stated that after committing alleged offence, the accused while escaping away from the spot, when reached at the corner of the street, younger brother of the complainant namely, Shah Mir, came out of the house and gave *Lalkara* to the accused who instead of stopping their bike made fire shot, which missed and complainant and his brother were saved. Here the complainant does not speak about any other person except his younger brother Shah Mir; however,

P.W. Mohammad Siddique, uncle of the complainant, in his evidence deposed that at the time of alleged incident he was present in his Cattle Pan (*Bara*) and on hearing commotion outside the *Bara*, he came out and saw three persons, who after having robbed the complainant, while fleeing away **on seeing him** (P.W. Mohammad Siddique) fired two shots and then they escaped away. Contrary to that, as stated above, the compliant has not said a single word about the reaching of P.W. Mohammad Siddique at the spot at the time of alleged incident.

17. It is also significant to point out at this stage that on 24.6.2024 when evidence of complainant was recorded, further examination-in-chief was reserved *due to want of case property*. Thereafter, case was fixed on 26.6.2024 viz. after two days; however, there is no indication that on said date case property was produced, rather straight away cross-examination of the complainant was commenced. The scrutiny of record reveals that even the case property was not produced by any of the witnesses. This is also a glaring and severe defect in the prosecution case which makes it doubtful.

18. It also appears that the FIR was lodged after an inordinate delay of about 14 days as alleged incident took place on 31.01.2022, whereas the FIR was lodged on 14.2.2022. The complainant in his deposition has tried to explain such delay by deposing that after alleged incident, they reported the matter at Landhi P.S. but they did not lodge FIR, however, but only kept an entry on the record. Such explanation does not seem to be reasonable in the eyes of law because if the police is reluctant to register the FIR, then the complainant has been provided a legal remedy by filing an application under Section 22-A(6)(i) Cr.P.C. before the concerned court for issuing directions to SHO of concerned police station to register FIR if prima facie a cognizable offence is made out. In instant case, on the face of it, it was a cognizable offence therefore, such explanation is not sufficient to fill up the loophole regarding delay of 14 days in lodgment of the FIR. The delay in lodging the FIR is fatal to the prosecution case.

19. In this connection, reference may be made to the case of *Ayub Masih v. The State* (PLD 2002 SC 1048), wherein Honourable Supreme Court held as under:-

“The unexplained delay in lodging the F.I.R. coupled with the presence of the elders of the area at the time of recording of

*F.I.R. leads to the inescapable conclusion that the F.I.R. was recorded after consultation and deliberation. The possibility of fabrication of a story and false implication thus cannot be excluded altogether. **Unexplained inordinate delay in lodging the F.I.R. is an intriguing circumstance which tarnishes the authenticity of the F.I.R., casts a cloud of doubt on the entire prosecution case and is to be taken into consideration while evaluating the prosecution evidence.** It is true that unexplained delay in lodging the F.I.R. is not fatal by itself and is immaterial when the prosecution evidence is strong enough to sustain conviction but it becomes significant where the prosecution evidence and other circumstances of the case tend to tilt the balance in favour of the accused."*

20. In the case of Sabir Hussain V. The State (2022 YLR 173), it was held as under:

"9. The complainant has knowledge about missing of the deceased on 13.07.2019, but despite that, the complainant did not lodge the report, and he lodged the report on 16.07.2019 at 10:30 a.m. Nothing came on record about lodgment of the report of missing of the deceased by the complainant in Levies Thana. It has also come on record that the dead body of the deceased was recovered from the water bank of the Madrasa on 16.07.2019 at 6:30 a.m., and the FIR was lodged on the same date at 10:30 a.m., with a delay of four hours from the recovery of dead body of the deceased. The lodgment of the FIR with delay by the complainant creates a reasonable doubt in the prosecution case. Reliance in this behalf is placed in the case of Mehmood Ahmed and 3 others v. The State and another (1995 SCMR 127)."

21. In view of above, possibility of deliberation and consultation on the part of complainant/prosecution and false implication of the accused cannot be ruled out.

22. It is also pertinent to observe that the FIR was lodged against three **unknown** culprits with the allegation that on the strength of weapon, they snatched mobile and other articles from the complainant and then fled away. It is a settled law that where the names of the accused are not given in the FIR and they are said to be unknown to the complainant party, then after arrest of alleged culprits, under the law, identification parade becomes necessary. In instant case, no identification parade was conducted to identify the appellant at least by the complainant who had seen them very closely. In the circumstances, such lacuna puts severe dent in the prosecution case. In

this connection, reference may be made to the case of **Farman Ali Vs. The State (1997 SCMR 971)**, wherein Honourable Supreme Court held as under:

*"7. Holding of identification test becomes necessary in cases, where **names of the culprits are not given in the F.I.R.** Holding of such test is a check against false implication and it is a good piece of evidence against the genuine culprits. , Holding of identification test cannot be dispensed with, simply because the person accused of committing the robbery, has been subsequently found in possession of the robbed goods"*

23. In another case of **MUHAMMAD ASGHAR Vs. THE STATE**, reported in **PLD 2008 S.C. 513**, Honourable Supreme Court held as under:

*"We feel that in the attending circumstances of the case as the appellant was **not known** to the witnesses by face and his **name was not mentioned in the F.I.R.** it was all the more necessary for the prosecution to hold identification parade of the appellant."*

24. In view of above legal position, in absence of proper identification test / parade prescribed under the law, merely identifying the accused / appellant, who was admittedly not known to the complainant and other prosecution witnesses previously, in the court, has got no evidentiary value and, thus, it damages the prosecution case.

25. It is also noteworthy that P.W. Saleem Ahmed Khan, Investigating Officer of the case, in his evidence deposed that through complainant he came to know that the accused persons, involved in instant case, were confined at the lockup of P.S. Sharafi Goth, having been involved in FIR No.61/2022 under Section 392 read with Section 397 PPC. Accordingly, he along with the complainant reached there, where the complainant identified all three accused to be involved in instant case. During course of investigation, all three accused led the police to the place of incident and confessed that they had committed offence of instant case at said place. Thereafter, the I.O. involved the accused in instant case.

26. However, in his cross-examination, the I.O. made certain material admissions to the effect that he did not recover anything from the appellant; that he did not associate ASI Shakeel of P.S. Sharafi Goth as a witness in this case; that what recovery was made by said ASI Shakeel, was not made in his presence.

27. It may be observed that the articles allegedly robbed by the accused in instant case, were allegedly recovered by said ASI Shakeel Ahmed of P.S. Sharafi Goth. In the circumstances, it was almost necessary that said ASI Shakeel Ahmed, being star witness, should have been associated as a witness and examined in instant case.

28. It is also worthwhile to point out at this stage that younger brother of the complainant namely, Shah Mir, who is stated to have come outside the house and raised *Lalkara* to the accused, who in turn, had made fire shots, which were missed, has also not been examined before the trial Court. Both aforesaid witnesses were material witness, despite that they were not examined during the trial. In this view of the matter, in the light of Article 129(g) of the Qanoon-e-Shahadat Order, 1984, strong inference / presumption could be gathered that had said witnesses been examined, they would not have supported the case of prosecution. In this connection, reference may be made to a decision of Honourable Supreme Court given in the case of *Abdul Ghani Vs. The State* reported in **2022 SCMR 2121**, wherein a Full Bench of Honourable Supreme Court held as under:

“Thereafter, according to Noor Ullah Khan, S.I. (PW-4) on 08.06.2011 he sent the sample parcels to the office of Chemical Examiner but according to the report of Chemical Examiner the sample parcels were delivered there by one Head Constable No. 25 on 10.06.2011 but the said Head Constable was not produced by the prosecution during the trial. The learned State Counsel could not explain as to why the said Head Constable was not produced to confirm the safe transmission of the sample parcels to the office of Chemical Examiner so an adverse presumption under Article 129(g) of the Qanun-e-Shahadat Order, 1984 can be drawn against that person that he is not supporting the prosecution case.”

29. It seems that the prosecution has laid stress on the confession made by the accused / appellant before the police and the complainant that he had committed the alleged offence along with absconding accused persons. However, such admission / confession is not admissible in evidence by virtue of Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984.

30. Since the appellant was not nominated in the FIR nor any body

features or marks of identification were given by the complainant in his FIR, even after his arrest, the appellant was not subjected to identification test as for robbed articles are concerned, nothing incriminating was recovered from his possession nor was produced by him during course of investigation. Mere his alleged confession before police was not sufficient to maintain conviction against him as it is in violation of Articles 38 & 39 of Qanun-e-Shahadat Order, 1984. Hence, prosecution has miserably failed to prove its charge against him which may warrant conviction.

31. On 31.08.2026, after hearing learned counsel for the parties by a short order, instant Appeal being Cr. Appeal No.785 of 2025 (Re: *Muhammad Irfan @ Barha v. the State*) was allowed; impugned judgment dated 30.09.2024 penned down by learned IVth Additional Sessions Judge, Karachi East (trial court), vide Sessions Case No.1028 of 2022 (Re: *The State v. Muhammad Irfan @ Barha*) being outcome of Crime No.95 of 2022, registered with police station Landhi under Section 397/34 PPC was *set aside*. Resultantly, the Appellant was acquitted of the charge. The Appellant who was in custody; was ordered to be released forthwith if his custody was no longer required by the Jail Authorities in any other criminal custody case. Above are the reasons for said short order.

**JUDGE
HEAD OF CONST. BENCHES**

Karachi
Dated. 17.09.2026
APPROVED FOR REPORTING